

# **Weapons of Mass Destruction, Terrorism and Security: Hanging Together or Hanging Separately?**

As presented by Paul Heinbecker at the Lawrence Livermore Conference,  
January 2006

## **Introduction**

President Bush and Senator Kerry readily agreed on one crucial issue during the 2004 presidential debates: the nexus of terrorism and weapons of mass destruction is the most important problem the United States, and the world, face. Since then, US political divisions have widened and international progress on the arms control and disarmament (ACD) agenda has stalled, even receded. Multilateral cooperation, already inadequate to the new challenges it faces, has become paralyzed in disagreement, and security is prejudiced as a consequence. The Non-Proliferation Treaty, the well-spring of arms control and disarmament law and norms, may itself be in serious jeopardy, with no effective alternative in sight. In these circumstances, the purpose of this paper is to examine the current state of affairs and commend some steps to be taken. The paper will endorse the view that neither the existing treaty-based arms control and disarmament regime nor a US-led strategy focused on enforcement and compliance will succeed on its own but rather that both are going to be necessary in today's evolving environment. It will, also, posit that greater international solidarity is integral to success, including specifically as regards dealing with the "latency issue", and suggest ways in which that can be achieved. In doing so, it will draw on numerous sources, including the Carnegie Endowment's work on Universal Compliance, the report of the Advisory Board on Disarmament Matters to the High Level Panel on UN reform, on reports to and by the Weapons of Mass Destruction Commission and on other expert commentary and research in the field. At the same time, the paper is more about governance than about arms control or disarmament per se, which are discussed in depth in the work described above and elsewhere.

## **Where We Came From**

In 1995, the signatories to the Non-Proliferation Treaty made the accord permanent, transforming its 25 year term into an open-ended commitment. To be sure, countries retained the right to secede but an effective instrument to prevent the acquisition and use of nuclear weapons was thus reinforced and the bargains agreed to in the original NPT were preserved intact. In 1968, the non-nuclear weapons states (NNWS) had forsworn the development or acquisition of nuclear weapons (Articles II and III) in exchange for the "inalienable right" to nuclear energy for peaceful purposes (Article IV) and the undertaking of the nuclear weapons states (NWS) to "pursue negotiations in good faith" to cease the arms race and to negotiate general and complete disarmament (Article VI). IAEA inspectors verified non-proliferation compliance by non-nuclear weapons states parties. It was an unequal bargain that most states were prepared to accept because they understood the laws of probable use were proliferation to continue and because they believed that its inequity notwithstanding the treaty made them safer. They, also, hoped

against their better judgment that the nuclear weapons states would keep their ends of the bargain, if not immediately then in some foreseeable future. And, in fact, as the Cold war receded, Russia and the United States first limited then began to reduce their weapons significantly, although nuclear warhead destruction did not keep pace and there has been no international verification of these reductions. The UK and France have, also, reduced their comparatively smaller arsenals but China has augmented its weapons, albeit from a small base.

By 1995, 173 countries had ratified the unequal bargain. Three--India, Pakistan and Israel--did not. (Brazil came on board subsequently, as did Cuba, and the ratifications total 188 now.) Belarus, Kazakhstan and Ukraine gave up their nuclear weapons, as did South Africa. Ultimately, all but the three outriders among the undeclared nuclear weapon states gave up their nuclear weapons and weapons programs. At the International Atomic Energy Agency (IAEA), in light of the deception perpetrated by the Iraqi regime in the 1980's, progress began to be made on the "Additional Protocol", which allowed IAEA inspectors to carry out substantially more intrusive inspections in participating countries. At the 2000 NPT Review Conference, the nuclear-weapon States gave an unequivocal undertaking "to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament to which all States parties are committed under Article VI", although none said when and no one was quite sure how. Still, the deal was not repudiated. They also endorsed "Thirteen Steps" by which they would give some effect to this commitment, including the early entry into force of the Comprehensive Test Ban Treaty (CTBT), conclusion within five years of a verifiable fissile material cut-off treaty (FMCT, initially proposed by President Clinton), a reduction in the number of tactical nuclear weapons, a reduction in the operational status of nuclear weapons systems, the application of the principle of irreversibility to all nuclear arms control and a diminished role for nuclear weapons in security policy.

