The Decline of WMD Non-Proliferation Regimes

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The decade ending in the mid-1990s could perhaps be referred to as the golden years of the non-proliferation regimes of Weapons of Mass Destruction (WMD). The Chemical Weapons Convention (CWC) entered into force, the Comprehensive Test Ban Treaty (CTBT) was born and was well on the way to establishment, a protocol for the verification of the Biological Weapons Convention (BWC) was being discussed in Geneva, and talks began on a Fissile Materials Cut-off Treaty (FMCT). The International Atomic Energy Agency (IAEA) adopted the "Additional Protocol," a much stricter verification mechanism than the existing obligatory arrangements. At the end of this period, the Nuclear Non-Proliferation Treaty (NPT) was extended indefinitely. In the following years, however, problems began to appear. Iraq and North Korea presented troublesome areas, although the world at first believed that it had dealt with them effectively. The Indian and Pakistani nuclear explosions that occurred were deemed a serious cause for concern but were not seen as undermining the NPT regime since both states were not parties to this treaty.

Though not yet widely noticed, the WMD control and disarmament regimes are now heading towards a serious watershed. The present juncture mandates a fresh look that includes taking stock of the situation and searching for a remedy. Otherwise, we may pass a point of no return, beyond which there could be no immediate recovery. The following discussion reviews the symptoms of this decline, the main issues involved, and possible approaches for recovery.

The Symptoms

The purpose of arms control treaties is the containment of a given situation and the subsequent reduction and eventual destruction of the weapons in question. Yet in at least three cases the nuclear regimes are being abused, in at least one case the CW regime is abused, and the BWC abuse cases cannot even be estimated. These abuses, although they can be viewed as unrelated, could have an irreversible effect on the whole issue of WMD controls and disarmament.

On the global scale, there have been serious setbacks on almost all fronts. The BWC is slowly being recognized as unverifiable. The CTBT did not enter into force, and there seems little chance that this will happen in the foreseeable future. The FMCT discussions are stalled in Geneva, and a means of bridging the wide gaps on this issue is not in sight. While the application of the CWC is proceeding, many countries that are known to possess chemical weapons are not party to the convention.

The most serious problems now evident relate to the NPT. There is, of course, the old thorn in the form of the three states – India, Pakistan, and Israel - that are not party to the treaty. However, more recent issues threaten the strength of the treaty, related mainly to verification and the way it is applied in states that are parties to the treaty.

What are the main issues? The first is that numerous states ignore or deliberately bypass their obligations. The second is that in the more serious cases the verification regimes are not able to fulfill their mission. The third issue is that the caretaker political bodies do not want or are unable to take the necessary actions, and the lowest common denominator among the parties prevails, mandating at best only limited action.

The First Issue: Bypassing Obligations

With regard to the first issue, there are three outstanding problems: North Korea, Iran, and Iraq. In late 2002, North Korea stated that although still a member of the NPT, it was seeking a nuclear capability. In January 2003 it announced that it was withdrawing from the treaty. In addition, it removed monitoring equipment from its installations and stopped all verification activities. A month later, it was reported that it restarted operation of its plutonium production reactor. Whatever North Korea's motivation, the effect was total disregard of its international obligations.

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Iran, although denying it, is strongly believed to be pursuing ambitions of acquiring a military nuclear capability. The evidence is there and the route it chose to follow is clear: obtain all necessary capabilities under the pretext of developing a peaceful nuclear program, produce the necessary fissile materials, and then, when convenient, withdraw from the NPT. Although very strict verification such as provided by the IAEA's Additional Protocol could make the situation difficult, Iran could still achieve all it wants "legally." When it feels necessary it can withdraw from the NPT under Article X (1) of the Treaty: "Each Party [to the Treaty] shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events . . . have jeopardized the supreme interests of its country." Iran could then be within a year of having a large-scale military nuclear force. On the other hand, Iran could develop its nuclear military capability in a parallel, secret, project, with the IAEA unable to do anything about it, should Iran not adhere to the Additional Protocol. Iran is also strongly suspected of CW development.

The most blatant example is that of Iraq. That Iraq reneged on its NPT obligations has been proven. Iraq is also in noncompliance with its BWC obligations, which was confirmed by UNSCOM (the commission entrusted with verification in Iraq) and its successor UNMOVIC. Iraq had massive quantities of chemical warfare agents and their precursors that were still unaccounted for when inspections ceased in March 2003.

Is Libya also developing nuclear weapons? Is Algeria conducting a clandestine nuclear R&D program? In addition to these outstanding questions, one should also remember that more than a quarter of NPT members have not concluded the obligatory safeguards agreements, and although for some it is not more than a minor transgression, for others it could be a serious matter. Certain states that are suspected of clandestine nuclear development have not accepted the Additional Protocol and show no intention of doing so.

The Second Issue: Failings of the Verification Mechanisms

On the second issue there is unfortunately a multitude of evidence. Verification failed in Iraq. It failed prior to the 1991 Gulf War, when following a routine inspection in November 1990 it found nothing unacceptable about Iraq's nuclear program; it also was shown to have failed in 1995, when the IAEA was ready to abandon its search for past illicit activities only to learn, due to the defection of a senior Iraqi official, that it had missed very important information. As stated by the inspectors, verification also failed to achieve its aims in the biological and the chemical areas. The situation at the beginning of 2003 was not much better, in spite of the renewed inspections.

