

Improving Nonproliferation Enforcement

The United Nations Security Council did not fail, as U.S. editorial comment and political rhetoric asserted, when it refused to adopt a U.S./United Kingdom draft resolution designed to constitute an endorsement of an attack upon and invasion of Iraq. In strict terms, it did its job according to the rules. If any failure occurred, it was that of the cosponsors of the resolution—the United States, United Kingdom, and Spain—to obtain even the necessary majority of nine votes of the Security Council, not to mention an assurance that none of the states holding a veto power would have exercised it. That failure was a serious one given the extraordinarily strenuous efforts made to persuade and cajole other members of the Security Council into agreeing to the draft resolution.

Those efforts had included publication by the British government of an extensive dossier on Iraq's weapons of mass destruction (WMD) and a presentation to the Security Council by U.S. secretary of state Colin Powell of a kind not seen since the Cuban missile crisis of 40 years earlier. The British dossier and the Powell presentation sought to persuade members of the Security Council and the world beyond that Saddam Hussein still possessed extraordinarily large quantities of WMD and that he might have been making them available to terrorist groups.

Supporters of the United States and the United Kingdom have lamented the doggedness, the churlishness, of other Security Council members in refusing to be persuaded by the U.S./U.K. arguments. At a popular level, especially in the United States, reaction against France and all things French has been highly negative because of the prominent role France played in opposing the United States and United Kingdom.

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The Security Council has repeatedly failed to enforce the nonproliferation treaties.

One must also recall that, in the months leading up to these events, U.S. president George W. Bush and leading members of his administration, in particular Secretary of Defense Donald Rumsfeld, had threatened repeatedly—to the point where it had become a mantra—that, if the Security Council did not do exactly what the United States thought it should do, it would prove itself an inadequate and failing institution. In his usual economical language, Bush had said repeatedly to the Security Council in refer-

ence to attacking Iraq, “If you don’t do it, we will.” This stance contributed to very many Americans concluding that what happened in February did indeed constitute a failure of the Security Council. In fact, careful analysis reveals that to be the wrong conclusion being drawn from the right data.

The data reveals that, for a substantial period of time, the Security Council had failed to bring about compliance by Iraq with its decisions. Those decisions were le-

gitimate and were binding under international law. Iraq’s stance meant that a remedy was required. To assert that the Security Council failed because it was unprepared to agree in February 2003 to the specific remedy proposed by the United States and United Kingdom, however, is deeply questionable. Such an assertion implies that only one remedy was correct or viable. Other remedies were proposed. For example, France proposed that WMD inspections continue for a further brief period before the council might conclude that Iraq remained in noncompliance with the latest Security Council resolution (Resolution 1441 of November 2002).

The Security Council members were acting within their rights—some would argue that they were carrying out their proper responsibility—when they formed the view that the U.S./U.K. proposal was wrong and insupportable. The decision by the United States and United Kingdom to ignore the will of the Security Council and proceed with military action was contrary to the principles of international law as established in the UN Charter. Under these circumstances, it appears that the Security Council had not broken down earlier this year but rather that two of its permanent members decided to defy it and international law.

Having made this point, one should recall that, over the long haul, the Security Council’s performance on Iraq had been mixed at best. In January 1991, the Security Council adopted Resolution 687, which imposed far-reaching but very clear disarmament requirements on Iraq. The time frame in mind in 1991 anticipated approximately a year, or perhaps a little more,

to eliminate Iraq's WMD. Thereafter, sanctions could be removed, and a formal cessation of the Persian Gulf War hostilities would be declared.

From the beginning, Iraq refused to cooperate with the inspection process and to conform to the Security Council's decisions. As the years went by, well beyond the time frame initially envisaged, Iraq's resistance, obstruction of inspections, and concealment of its weapons programs increased. Crises and threats of the use of force were repeated. In 1998, after seven arduous years, Iraq remained in noncompliance with Security Council decisions and decided to shut down the inspection process then being carried out by the UN Special Commission to Disarm Iraq (UNSCOM).