Further, the extraordinary statesmanship manifest in the US-initiated Nunn-Lugar Cooperative Threat Reduction Program launched in 1992, was leading to the dismantling and securing of nuclear, biological and chemical weapons and materials in Russia and the former Soviet Union, and it continues. Several thousand warheads, material for several thousand warheads more and thousands of missiles and missile launchers have been deactivated or destroyed. Otherwise idle scientists have been gainfully employed in non-lethal activity. In time, this initiative was joined by others and ultimately at its 2002 summit in Canada, the G-8 launched a \$20 billion Global Partnership against the Spread of Weapons and Materials of Mass Destruction. (Canada's share is \$1 billion.) Still, by some estimates, the job is probably only about half done. In the 1990's both the Chemical weapons Convention and the Comprehensive Test Ban Treaty were opened for accession.

This decade plus of progress notwithstanding, trouble simmered and, ultimately, boiled over. Most spectacularly, in 1998 India and Pakistan confirmed their determination to join the nuclear weapons club by detonating five nuclear weapons each. The world held its collective breath watching sworn enemies, who had no geographic separation, no hotline and unproven command and control systems, face off across the

Line of Control, the site of major fighting, with nuclear weapons in a classic “use them or lose them” posture. Neither the NPT nor the IAEA had stopped two major countries from crossing the nuclear weapons threshold. More sinisterly, as the world was to find out in 2003, A.Q. Khan of Pakistan was taking nuclear weapons development and sales private. Iran, Libya and North Korea were among his clients. North Korea put itself in and out and in and out of compliance with its NPT and IAEA obligations in an increasingly tragic and dangerous cycle, withdrawing from the NPT in 2003. Meanwhile, starting in 1998, the Conference on Disarmament failed to reach agreement on a work program, a situation that has prevailed for the past seven years.

## **Where We Are**

9/11 changed everything, or at least, it demonstrated that the prospect of terrorists equipped with nuclear weapons presented a major new danger. Countering the proliferation of nuclear weapons, in particular preventing their acquisition by terrorist groups and locking down existing stockpiles, became a new top priority. “Meeting this duty,” President Bush said in February 2004, “has required changes in thinking and strategy. Doctrines designed to contain empires, deter aggressive states, and defeat massed armies cannot fully protect us from this new threat.... We're determined to confront those threats at the source. We will stop these weapons from being acquired or built. We'll block them from being transferred. We'll prevent them from ever being used.” In any case, dramatically different approaches were in train in Washington, more focused on compliance and military and prevention than on promotion of treaties and norms. Washington seemed to have concluded that nuclear proliferation could only be managed, not averted, that multilateral mechanisms to avoid the spread of weapons were ineffectual and, equally bad, constrained American freedom of action, that paradoxically regional considerations (relations with India, partly as a counterweight to China) outweighed proliferation risks and, finally, and most controversial, that the danger lay not in the unimaginable destructive power of the weapons themselves but in the irredeemable malevolent nature of the regimes that possessed them.

In 2002, Washington published both its new National Security Strategy and National Strategy to Combat Weapons of Mass Destruction, which postulated perpetual US superiority and contemplated readier use of nuclear weapons. In comparatively short order, Washington, also, abandoned the negotiations of a verification mechanism for the Biological Weapons Convention (BWTC), abrogated the Anti-Ballistic Missile Treaty and stood aside from the Comprehensive Test-Ban Treaty, while maintaining the testing moratorium and concluding the Treaty of Moscow on reducing nuclear weapons. Portraying Iraq, Iran and North Korea as an Axis of Evil, in 2003 the US conflated Saddam into the broader threat it saw post 9/11 and attacked Iraq in the face of the opposition of the vast majority of UN members and despite the reports of UN weapons inspectors that they were not finding weapons of mass destruction. The US launched the Proliferation Security Initiative, a useful complement to export controls, and re-engaged with North Korea through the six power talks. Libya gave up its clandestine program under pressure from the US and UK.

