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the threat from states, non-state actors and terrorists
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"The Nuclear Threat: Basics and New Trends"

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Let me begin with a note about terminology. I prefer to refer to nuclear, biological, and chemical weapons as NBC weapons, not WMD for weapons of mass destruction. The term WMD conveys a false sense of equivalence among NBC weapons. In most cases, nuclear weapons are far more destructive than biological or chemical weapons.

Back to basics

On June 3, the Bush administration announced the submission to Congress of a classified plan for the future size of the U.S. nuclear arsenal. The bottom line is that *in 2012 the United States likely will have more than 6,000 warheads.*

Numbers can be numbing, and just one nuclear bomb exploded in a city is an unspeakable catastrophe. Still, given the complacency now reigning, consider:

- Today the United States has over 10,000 warheads (including bombs), with over 6,000 deployed strategic (long-range) and 800 deployed non-strategic warheads.
- By 2012, after implementation of the 2002 Moscow Treaty, the United States will still have over 6,000 warheads, according to a Natural Resources Defense Council estimate. That includes 2,200 deployed strategic warheads with well more than 2,000 in reserve, and hundreds of deployed and reserve non-strategic warheads. The Energy Department says a new plant (the "Modern Pit Facility") to make plutonium cores for warheads will be needed.
- Russia presently has perhaps 18,000 warheads, with about 5,000 deployed strategic and over 3,000 non-strategic warheads, and many thousands in reserve, storage, or awaiting disassembly. In 2012, under the Moscow Treaty, Russia can have up to 2,200 deployed strategic warheads, plus reserve and non-strategic warheads in unlimited numbers.
- China, France, Britain, Israel, India, and Pakistan all have arsenals in the low hundreds or less. None has made any specific commitment to reduce its arsenal. The total world count of nuclear warheads is about 30,000.

You don't have to be an expert to see that U.S.-Russian reductions are proceeding very slowly, and are readily reversible. A crucial step called for by Nuclear Nonproliferation Treaty (NPT) commitments would be to verify the warhead withdrawals and dismantlements. But the Moscow Treaty contains no such requirement, and so far the Bush administration has resisted Russian requests to discuss the matter.

Also important is to stand down the nuclear forces. It is absurd and dangerous beyond belief to keep the submarines on patrol and the warheads on the missiles as if the United States and Russia may wage all-out nuclear war at any moment.

The Bush administration sees the planned reductions more as a matter of efficient reorganization than as compliance with the NPT disarmament obligation. It is commonplace to observe that the Clinton administration lost a great opportunity to end the nuclear nightmare by persisting in a Cold War posture even in the wake of the disintegration of the Soviet Union. But in reality the opportunity still exists; the world's major powers still interact on a relatively cooperative basis. It is foolhardy in the extreme to count on that to last indefinitely.

Aside from ongoing US-Russian confrontation, India and Pakistan have more than once teetered on the brink of major war that could go nuclear. Other scenarios for use of nuclear arms cannot be ruled out, for example on the Korean peninsula or in a China-United States conflict over Taiwan.

Civil society must demand that the world set in motion a global process, involving all nuclear powers, leading to the abolition of nuclear weapons.

Proliferation and terrorism

But the world now faces new consequences of states' reliance on NBC weapons. The spectre of their spread to additional states has become a stated rationale for war. And the fear of their acquisition by Al Qaeda-like groups has given powerful impetus to the world-wide, civil liberties-undermining, efforts at suppression of terrorism.

A brief review of nuclear "proliferation":

It began in 1942 with the Manhattan Project in the United States.

Then came Russia, Britain, France, and China, with its 1964 test.

Then came India, with its 1974 test.

In 1991 the world learned that Iraq had an active nuclear weapons program in the 1980s.

Then in 1998 India and Pakistan carried out a series of test explosions.

Now North Korea is pursuing nuclear weapons, and according to Pakistan nuclear metallurgist A.Q. Khan already has several nuclear explosive devices.

Iran appears to want to be nuclear weapons-capable, like many other states, though it is under intense pressure to give up this aspiration.

Recently there were public revelations about a Pakistan-based nuclear proliferation network: Khan plus businesses in several countries, including Germany and Malaysia, and a British businessman, supplied uranium enrichment components, uranium, and bomb designs to Libya, and at least components to Iran and North Korea.

According to a recent report of the Project on Managing the Atom of the Kennedy School of Government at Harvard University, a senior Pakistani nuclear weapons scientist, Sultan Bashiruddin Mahmood, met with Bin Laden and discussed nuclear weapons at length.