In the face of this ultimate defiance of its decisions, on the whole the Security Council did little or nothing. Beyond arms control, the Security Council also did nothing about another matter of profound importance: Saddam's violation of human rights. For more than a decade, it was well known that Saddam was a serial violator of human rights and had committed acts of genocide against Kurdish and Shi'a Iraqis.

What can be said of these circumstances? The Security Council remains the supreme body under international law for the "maintenance of international peace and security." Its willingness and ability to do its job has varied greatly. On some occasions, it has worked very well; on others it has failed dismally. The genocide perpetrated in Rwanda in 1994 is an outstanding example of the latter. The extended failure with respect to Iraq and the failures in the former Yugoslavia run a close second. To complain about the Security Council refusing to bend to the will of two of its permanent members when alternative approaches were available and the relevant facts were in dispute, however, is a narrow and self-interested criticism that ignores the much larger issues of how the Security Council works, the adequacy of its decisionmaking methodology, and the relevance of its present constituency and agenda.

The Security Council and the Nonproliferation Regime

The adequacy and effectiveness of the Security Council are especially relevant to the UN role in maintaining and keeping whole the key multilateral treaties on WMD nonproliferation: the Nuclear Non-Proliferation Treaty (NPT), the Biological Weapons Convention, and the Chemical Weapons Convention.

The effectiveness of these nonproliferation treaties relies not only on their substance and their means of verification but ultimately on the political attitude expressed by the international community toward them. That attitude finds its peak expression in the Security Council, the supreme international lawmaker and law enforcer.

Each of the nonproliferation treaties shares four main characteristics. First, each of the treaties gives expression to a fundamental norm that the weapon covered by the treaty, whether nuclear, chemical, or biological, is a weapon that no state and no person should possess. This is not to exaggerate the sense and purpose of the treaties. Some might question whether the NPT, for example, expresses such a norm given that it establishes two categories of states: those with and those without nuclear weapons. The treaty establishes the obligation, however, that nuclear weapons states must progressively eliminate their nuclear weapons and nonnuclear states must never acquire them. The sum total of this commitment is the norm that asserts that no state should possess nuclear weapons.

The chemical and biological conventions establish a similar norm, although they are freed of the rather complicated business of beginning by formally recognizing that some states may be armed with those weapons but ultimately must get rid of them. The importance of the fact that the nonproliferation treaties establish a norm of civilized life cannot be overstated.

Second, each treaty provides the opportunity for states to make a political commitment. The decision by states to sign and then ratify their accession to each of the treaties commits them to observing the provisions of the treaty and the norms set forth in it. Some have argued that such action reduces the sovereignty of the state. In my view, this form of the sovereignty argument is misconceived. Joining a treaty is an act of sovereignty; it is exercised presumably because it is seen as improving the security of the state and also possibly for reasons of principle.

Third, one of the key issues in the negotiation of these treaties has been the anxiety that states feel that others may join a given treaty but then cheat on it. To address this concern, a means to verify that treaty obligations are being fulfilled is established and made either an integral part of the treaty or a protocol to it. Whereas joining the treaty is essentially a political action, accepting the obligations of verification is also political but more significantly a technical matter. Verification will not be perfect, but if all parties to a treaty are subject to the same periodic means of verification, such as inspection, and those acts of verification do not reveal noncompliance with treaty obligations, confidence that all parties to the treaty are maintaining their political commitment and continuing to observe the moral norm spreads.

Fourth, of almost equal importance in treaty negotiations has been the question of enforcement—what happens in the event that a state breaks its commitment and is discovered to be cheating. At this point, the Security Council most prominently enters the picture. In international law, just as in domestic law, if persons or states are seen to be able to break the law and

suffer no punishment or sanction, others begin to lose faith in that law. Accordingly, if a state breaks its obligations under a treaty and ignores warnings that it should desist from its course of action, for the sake of the viability of the treaty overall and possibly for the maintenance of international peace and security, enforcement action by the other treaty parties against the transgressing state is appropriate. Under each of the nonproliferation treaties, only the Security Council can authorize such enforcement action. In this overall context—more widely than in the Iraq case—deep concern about the Security Council’s unreliability in providing that source of enforcement is reasonable.