In the UN context, at least, the nuclear weapons states seemed to have excised the word “disarmament” from their vocabularies, sending unhelpful messages thereby to the many who find the idea of perpetual possession by a few to be anathema to progress on non-proliferation. The NWS, also, took few of the Thirteen Steps promised at the 2000 NPT Review Conference. In August 2003, China, which had been blocking consensus to negotiate an agreement on the prevention of an arms race in outer space (PAROS) did agree (with Russia) to at least discuss it, a step that raised hopes that progress might be possible, also, on a Fissile Material Cut-off Treaty (FMCT), nuclear disarmament and negative security assurances. Washington did not reciprocate on PAROS, apparently because it preferred not to risk constraining its options on space weapons and in July 2004, presented an FMCT proposal in the CD that ignored elements of importance to other states (e.g. adequate verification). The NWS’s apparently welcoming India to the high table, thereby undercutting Brazil, Argentina and South Africa who had actually adhered to NPT disciplines, will not have made the achievement of cooperation of NNWS on non-proliferation easier.

The 2005 World Summit, held in New York last September, achieved very few worthwhile outcomes (one notable exception being agreement on the Responsibility to Protect doctrine). But, in Secretary General Annan’s words, the most disgraceful of the Summit’s failings was its inability to agree on any language at all on non-proliferation and disarmament. Why did member States not live up to the world’s expectations at a time when the multilateral non-proliferation regimes were being tested by a small number of governments, and the ambition of terrorists to acquire WMD was clear? Principally, it was because, in keeping with the failure in 2005 of the NPT Review Conference to agree on any substantive outcome and the continuing paralysis in the CD in Geneva, member States simply did not have the political will to make the concessions necessary to achieve progress. At the UN summit negotiations in the fall, too many delegations had brought too much ideology with them. The NWS including the US, deliberately or inadvertently played into the hands of spoilers such as Iran and Egypt in the latter’s desire to deliver a non-outcome on arms control. At the subsequent UN General Assembly’s First Committee discussion of nuclear issues, the US voted negatively, alone, on double the number of resolutions it had done previously. The US was the sole “no” on eight of the 20 resolutions that went to a vote. The complete lack of outcome at the UN summit raise the possibility of a system-wide collapse.

### ***The Crux of the Disagreement***

The ACD regime, not surprisingly, is in disarray. There are wide doctrinal disagreements between the nuclear weapons states, principally but not exclusively the United States, on the one hand and much of the rest of the NPT membership, that is to say, most of the rest of the world on the other. These disagreements go to the heart of the NPT bargains, primordially that of disarmament. Some believe that disarmament has always been little more than a delusion on the part of the NNWS, a necessary pretext that there would one day be a quid for the quo they were giving in renouncing their own nuclear weapons aspirations, a quid on which the NWS never really intended to make good. In this light, everyone would be better off just to drop the pretence. Moreover, the

NPT's non-proliferation undertakings were in any case not just a bargain between the NWS and the NNWS, but also a binding commitment among the NNWS themselves. They had, undertaken *to each other* as well as to the NWS not to acquire nuclear weapons. Further, too much effort has been paid to obtaining signatures on treaties and not enough on ensuring compliance with them. Arms control agreements and export controls had been ineffectual with respect to India, Pakistan, Israel, North Korea and, prospectively, Iran. They, also neither deterred nor much delayed A.Q. Khan in his activities. Counting on their effectiveness was equally delusional and downright dangerous.

The counter arguments derive from the famous observation by President Kennedy, the only President to face a full fledged nuclear crisis, that "We must abolish the weapons of war before they abolish us." Those arguments hold that ridding the world of nuclear weapons will necessarily be a goal for the very long term but that it ought never be abandoned, against the possible day that political attitudes and security perceptions with respect to nuclear weapons might change, and that near term action should be framed in such a way as not to preclude reaching the goal in the longer term. Further, non-proliferation can only be achieved cooperatively and treating the NNWS as inherently and eternally inferior entities is unlikely to serve the goals of compliance and enforcement. Times are changing but it seems very unlikely that the world can be run by coercion. As for the effectiveness of the ACD regime, particularly the NPT, there are fewer than half as many governments in 2005 with nuclear weapons programs as there had been in the Sixties and more countries have given up nuclear weapons than had illicitly acquired them. Not insignificantly, each arms control agreement codifies an additional global norm and provides the international legal framework for ending and preventing weapons programs. Securing sensitive assets would be much easier in the descent to a zero-arsenal world than in one where multiple states maintained operational nuclear forces and large related infrastructures with little or no transparency and international monitoring.