The main thrust of the report is that threats to nuclear facilities in Russia from terrorists appear to be growing. Entitled *Securing the Bomb: An Agenda for Action*, the report says:

- Russian official sources report four instances of terrorist surveillance of nuclear warheads in 2002 and 2002
- the October 2002 terrorists who seized hostages at a Moscow theater first considered attacking a Moscow site containing enough highly enriched uranium (HEU) for dozens of warheads, according to a Russian newspaper
- a 2003 criminal case revealed that a Russian businessman had been offered \$750,000US to obtain plutonium for a foreign client, and had made contact with residents of a closed Russian nuclear city

Current responses to nuclear proliferation

- 1) The U.S.-funded Cooperative Threat Reduction program (also known as Nunn-Lugar) aims to secure nuclear materials, warheads, expertise, as well as biological and chemical weapons and facilities, in Russia. It still is funded at Clinton administrative levels, roughly \$1 billion.
 - a. according to *Securing the Bomb*, more than half of Russian sites with warheads or materials still need security upgrades
 - b. there are 600 metric tons of HEU and plutonium (about 100 tons of the latter) in Russia - much stored in insecure sites; efforts to secure plutonium by making new nuclear fuel (mixed oxide, or MOX) are moving slowly, and misconceived anyway because they perpetuate the fuel cycle
 - c. similar efforts needed in Pakistan
- 2) June 2004 G-8 meeting, Sea Island, Georgia
 - a. agreed not to make new arrangements to supply uranium enrichment or plutonium reprocessing equipment for next year, and in meantime to establish new criteria to stop their export to countries not fully in compliance with nonproliferation norms
 - b. works towards denying nuclear cooperation to countries which have not adopted Additional Protocol allowing inspections of all nuclear facilities in a country, including non-declared

- c. additional countries agreed to help meeting the \$20 billion pledge for securing nuclear materials (Global Partnership) in Russia and elsewhere: Australia, Belgium, the Czech Republic, Denmark, Ireland, the Republic of Korea, and New Zealand
- d. backed Proliferation Security Initiative
- e. committed to concrete national and international steps to: expand or, where necessary, initiate new biosurveillance capabilities to detect bioterror attacks against humans, animals, and crops; improve our prevention and response capabilities; increase protection of the global food supply; and respond to, investigate, and mitigate the effects of alleged uses of biological weapons or suspicious outbreaks of disease. Seek realization of commitments at 2006 Biological Weapons Convention Review Conference.

3) Security Council Resolution 1540 on non-state actors and terrorism, adopted April 28, 2004

I will not comment on the G-8 initiatives or the US Cooperative Threat Reduction efforts in Russia, except to observe that they do not address the reduction and elimination of nuclear arsenals in all nuclear-armed states. But I do want to look in depth at the new Security Council resolution, which the Lawyers' Committee on Nuclear Policy, along with the Reaching Critical Will initiative, monitored closely. We talked with diplomats, provided analyses and alternative language (some of which was adopted in the form of references to disarmament in the preamble), held a well-attended press conference at the United Nations, and activated the Abolition 2000 Global Network to Eliminate Nuclear Weapons to contact foreign ministers to demand changes in the resolution.

Adopted unanimously on April 28, 2004, Security Council resolution 1540 requires all states to criminalize terrorist and other non-state actor acquisition of nuclear, biological, and chemical weapons and missiles and drones for their delivery. It also requires all states to establish export controls, methods of accounting and physical protection, and border controls and law enforcement efforts to prevent non-state actor trafficking in NBC weapons, related materials, and missiles.

The resolution should be welcomed because it responds to a clear and urgent need. But it also should inspire serious concerns about the future shape of disarmament and non-proliferation regimes and of international law and institutions.

A concern about the resolution is that it will reinforce the current emphasis on the imperative of preventing the spread of NBC weapons to the virtual exclusion of the need, indeed the obligation under the Nuclear Nonproliferation Treaty (NPT), to reduce and eliminate existing arsenals of nuclear weapons held by the world's most powerful states. Responding to intense pressure from countries of the developing world and non-governmental organizations, the United States and other sponsors eventually incorporated references to arms control and disarmament obligations in the resolution's preamble. Still the resolution comes in the context of a U.S. refusal to meet NPT commitments to ratify the Comprehensive Test Ban Treaty, to reduce nuclear arms in a verifiable, transparent, and irreversible manner, and to negotiate a treaty banning production of fissile materials for nuclear weapons. It can only reinforce the fear that the United States is committed to the ultimately unsustainable policy that a few privileged states will be allowed to retain catastrophic weapons while others will be denied them, through war if necessary.