A few further comments on each of these four characteristics of the nonproliferation system are required to understand the difficulties currently being encountered within that system. For a norm to be effective and adherence widespread, it must be universally accepted and, as a consequence, be free of iniquity or double standards. From this standpoint, the present circumstances are not ideal. The nuclear weapons case is the most highly relevant one because the NPT contains two inherently unequal categories of states: non-nuclear weapons states and nuclear weapons states. Even in the cases of chemical and biological weapons, some states possessed those weapons or were able to make them while others were not, when the treaty was written and the norm was established. Unlike the nuclear weapons treaty, however, the chemical and biological weapons treaties do not formally acknowledge this reality.

The assertion of a universal norm and its coexistence with a double standard causes profound difficulty. This difficulty has reached the absurd proportion in political rhetoric, where it is virtually asserted without the use of the exact words that some WMD are good and acceptable (typically those of the politician speaking) while others are despicable (such as Saddam’s). This contradiction is widely noticed, is not accepted, and is seen as deeply iniquitous. During my 25 years of discussing the NPT with Indian officials, they repeatedly asserted that for the United States, for example, to state that its security was so important that it must have nuclear weapons and to imply that the same was not true of India’s security was simply unacceptable. This feeling of iniquity ran deep, and the world has seen the outcome: the acquisition by India of nuclear weapons, followed by Pakistan.

What I would call the “axiom of proliferation,” which asserts that, so long as any state possesses WMD, others will seek to acquire them, is elementally involved in this point. The basis for this axiom is the profound sense of in-

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justice or iniquity that is felt in the weapons and national security context. It also rests on the practical reality that countries, especially those in adversarial pairings such as China and India or India and Pakistan, feel compelled to acquire weaponry equal in power to that held by their adversary.

The second key characteristic of these treaties, the political commitment involved in acceding to a treaty, is a commitment that states should not make lightly. It should be real. In this sense, the refusal of India, Pakistan, and Israel thus far to join the NPT has at least had the virtue of honesty.

Saddam's stance has stood in stark contrast. He embarked on a nuclear weapons development program almost immediately followed his accession to the NPT.

States may withdraw from the nonproliferation treaties when their high national interests dictate such action. I do not believe that this facility within the treaties should be a source of concern or alarm. When a state exercises that right, the circumstances involved are clearly serious and should attract

the attention of the world community and the Security Council. This is precisely what has now happened with North Korea. Much more importantly, a state's decision to accede to a nonproliferation treaty should be real, and if it cannot be given in real terms, it is better that it not be given at all.

Verification has always been a vexed but, I would argue, much misunderstood matter. The skeptical view, which has now become widespread, is that treaty undertakings can never be adequately verified. If a state decides to cheat, it will succeed in doing so and possibly not be detected. In my view, such skeptics most often search for an absolute standard that cannot be met and claim that verification therefore can never work under any circumstances.

When access to relevant facilities, activities, and information is provided, however, the technical ability to determine whether a state is complying with its obligations can be relatively high. Verification can never be perfect in the face of a state prepared to violate its obligations, but it can be relatively accurate forensically. As time passes, if violations do not occur, the degree of confidence among treaty partners that the norm and political commitments are being observed grows. A point of intersection between political confidence and adequate verification can be posited where the two, taken together, provide a very high, if imperfect, degree of assurance that a given nonproliferation treaty is doing its job.

Yet, breakdowns and violations can occur, introducing the need for enforcement. Simply, the possibility that a state will suffer great harm if it does

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not maintain its commitment and obligations is essential. This is not to say that that harm must always be a delivered military punishment. The threat of such punishment is important, but the combination of sanctions and the threat of force should in most circumstances be able to prove effective as a means of enforcing obligations under the nonproliferation treaties. When that combination fails, taking military action, such as removing or terminating offending facilities (places where WMD are being manufactured or deployed) and of course the weapons themselves, will be necessary.