These doctrinal differences have far-reaching implications, not least for the issue of "WMD Latency". Countries make their decisions to pursue WMD development out of a mix of motives, including security, prestige and, even, religion. Nonetheless, simple fairness probably enters into the calculation, as well. Weapons of mass destruction have considerable political value and nuclear weapons, in particular, are great equalizers. With nuclear weapons, countries do not have to be superpowers to be able to deter others and to command respect, even if only the kind of deference that a well armed lunatic commands.

The wars in Iraq and Afghanistan have demonstrated, among other things, the risks and costs of acting in defiance of international consensus and the benefits of working with it. It is evident that no country, however exceptional, and no coalition of countries however genuine, is likely to prosper flying in the face of world opinion. Legitimacy, in the sense of enjoying support of the international community at large is not just nice to have, it is necessary to success and integral to the effective exercise of power, in this global age perhaps more than ever before. The insight of President Truman

before the assembled UN delegates in San Francisco holds true today, “[w]e all have to recognize that no matter how great our strength, we must deny ourselves the license to do always as we please”.

## **Where We Need to Go**

2005 has probably been the nadir of multilateral cooperation to the point that some fear that the entire international governance structure is at risk of unraveling, and not just on WMD. Experience shows that arms control and disarmament, like trade liberalization, either move forward or fall backwards; they cannot sustain immobility for long. Such a hiatus, much less a descent much further into a global vortex of dysfunctionality, is simply unaffordable in security and economic terms and cannot and, therefore, will not long continue.

The good news is, in fact, that multitudes of proposals are emanating from the US, Europe and elsewhere for both problem-specific and more general governance responses. A good deal of work is being done, conceptually at least, on what it will take to build more effective security order. It is becoming evident that for us all to be truly safe, our common approach can and must be comprehensive, in terms both of treaties and laws and of compliance and enforcement. Simply put, the non-proliferation goal should be universal compliance with a much tougher regime. Part of the task is technical, to develop the concepts that, if implemented, will enhance security. Part of it is to get the governance structures right. Success will take the sustained cooperation of nuclear weapons states and others with advanced nuclear assets and capabilities if nuclear weapons, technology and material are to be kept out of dangerous hands.

### ***Breaking the Impasse***

Over the next six months, political strategies for reviving multilateral work are likely to focus on two tracks: i) initiating a multilateral process that actually allows for the substance of the NACD agenda to be discussed and ii) urging key nuclear weapons states that it is in their national security interests to participate in the resumption of multilateral NACD work. Currently, there is a handful of states that are taking advantage of consensus rules to prevent, not just negotiated outcomes, but even the discussion of issues wanted by the vast majority of states. Given the eight year long impasse over adoption of a Program of Work at the Conference on Disarmament (CD), it is hardly precipitous to look for a way to start work on the core NACD issues that have long been identified in that forum, but which could not formally begin due to the lack of consensus. There are four issues that, taken together, would constitute a comprehensive and balanced agenda: i) nuclear disarmament, ii) negotiation of a FMCT, iii) PAROS - the prevention of an arms race in outer space and iv) Negative Security Assurances (NSA). Like-minded countries are presently consulting about how they might utilize the UNGA First Committee, where the consensus rule does not apply, in order to get out of the straight jacket of the CD. So long as the CD is prevented from taking up these issues, other multilateral avenues for addressing them are bound to be explored.

The second track is to convince a few powerful countries that allowing multilateral forums at least to talk about some NACD issues of concern is not inimical to their security interests. Their continued blockage of agreement on a CD Program of Work is more detrimental to their security interests than beneficial. Reinforcing the NPT regime requires ever closer collaboration between member states. It is not realistic to expect such cooperation on non-proliferation and counter-proliferation issues and, at the same time, to brush aside the legitimate concerns of states for more action on disarmament or on other issues of interest to them. Collective security in the nuclear realm derives largely from the non-proliferation, disarmament and peaceful uses rights and obligations inherent in the NPT. For the integrity and authority of this Treaty to be maintained, its states parties, NWS and NNWS alike, need to respect all three elements.