Nuclear verification is clearly failing in Iran, when it lets Iran proceed with its ambitious program. In any case, however, it would be unable to deter or stop its development of nuclear weapons. The verification mechanisms will fail by not being able to prove anything, since intentions, particularly when based on legal actions, are unverifiable.

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While CW verification, perhaps the strictest multilateral verification mechanism, has yet to prove its capabilities, it will probably be impossible to come up with a good BW verification protocol, because of the extensive legitimate biological research and development activities that could mask illicit ones.

The Third Issue: Weak Oversight Bodies

We only need to recall the many instances where the international bodies failed to adopt decisive measures in order to grasp that something is wrong with the system. The Security Council failed to stand behind UNSCOM inspectors in Iraq up to 1998; the Organization for the Prohibition of Chemical Warfare (OPCW) is unable to even debate the possibility of performing a challenge inspection in Iran to confirm or negate the charges that Iran is developing chemical weapons; the IAEA was unable to persuade North Korea to accept a Special Inspection. The IAEA also did not decide to require all new NPT safeguards agreements to incorporate the Additional Protocol.

The situation regarding the Iraqi question is even worse. Political issues divided the Security Council, rendering an agreement almost impossible on even purely technical issues, such as the noncompliance of Iraq with some of its obligations under the terms of Resolution 1441. Furthermore, a little-noticed fact is that Resolution 1441 and its precursor Resolution 715 (1991) have inherent weaknesses in that they provide the inspectors with many rights while not obligating them to employ all these rights in fulfilling their mission. Had the inspectors in Iraq used them from the beginning, the results could have been very different.

Although officially acknowledged by the UN, the inherent right of the verification bodies to warn against a potential danger was utilized only in the case of North Korea. The cases of Iran, Libya, and Algeria were never publicly noted by the oversight bodies, not even in passing.

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issue that is encountered by the international bodies. As an example, the most severe verification action that the IAEA can take is to request a "special inspection," where it can utilize almost all available technical means of inspection to determine whether a state is in noncompliance with its obligations. In early 1993, for the only time in its history, the IAEA requested such an inspection in North Korea. North Korea decided not to grant this request. The IAEA was thus unable to verify the status of North Korea's nuclear activities. All that remained for the IAEA to do was to refer the issue to the Security Council, and no further enforcement action was taken.

A Possible Route to Recovery: The Regional Approach

The situation is bleak. One should not weigh all achievements to date and statistics of success against failures. One cannot, in this case, see the glass half full and argue that it surpasses the empty half. A perfect score is essential for compliance with WMD obligations: percentages are not enough.

There is much to be said in favor of the global approach to WMD controls and disarmament. This approach led to global treaties and their supplementary mechanisms such as suppliers' agreements and the voluntary limitations on sales of sensitive technologies and materials. However, there are times that this approach is lacking in resolution and implementation. The case of Iraq is but one such example. Security Council Resolution 1441, although approved unanimously, was deemed by some members not to have been correctly implemented, an interpretation that is of course politically based. Were the interpretations false or was it a failing inherent in the organization? Or in other words, was this a built-in failure mechanism waiting for the situation to appear?

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The regional approach, which has gained favor in recent years, suggests that whenever possible, regional organizations should take over the application of the obligations of the international non-proliferation regimes, since they are more effective in this application than global organizations. In this way, the region will have responsibility for overseeing the fulfillment of the regional states' international obligations. The regional states have a much larger stake in the assurance of compliance than the international organization. They also have a better capability of knowing when a member state is in default of its obligations.

The international organizations should not, however, be disbanded. They should remain in an advisory and supplementary role, active when needed. They should develop better verification technologies and methods, and they should provide training and support for the regional organizations, whenever these do not have the necessary capabilities to do so themselves.

Short-Term Remedies

Maintaining the old practices will lead to continuing gradual decline and eventual disintegration. Any solution will need both courage and resolution: courage to recognize the problems and to identify the problem states publicly; and resolution to tackle the issues and to create and apply a new system to remedy the existing situation.

Those states that are suspected of acting in breach of their international obligations must be identified by name and the burden of proof placed on them. The costly verification mechanisms must concentrate on these states and not be wasted on useless (and non cost-effective) activities. Verification practices should be revised to take account of the changing roles. In the case of Iran, which should set an example, strong action to strengthen the verification activities should be taken by the international community. In order to succeed, it must be assisted by Iran's acceptance of the need for complete transparency. If there is no change in attitude on both sides, the present verification regime could still be seen

as working but it will prove, in the end, to have failed.

Those states that are not fulfilling their obligations should not be considered "members in good standing" (e.g., of the NPT). The political bodies should adopt a firm position and actively address the problems. They should use their right to issue warnings when the situation warrants it. Should they lack the will to do so, the WMD control and disarmament regimes will surely fail.

The decline of WMD controls can have larger implications. Not having an historical perspective makes it difficult to assess whether the present situation where these controls are seriously eroding will pass, leaving little mark on world affairs. Or in fact, it could have a lasting effect, resulting in a major change of the world regime as we know it into a different one. However, there is also the significant probability that Newton's Law of Inertia will, as usual, take over. In this case, little will change; the global institutions, though weakened, will survive until the next crisis arrives, which in the end could leave an irreparable effect.

But the real issue is to negate the need for the terrible weapons themselves. We have many instances of nations who have abandoned their WMD ambitions. They are those who are at peace with their neighbors. This peace is essential for disarmament.