The Limits of the Security Council

Widespread if not universal commitment to enforcement is crucial. The Security Council's repeated failure to take action collectively and strongly in the face of noncompliance with the nonproliferation treaties has come to constitute the weakest aspect of the treaty fabric.

Apart from unilateral action, such as the recent attack on Iraq, the only source of such enforcement on a universal basis is a Security Council decision to authorize the use of force in the name of the maintenance of international peace and security. The main impediment to such decisions in the past has been decisions by permanent members of the Security Council to reject or impede such action for reasons of their own interest. A key example was China's action, some eight years ago, when faced with a report by the International Atomic Energy Agency (IAEA) stating that North Korea was in violation of its NPT obligations. Beijing refused to allow the Security Council to take any action against its friend North Korea.

The characteristics so far described—the moral norm, the political commitment, the means of verification, and reliable enforcement—are essentially concepts and arrangements that have been negotiated by the whole international community. The reliable delivery of enforcement, however, is a matter for the Security Council, and thus, it is in the council that the greatest degree of change is required. This is important because the nonproliferation treaty system is unlikely to remain intact if a reliable means of enforcement cannot be developed.

EXCLUSIVE MEMBERSHIP

The modern Security Council has a completely unsatisfactory constituency. Its permanent members are no longer representative of the world as we know it, especially the postcolonial world. By what logic or sense does the Islamic world have no permanent representation on the Security Council? How is it possible that India, a country of 1.2 billion people and an electoral

democracy, is not a permanent member? Why is Brazil, the largest of the countries of Latin America, or Mexico, with its economic and demographic size and its regional and cultural significance, not a permanent member of the Security Council? Why precisely, in today's world, should the UN have

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permanent members?

The system for the election of nonpermanent members also has repeatedly produced a Security Council that has no effective relationship to the composition of today's world. The Security Council is too small, and so long as it remains seriously unrepresentative of today's world, it is unlikely that it will be able to make credible and respected decisions.

Moreover, the possession of WMD by all the Security Council's permanent members poses a deep contradiction. Possessing nuclear weapons has not been a qualification for permanent membership, but the fact that they do complicates their roles as the keepers of the ring on WMD and the nonproliferation treaties.

DECISIONMAKING AND ABUSE OF THE VETO

The Security Council's decisionmaking methodology is a critical problem. The fact that permanent members each have a veto, able to block any substantive motion, may be grounded in real politics, but it has the practical effect of almost always distorting Security Council decisions beyond rational recognition. The key reason why this has proven the case is that those states that have the veto have come to view it as a means of protecting their national interests across the board, rather than ensuring that the Security Council decisions match as closely as possible the principles of the UN Charter and the norms of international law, including the nonproliferation treaties.

This arrangement was not meant to be. The 1945 San Francisco conference on the charter gave the five permanent members the veto solely to protect each of them from having military force used against them on their own territory, not to be used beyond their borders in the nationally selfish way that we have seen. If the Security Council's constituency is to be changed, then so should its decisionmaking methodology. If permanent members are to exist in the future, they should have different identities, and there probably should be more of them. Whether or not the veto should continue to exist and, if so, under what circumstances it may be used and how many vetoes should be required to block a substantive proposition also need to be reviewed.

THE INEVITABLE INFLUENCE OF POLITICAL ISSUES

Finally, in considering the Security Council's specific role under the nonproliferation treaties, one must observe that WMD issues routinely get caught up with and subjected to other political issues. When the Security Council has considered WMD issues, other interests—regional, economic, global strategic, and political—have distorted its treatment of intrinsically WMD problems. An example of how global competition came into play was evident in the Security Council's action on Iraq in February 2003. Simply, for France, Russia, and Germany, the issue of the uses of U.S. power and the potential for U.S. dominance in a unipolar world clearly became a more pressing concern than anything that Saddam might do or than the preservation of Security Council credibility.