Even if they can expect to enjoy a monopoly on nuclear weapons for a very long time, for the sake of attracting cooperation on preventing proliferation the nuclear weapons states need to acknowledge that that does not mean eternity. Russia and the US, in particular, need to revisit their calculations of the minimum stockpile of nuclear weapons they need for deterrence, make a priority of eliminating tactical nuclear weapons, which because of their relative portability are probably the greatest danger the world faces, and make their stockpile management more transparent. They could take several other initiatives, for example, making the nuclear weapons reductions that they have agreed irreversible and verifiable, and making clear what financial, technical and institutional issues would be entailed in disposing of nuclear inventories. They need especially to make it clear that they will not develop new types of nuclear weapons. The refusal of the US Congress to fund research on the “bunker buster” has sent a strong signal. Consideration of tactical uses of nuclear weapons increases the motivation of others to develop or acquire one. Ratifying the CTBT and launching negotiations on an FMCT would help. General Scowcroft and Arnold Kanter have proposed entering into the CTBT for five-year terms, renewable. The verification issue would remain but no arms control agreement is completely verifiable, and that does not vitiate their utility, particularly when it is recalled that the objective is stopping nuclear terrorism, not deterring nuclear attacks by states. Making the perfect the enemy of the good in this light is not just shortsighted, it is self-defeating and dangerous.

The international community’s opprobrium for those states violating non-proliferation rules is important to their arms acquisition and development decisions but not necessarily decisive and several have proceeded regardless. Some, e.g., Israel evidently feel genuinely threatened and see nuclear weapons as an ace in the hole. Others, possibly including Iran may feel insecure as well but see nuclear weapons also in religious terms. Some, perhaps India, while very conscious of their nuclear-armed neighbours, are, also, only too aware of the privileges of the P 5, not coincidentally the original NWS, and see nuclear weapons as tickets to the top table. Pakistan cannot allow itself to fall very far behind India. For North Korea, which remains inscrutable, security is obviously an issue, as are the commercial prospects of WMD sales, including possibly to terrorists. Major diplomatic efforts especially by the NWS and other major powers, therefore, to redress over time regional security concerns, would be an important complement to non-proliferation more practicable in the more dangerous

regions. Similarly, the interests of nuclear disarmament and non-proliferation will be served when the political utility of nuclear weapons is ultimately reduced to coincide with the military utility of nuclear weapons, i.e. something close to zero. In any case, it is not the transgressions of the few that should drive thinking about proliferation but rather the need for the cooperation of the many to prevent things from getting worse.

### *Doing Good Better—the IAEA*

There are numerous problems with the IAEA's procedures. The inspectors can only inspect declared nuclear sites, states can with impunity assemble many of the elements of a future nuclear weapons program so long as they are declared to be for peaceful purposes, and the intensity of verification is determined more by the size of its nuclear program (e.g., Canada) than by the likelihood of its compliance (Iran). The IAEA's "Additional Protocols" increase the IAEA's capacity to ensure that states parties' declarations are complete, improve the Agency's chances of detecting undeclared material and activities and thus deter states from engaging in prohibited activities. As of August 2004, however, only 84 Additional Protocols had been signed and 59 had come into force. To make IAEA inspections more effective, Additional Protocols should become the new accountability norm. Transfers by members of the Nuclear Suppliers Group should be made conditional on the recipient state's accepting the Protocol. Further, the IAEA's resources should be augmented to reflect the seriousness with which the international community takes this issue.

In December, 2003, IAEA Director General Mohamed ElBaradei argued that the only way, ultimately to prevent non-nuclear weapons states from acquiring their own plutonium or highly enriched uranium for weapons purposes was to restrict enrichment and reprocessing activities by individual states. President Bush added his voice in February, 2004. In the meantime, support has grown for such a more rigorous approach, although resistance is apparent from states, including from some with exemplary non-proliferation records. Still, the loophole that Iran is apparently exploiting, to put itself in a position to produce highly enriched uranium or plutonium and, thus, weapons in short order, needs to be closed and this is the obvious way of doing it. (At the same time, Japan already has plutonium production for its civil program, making consistent behaviour by the international community difficult to say the least.) Under the current regime, countries can, also, like the DPRK leave the treaty regime with impunity, taking with them effectively whatever technology they were transferred in good faith while they were states parties.