Also troubling is that resolution 1540 accelerates a trend for the Security Council to assume the power to act as a global lawmaker. Following the attacks of September 11, 2001, Security Council resolution 1373 required all states to take measures to suppress terrorism. The problems with the Security Council taking this role are fundamental.

- First, issues raised by the resolution demand careful scrutiny and deliberation of the kind inherent in multilateral negotiations. For example, while the sponsors describe the resolution as concerning non-state actors, by its terms it allows Security Council regulation of state to state transfer of missiles. A rational and legitimate lawmaking process on a topic of such magnitude requires in-depth negotiation with the participation of affected states.
- Second, a resolution requires political acceptance if it is to be effectively implemented. The highly unrepresentative Security Council, dominated by the nuclear-armed P5, is not the best institution to elicit such acceptance, especially with respect to NBC-weapon measures as to which hypocrisy and double standards will rightly be charged.
- Third, there is nothing in the UN Charter that confers the authority to adopt global legislation on the Security Council. Rather the Charter contemplates multilateral agreements entered into by states as the primary mode of global lawmaking, with the General Assembly promoting this process by making recommendations (Art. 13). For more on this, see the appendix to this paper.

For its part, if the Security Council is to persuade states to effectively implement resolution 1540, and more broadly to gain acceptance of an expanded role in disarmament and non-proliferation, it must commit to transparency and inclusion of non-Council members in its decision-making procedures, and more fundamentally, reform to make the Council more representative. Transparency was wholly lacking with respect to resolution 1540, which was negotiated secretly for months by the permanent five members before its presentation to the Council. The sponsors then did engage in wide-ranging consultations with non-Council members, who also had the opportunity to speak at an April 22 open session. Reform is nowhere on the horizon.

But to preserve the possibility of a democratic and legitimate future international order, we should not place our hopes in the Security Council. Rather to address the disarmament deficit, and to avoid future reliance on the Security Council as a global lawmaker, states must work to revitalize the existing NBC-weapon treaty regimes and to create new multilateral agreements, including: 1) on non-state actors, codifying and elaborating on the Security Council resolution; 2) in the nuclear arena, on a fissile materials ban, including transparency and reduction of existing stockpiles, control and elimination of warheads in all nuclear-armed states, and a comprehensive nuclear abolition regime; and 3) on a verification regime for the existing ban on biological weapons.

APPENDIX:

THE UN CHARTER AND SECURITY COUNCIL LAWMAKING:

There is nothing in the UN Charter that confers authority to enact such global legislation on the Security Council. The Charter contains no references to a Security Council role in the development of international law. When the framers of the Charter saw a role for a UN body in such development, it was spelled out.

Article 13 states that the General Assembly shall “make recommendations for the purpose of ... encouraging the progressive development of international law and its codification.” With regard to privileges and immunities of the UN Organization, its officials, and state representatives, Article 105 states that the General Assembly “may make recommendations with a view to determining the details ... or may propose conventions to the Members of the United Nations.” Article 62(3) says that the Economic and Social Council “may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.” No such provisions appear in support of a Security Council role in lawmaking.

Article 24 states that the Security Council has “primary responsibility for the maintenance of international peace and security,” and provides that in meeting this responsibility the “specific powers granted to the Security Council” are found in Chapters VI, VII, VIII, and XII. Of these, Chapter VII is the only one relevant to a decision requiring all states to adopt certain measures. But the measures not involving the use of force identified (without excluding others) in Article 41 are “complete or partial interruption of economic relations [and] means of communication, and the severance of diplomatic relations.” There is not even a trace of intent that the Security Council would engage in detailed regulation of conduct of all states of the kind envisaged by the proposed resolution. Further, Chapter VII seeks to deal with disputes involving particular states. Article 40 refers to the “parties concerned” in a situation.

The practice of the Security Council has been to address particular situations of conflict. The incongruity of the Security Council attempting to act as a global legislature is reinforced by the fact that enforcement of its own resolution against the permanent five members would be subject to the veto. It is plain that the Charter contemplated multilateral agreements entered into by sovereign states, encouraged by the General Assembly, as the primary mode of global lawmaking. The Statute of the International Court of Justice, adopted at the same time as the Charter, in Article 38, identified “international conventions” as the first source of law to be applied by the Court, and nowhere mentions Security Council resolutions as a source.