I have already referred to China's attitude toward North Korea. The same is true in the South Asian region where various strategic relationships greatly shaped attitudes toward India's and Pakistan's decisions to acquire nuclear weapons. China's and Russia's support for Pakistan and, more recently, U.S. support for India were very evident in the formation of responses to India's and Pakistan's acts of proliferation. As far as the economic aspect is concerned, who could conceivably separate attitudes toward Iraq and other Middle Eastern political and security issues, including the underlying issue of the presence of WMD in the region, from questions of access to oil?

Improving Nonproliferation Enforcement

If, in the future, the UN is to be successfully and constructively involved in maintaining the nonproliferation treaties—a highly desirable outcome—two main developments are required. First, the specific task of preventing the spread of WMD and ultimately eliminating them must be separated from the Security Council's other, wider political agenda. Nonproliferation must be made an exception from politics as usual, based on the rationale that the weapons involved are deeply dangerous and threaten all humanity. This makes them special, and they should be given special treatment.

Taking such action should not harm the security of any state; indeed, it should enhance it. All states are guaranteed the right to self-defense under the UN Charter and should be free to provide for that defense by whatever conventional means seem necessary. Under the nonproliferation treaties and the norms they enshrine, however, no state should possess WMD. Defense and national security, on the one hand, are clearly distinct from the great danger posed by WMD on the other. Consistent with that distinction, the nonproliferation treaties and the tasks of controlling and eliminating WMD should also be separate from politics as usual. When they are rolled up into

and ensnared in those politics, handling them becomes ineffective. If this had not been the case earlier this year, if the Security Council had looked squarely at the WMD facts and Iraq's continuing failure to meet its disarmament obligations, it might have been able to agree on a collective response.

Second, the norms and obligations of the nonproliferation treaties must have a reliable means of enforcement. As already argued, this means that

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the Security Council should behave differently, but a body might also be established in conjunction with, or parallel to but with a separate mandate from, the Security Council—a Council on Weapons of Mass Destruction (CWMD).

A diplomatic conference involving all states should be convened to consider articles establishing a CWMD. Those articles could come to form amendments or an as-

sociated statute or protocol to the UN Charter. The entire international community should elect members to the CWMD. All regions of the world and degrees of industrial, military, and scientific sophistication should have representation. Such an arrangement is not unprecedented. For a good deal of its life, the IAEA had drawn part of its board of governors on a geographic basis and part on the basis of their degree of sophistication in atomic science. The question of whether or not to have permanent members of the CWMD and what their powers might be would need to be discussed.

The crucial question of decisionmaking methodology—that of possible vetoes and whether or not CWMD decisions would need to be made by consensus, by two-thirds majority, or by some other means—would require deep consideration. That decision, however, would best be shaped after the mandate and powers of the CWMD had been decided.

The mandate of the CWMD should be to monitor and keep whole the nonproliferation treaties. For this purpose, the CWMD would have a secretariat to furnish it with continuing reports of conduct under the nonproliferation treaties. This would naturally, and perhaps especially, include reports of questionable activities or downright noncompliance with treaty obligations. For that purpose, the secretariat would need to have available to it a high degree of technical ability as well as inspectors that the CWMD could send to examine any reported incidence of ambiguity or concern in the behavior of a state party to a given treaty.

As is always the case in arms control, the best reports report no significant findings. Hopefully, the secretariat would furnish periodic or annual reports to the CWMD that, although not blank, would state that nothing had occurred and that all was in good shape under each of the nonproliferation

treaties. Under circumstances where this was not the case, whether in the secretariat's periodic reports or in a special or urgent report, the secretariat could call the CWMD's attention to any suspicious state behavior. That report would be essentially technical. The CWMD could then meet to consider it and could decide whether to direct inspectors to be sent to the state concerned. It could also invite the state to come to the CWMD to explain its behavior.