Diminishing or removing "the inalienable right of all parties to the treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination" will be a tough sell, particularly in light of the allergy of the nuclear weapons states to proceed with disarmament, and particularly for countries who have been fully compliant. Nevertheless, one possibly workable approach as President Bush has proposed is to guarantee states that do not already have enrichment or reprocessing facilities access to nuclear fuel at competitive prices. Secretary Bodman announced that the US would convert up to 17 metric tonnes of highly enriched uranium to low-enriched

uranium and hold it in reserve to support fuel supply assurances. The IAEA's proposal to establish an actual or a virtual fuel bank, comprising several fuel suppliers in order to preclude politically motivated decisions to withhold supply, has considerable merit. To be acceptable, it would have to function exclusively on non-proliferation grounds. Surplus highly enriched uranium could be downgraded and supplied to the IAEA bank, as the US has apparently offered to do and Russia has contemplated doing, thus removing material that could be used illicitly to make bombs, thereby killing two birds with one stone. Success in creating an effective fuels bank would make it easier to achieve a moratorium on the construction of new enrichment or reprocessing facilities. In the meantime, states could agree to end the production of HEU and pause in the separation of plutonium.

### *Chemical and Biological Weapons*

The Biological Weapons Convention (BWC), concluded in 1972 under the Administration of Richard Nixon, presently has 151 States parties. The treaty is handicapped by the absence of effective verification and only weak compliance provisions. Each state party is obliged to take national action to fulfill its commitment to comply with the treaty but there is no multilateral body to monitor and encourage these efforts. There have been revelations about past offensive biological weapons projects by several States, suspicions that several countries, Russia in particular, were conducting BW offensive programmes contrary to the international norm, and increasing concern that non-state actors were striving to acquire and use biological weapons (e.g., Anthrax after 9/11). Progress in biogenetic science has increased international unease.

In an effort to strengthen the Convention to cope with these concerns, the parties to the BWC worked towards a protocol on transparency and compliance that was meant to improve the level of mutual confidence and to deal with the problem of clandestine biological weapons programmes. However, in 2001 this attempt faltered in the face of US contentions that no measure could provide sufficient assurance that such programmes were absent. The US rejected both the draft protocol and the approach it represented, preferring to deal with states bilaterally and in like-minded groups. Meanwhile, any state may bring a BW matter to the attention of the Security Council but none has. While reviews of the Convention take place every five years, annual meetings would facilitate strengthening the Convention, reinforce the norm and demonstrate continuing commitment.

The Chemical Weapons Convention (CWC), which entered into force in 1997, prohibits states from using, developing, producing, acquiring, stockpiling or retaining chemical weapons, and from transferring them directly or indirectly. The treaty requires parties to destroy, by 2012, all their CW and CW production facilities. As of April 2004, only 12.37 percent of the 71,000 metric tons of declared CW had been destroyed. The 6 states that have declared CW are Albania, India, Libya, Russia, South Korea and the US. There has been little progress in the destruction of the Russian and American CW stockpiles, by far the largest but it is clear that both states intend to comply

eventually. The CWC established a comprehensive, intrusive multilateral verification system, comprising declarations, various types of on site inspections, and some off-site sampling, designed to ensure that CW is not produced by military or civilian industrial facilities. The convention provides for routine and challenge inspections, as well as investigations of alleged CW use. The Organization for the Prohibition of Chemical Weapons (OPCW) has encouraged and assisted states to put the requisite national measures in place, including penal sanctions for individuals and organizations that flout the goals of the convention. At the same time, the peaceful global chemical industry is so vast that achieving total security of all chemicals and chemical precursors that might be used by terrorists to make their own chemical weapons is impossible. (Sarin gas killed 12 people and injured 500 when it was released in the Tokyo subway in 1995.) In situations of serious noncompliance the Conference may suspend the party in question, recommend collective measures against it, or refer the issue to the UN General Assembly or UN Security Council. States should adopt criminal sanctions and stringent domestic regulations and export controls obliging private actors handling dual use materials and technologies to prevent their diversion and unauthorized export

The Australia Group, an informal grouping now of 38 like-minded states and the EU, formed in 2005 to coordinate their export control policies, is outside the Chemical and Biological weapons conventions. It has developed lists to facilitate the control of dual-use chemicals and equipment and biological weapons materials. The lists cover 63 chemical precursors, 32 viruses, 32 plant and animal pathogens and various bacteria, toxins and equipment. Its existence causes some friction with developing country CWC states parties, which argue that as treaty members in good standing they should not be subject to such additional constraints on their economic development. Nevertheless, in the absence of a verification mechanism for the Biological Weapons Convention, the Australia Group's lists provide for the only harmonized control over these items. Trans-shipment, re-export and front companies make the enforcement of export controls more difficult.