In the end, in cases where inspections did not provide a satisfactory answer or where the state concerned was not prepared to come to the bar of the CWMD or provided unsatisfactory answers when it did, and when decisions to threaten or warn the state or to seek to impose sanctions were not proving effective, the CWMD should have the power, either on its own or in conjunction with the Security Council, to exercise enforcement consistent with the terms of Article 42 of the UN Charter.

One could ask why all this should not be lodged in the Security Council as it is presently constituted. The answer is because the Security Council has shown itself to be a suboptimal organization and, largely because of the presence of its members' veto powers, unprepared to keep the nonproliferation treaties whole and effective. Under these circumstances, subjecting the final, last-resort recommendations of the CWMD to take enforcement action to consideration by the Security Council is perhaps unwise because that would then reintroduce the potency of the veto of the council's permanent members. For this reason, the articles or statute for a CWMD would perhaps best stand alone rather than be subservient to the UN Charter. To this end, the General Assembly could adopt the statute for a CWMD in a way that made those articles supplementary to or of equal status to the charter.

Other or better ways to deal with the problem of maintaining and keeping whole and effective the nonproliferation treaties may exist. Even if the idea of separating WMD issues from other wider political issues is accepted—and I believe that to be a core requirement—the idea of establishing a new body, the CWMD, may not be seen as necessarily the best answer. For example, some may advocate strengthening the individual treaty organizations—the IAEA in Vienna; the Chemical Weapons Secretariat in the Hague; and, when it is established, a Biological Convention Secretariat.

The case for having one organization deal with each of the categories of weapons at the political level is compelling. That case rests on the need for reliable enforcement. This is not to say that the highly important work of

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the three treaty organizations would be replaced. On the contrary, their technical expertise and their provision to the CWMD's secretariat of the information required to enable that secretariat to advise the council would be essential.

Making the Necessary Sacrifice

Whatever the specifics, one thing is clear: None of this will work if the largest and most heavily armed military powers—today's five permanent members of the Security Council—continue to prefer to pursue all means of protecting their own national security over and above any collective effort they may make to ensure global security. The current permanent members need to look deeply into themselves and assess whether their own security might be better served by cutting it into two parts: the portion they provide for themselves in the traditional way and the portion they provide not only to themselves but to all by contributing to global mechanisms for global security.

In my view, a key mechanism that would contribute to global security would stop the spread of WMD, not only among states but also to nonstate actors, and move toward their progressive elimination. This is not a short-term process; it would take time. Its dividend for all, however, is beyond dispute. In a world of greatly diminished WMD, no problem of breakout, no sudden emergence of a WMD capability in the hands of a terrorist group, for example, could not be dealt with by use of modern conventional weapons.

If the largest states, perhaps especially the United States, think that they can deal with this problem solely through their own military and armaments plans, especially WMD, they are committing a deeply serious error. Continual vigilance and protection against terrorism is of course essential. The ultimate terrorist nightmare will only be prevented, however, if urgent action is taken on WMD.

The axiom of proliferation makes clear that, so long as any state has WMD, as inevitable as the sun rising each day, one day a terrorist group will emerge with WMD. It is not too late to improve nonproliferation enforcement. Every day that passes makes it more urgent. The worst possible way to recognize that the WMD threat needs separate treatment from all other political and global issues would be to await the catastrophe of the use of such weapons, perhaps by a terrorist group, and then embrace the wisdom that we should have seen this coming and done something about it. The catastrophic method of historical change is the worst way to achieve it. We can see the necessity for action now, and we should act now.

For this to be effective and supported by all, the five permanent members of the Security Council, the five official nuclear weapons states, must take

the first step. They must make clear that they support such special action and are prepared themselves to take part in a proper and orderly way in the eventual elimination of all nuclear weapons, including their own.

Few recall that, in May 2000 at the NPT Review Conference, the five permanent members of the Security Council made precisely that promise of eventual elimination in writing to the world. That was before September 11, 2001. Some would now argue that that outrageous event changed everything. Indeed it changed many things, but it did not change the need for a comprehensive solution to the WMD problem. On the contrary, it made it more urgent, more important, and the continuing neglect of it even more deeply dangerous.