## **Institutional Innovations**

In a situation of such scope and complexity, and in light of such significant doctrinal disagreements, how can effective multilateral action be achieved and channeled? Universal participation or as close as possible to that is important to a nuclear treaty's legitimacy and effectiveness. But large negotiating bodies are inefficient and prone to lowest common denominator outcomes. Not even the UN General Assembly (UNGA) tries to negotiate at the level of 191 countries; hence the recourse there to regional and other groups. Further, not all countries have the capacity or the interest to contribute meaningfully to complex technical negotiations. Smaller existing forums have to be used and/or new ones created to deal with them. One such forum is obviously the UN Security Council; another is the G-8; another could be the so-called L-20, a leaders' forum akin to the G-8 but larger, comprising developed and developing countries. Self-selecting cooperative initiatives targeted at cleaning up the residual problems of defunct weapons programs have filled key voids. Coalitions of the willing, for their part, seem better suited to military action than to diplomacy. There are other

quasi-official bodies such as the Article VI Forum and the Weapons of Mass Destruction Commission, which bring interested states together to promote progress on NPT issues.

There is also a significant role for specialized groups. The undoubted progress achieved by the Cooperative Threat Reduction Program and the Global Partnership notwithstanding, a great deal remains to be done before the world can assure itself that WMD and nuclear materials and other weapons precursors are being safeguarded to a Fort Knox standard. Foreshortened deadlines for these programs would help expedite matters. The US-initiated Global Threat Reduction Initiative, to clean out vulnerable nuclear facilities, will fill a void. Also, as required by UN Security Council resolution 1540, first proposed by President Bush at the United Nations in 2003, all member states should act to strengthen export controls of nuclear materials and to criminalize unauthorized possession and transfers. Those that need help in achieving these goals should be helped through the UN, which is more politically palatable than more direct means. Equally, international law should be expanded to facilitate the international response to errant states and the prosecution of non-state actors. For those cases where export controls fail, the membership of the Security Proliferation Initiative could be expanded and its quilt of coverage made more dense and its legal base strengthened by the Security Council to facilitate interceptions of illegal traffic through domestic waters, on the high seas and in the air.

The UN Security Council can be effective, depending on the degree of common interest among the permanent five (P 5) members and contingent on the line-up of non-permanent members on a given Council. Germany is more capable than Ireland, Pakistan is more powerful than Singapore and Mexico is more independent than Colombia, as the Iraq war showed. The Council has been very effective on discrete issues, such as curtailing the role of blood diamonds and illicit arms transfers in the Angola civil war. It has, also, been moderately effective on counter-terrorism, post 9/11. Acting under Chapter VII of the Charter, which makes its decisions legally binding, it adopted Resolution 1373 that prohibited and criminalized financial and other support for terrorists. The weakness of the Council in this case lay in its disinclination either to require compliance in practice or to transfer serious capacity to countries that needed help to fulfill their obligations (in fact, by withdrawing aid programs of ICC signatories, the US actually undermined some states' counter-terrorism capacity).

In adopting Resolution 1540 under Chapter VII, further recourse was had to legislative powers of the Security Council. 1540 required all UN members to criminalize support to non-State actors that attempted to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery and to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery. Member states were also obliged to enhance controls over nuclear and other materials. Such recourse to the Council will work only if it is united and determined. The fecklessness thus far on the part of China (and, until last week, Russia) in bringing Iran into the Security Council dock does not inspire confidence. Nor has the Council been allowed to amount to much on North Korea.

There is limited scope for the Security Council to do more. It could for example “legislate” a mandatory response by the international community to North Korea’s withdrawal from the NPT. It could impose sanctions on other miscreants, like Iran, for deceptive behaviour. It could possibly give the force of international law to the decisions of suppliers groups. Beyond the nuclear and chemical domains, whose treaty bodies have their own highly proficient inspections and verification capabilities, an enhanced inspection capability with respect to biological weapons and missiles could reinforce the Security Council by transferring to it the residual staff and expertise of UNMOVIC, which proved effective under the most adverse circumstances in Iraq. Alternatively it could be reconstituted as part of the UN Disarmament secretariat. The existence and the operations of a UN Security Council inspectorate would make willful blindness by member countries much harder to sustain.

There is a limit to how effective the Security Council can be as an instrument of non- and counter-proliferation. It does have the great advantages of simplicity and authority. Statutorily, only nine countries including the P5—on proliferation issues often like-minded-- need to be persuaded before action can be taken. Further, the Council has a Charter-mandated role on all matters affecting international peace and security. Simplicity and authority do not necessarily constitute legitimacy, however. Most UN members do not believe that in adopting the Charter they were empowering the Council systematically to bypass the General Assembly or, more important, to act as unaccountable executive and legislative branches, supplanting the constitutional roles of their own parliaments and cabinets. There remains, moreover, after the failure of the UN Summit, the representational deficit in so far as permanent members from the Third World are concerned, which includes two actual and two potential nuclear weapons states. Moreover, the allergy to disarmament of the NWS and the earlier threats by the US against Iran are undoubtedly generating sympathy for the Iranians, however misplaced. Clearly, those wishing to expand the Council’s writ will need to be circumspect about how fast to go on proliferation and how far to outpace the General Assembly consensus.

The G-8 continues to provide a forum in which the world’s leading economic powers bring their extraordinary resources to bear in support of the security of its members. In the eighties and Nineties the G-8 proved to be very effective in producing counter-terrorism cooperation. More recently, at Kananaskis in Canada, the G-8 reached agreement on the Global Partnership. In 2003, at Evian, the G-8 launched its Radioactive Source Security Initiative. In 2004, at Sea Island, the group laid out a Non-Proliferation Action Plan. In 2004, at Gleneagles, they followed up on previous commitments, particularly as regards the Global Partnership, indicating their preparedness to expanding its coverage to other countries. They also undertook to enhance the Nuclear Suppliers Group (NSG) guidelines and to refrain from transfers of enrichment and reprocessing equipment and technologies to additional states. Although it has no statutory authority and effectively leads by example, the G-8 can, thus, be effective in and of itself, and in acting as a high level ginger group for international action.

The L-20, or Leaders Summit, idea was born of the experience of the financial crises of the 1990s, when successively Mexico and countries in Latin America, then South Korea and ASEAN countries and finally Russia experienced serious economic and financial distress. The finance ministers of the G-7 proved too restrictive a group to set the direction for sound crisis management for countries that were not part of the group. “Buy-in” simply could not be imposed. Ultimately, a larger group had to be formed, the G-20, which comprised the G-8 countries plus regional powers, representing approximately 90 percent of the world's economic output, 75 percent of its trade, and 67 percent of its population. The L-20 idea recognizes that not just financial but also geopolitical realities are changing.

For non-proliferation and disarmament purposes, the L-20 could work. It could comprise countries with substantial actual or latent nuclear material and technology and other WMD capabilities, from North and South. It would not necessarily number 20 countries but would rather include those whose participation was necessary to the achievement of the group's purpose. It would meet annually at the summit level and deal with cross-institutional and inter-disciplinary issues that exceeded the writs of existing international organs and/or the portfolios of individual ministers/secretaries. The L-20 would provide leaders a regular opportunity for frank dialogue, deliberation and cooperative problem-solving. It would encourage familiarity among leaders, manifest the political problems and redlines they all face and, thus, encourage realism and cooperation in solving contentious problems. It would uniquely also be able to encourage greater coherence among existing institutions and make proposals for filling gaps between them. Decisions made would be binding on participants only. The membership would, however, be well positioned by virtue of its diverse membership to commend its conclusions to others. It would, also, be effective on issues such as bio-terrorism and health pandemics wherein several portfolios of government were in play at once and where all regions of the world were potentially at risk.

The L-20 ambit would be much wider than that of the Security Council, focusing on the major cross-cutting proliferation, security and economic issues of the day, including, for example, bioterrorism. Where the Security Council meets in continuous session at ambassadorial level, the L-20 would meet annually at heads level. It would undoubtedly facilitate the development of consensus, making it possible, as the key countries on a given issue would be present, to telescope consensus development in the UN or specialized institutions.