
THE ROLE OF THE UNITED NATIONS

The most important role for the United Nations consists of its efforts to work on the most dangerous conflicts among and within States that provide the key motivations for acquiring weapons, including weapons of mass destruction. The United Nations must enhance these efforts to combat this danger at the source. In this context, the Organization should continue to support and encourage efforts at the regional level to cope with the threat of the proliferation of weapons of mass destruction, including to non-state actors, e.g., the proposed Zone Free of Weapons of Mass Destruction in the Middle East, supported by all countries in the region.

Among the instruments of the international community to combat the dangers of the spread of weapons and of international terrorism, the first priority is to strengthen international treaties and other arrangements that serve these objectives. To this end, the capabilities of the United Nations, and the Security Council in particular, to uphold these treaties must be further enhanced, notably the capacity to respond in cases of grave non-compliance that could pose a threat to peace and international security.

In the NPT context, the IAEA Board of Governors can, under article XII.C of the IAEA statute, put cases of non-compliance before the Security Council and the General Assembly. Each State Party of the BWC as well as a meeting of States Parties, can request the Security Council and the General Assembly in cases of concern of non-compliance, to undertake an investigation of the matter (article VI). The Executive Council of the OPCW can bring non-compliance cases of particular gravity and urgency directly to the General Assembly and the Security Council. The Security Council has addressed the issue of weapons of mass destruction repeated-

ly, and has, *inter alia*, defined the proliferation of weapons of mass destruction, in its presidential declaration of 31. January 1992 and its resolution 1540 (2004) as a threat to peace and international security. It thus, could decide to take action on such cases under Chapter VII of the Charter of the United Nations. The Council also possesses the authority to take the initiative on its own in cases of proliferation and non-compliance even if referred to it by other actors or institutions.

Multilateral regimes are a first line of defence against both state and non-state proliferation; General Assembly and the Security Council serve as a last line of defence. The Security Council may choose to act in support of non-proliferation treaties, when such regimes put serious non-compliance cases in its hands. This would happen because the regime-inherent instruments do not suffice to remedy the situation and hence there is the necessity of using the Security Council's authority to solve the problem. The Security Council may choose to take the initiative on its own, *inter alia*, when problems other than non-compliance arise that cannot be dealt with by the instruments currently available to the regimes themselves, or when they present such urgent risks that immediate measures are required — until the regimes have been adapted to cope with the problem concerned. Action by the Security Council may also be called for when emerging dangers require a universal response.

The specifics of non-compliance cases vary. They cannot be addressed in a schematic way. Dealing with non-compliance involves a series of crucial decisions. Except for cases where the evidence of non-compliance is unambiguous and undisputed, the Security Council would develop its judgement of the assessment offered by the treaty organizations that a serious breach of non-compliance that could pose a threat to peace and international security had indeed occurred. It would have to assess the gravity of the risk posed to international

peace and security by this breach. It would also have to decide on the appropriate means under the Charter to remedy the situation. All these decisions require timely and efficient decision-making.

For these tasks, the Security Council should be able to draw upon independent technical expert capacity. Information available to Member States should be made available to the Security Council as far as possible. On nuclear and chemical weapons issues, independent assessment capability on which the Council can draw is available at the IAEA, the CTBTO and the OPCW. On biological weapons and missile issues and for a general assessment of the whole array of proliferation concerns, capacity must be available to the UN at short notice.

Recommendations

♦ *In cases of concern about non-compliance, the instruments available within established regimes should be fully utilized. Complementary access under the Additional Protocol (or special inspections as long as the Protocol has not been adopted by all NPT Parties), challenge inspections under the CWC, and investigations under the BWC should be invoked by the respective States Parties to regimes and the organization's bodies whenever needed.*

♦ *For cases referred to the Security Council, timely and efficient decision-making should be ensured. All relevant information and aspects should be made available for consideration, including the views of states from the region concerned. If required, the Security Council should be able to obtain independent technical expertise on short notice, drawing, as appropriate, on the verification bodies of the*

regime concerned.

- ♦ *If the threat is not assessed by the Security Council as requiring immediate effective action and important questions of fact remain undisclosed, the imposition of intrusive inspection and elimination activities might be a useful way to address the situation. However, it must be ensured that inspections do not become a device to postpone necessary decisions.*

- ♦ *There should be a core technical WMD verification and elimination capability with particular expertise in the BW and missile sector available at UN headquarters. This core organisation should be capable of drawing on a broad roster of experts.*

- ♦ *In order to make the most economical use of this expertise, consideration should be given to locating a small core unit, designed to enhance the resources available to the Security Council, within the Department for Disarmament Affairs. Care should be taken to ensure efficiency while avoiding unnecessary growth of bureaucracy.*

There is a risk of non-state actor proliferation which cannot be completely averted by the instruments presently available within the various treaty regime. This risk has motivated the work on Security Council resolution 1540 (2004) on the proliferation weapons of mass destruction. This resolution marks a landmark in the efforts of the international community to fight the threat of weapons of mass destruction terrorism.

In the course of its considerations, concern was expressed by non-permanent members and non-members of

the Council about the general scope of the resolution. Rather than being case-specific, it obliges the UN membership to take certain quasi-legislative actions. These concerns point to a real dilemma in the fight against proliferation of weapons of mass destruction, including their spread to non-state actors: risks are viewed as so high that immediate action cannot be avoided to compel all UN members to install effective measures at once.

The Council's establishment of general rules in this regard augments the inherent inequality between permanent and non-permanent members. No measure will be imposed that would restrict the core interests of one of the P-5, through all other Member States do not enjoy the same degree of protection of their national interests. There is also no procedure to review the compatibility of Security Council's adopted norms with general principles of international law nor their specific utility and effectiveness in achieving their stated objectives. While the urgency of the risk proposed by non-state actors may justify the adoption of such stopgap measures, such concerns should be heeded. In the working on the resolution, these concerns were raised in consultations and open meetings between the P-5 and non-members.

Recommendations

- ♦ *If existing WMD regimes do not yet contain necessary instruments to cope with new and urgent challenges, and the risk emerging from them appears immediate, the Security Council might decide to mandate steps to remedy the situation.*
- ♦ *Measures adopted by the Security Council in such situations should carry a sunset clause, that is, they should be reviewed by*

the Security Council after an appropriate period of time and be extended only if such a review proved their effectiveness and they are still deemed necessary to combat a serious risk to peace and international security.

♦ *When the Security Council adopts a resolution imposing such measures, it should invite simultaneously the members of the respective regimes or, where appropriate, the General Assembly to set up a negotiating body to create a universal legal instrument for provisions that are not covered by existing treaties and agreements and are outside their scope.*

♦ *Security Council resolution 1540 should be utilised to encourage members of the treaties and agreements to fully implement those provisions that help prevent the transfer of related items and technologies to non-state actors, and to continue their efforts to make the treaties and agreements universal. The Committee installed to supervise the operation of resolution 1540 should assist member states to achieve an effective implementation and should develop recommendations at the end of its two-year mandate how the provisions of resolution 1540 might be improved.*

The danger of the proliferation of weapons of mass destruction, including into the hands of non-state actors, requires that certain measures be applied universally to avert immediate threats to peace and international security. Such measures may be, so far, only binding on the States party to a

particular treaty or convention. Such measures may also be mandated by the Security Council to include non-members of those regimes. In order to be effective, they should take into account the security interests of such non-members.

Recommendation

♦ *When the Security Council considers universalizing measures which so far are only binding on regime members, there should be consultations with states not members to such the regimes. Their views and interests should be taken into account.*

When the Security Council acts to address issues related to the spread of weapons, including to non-state actors, the involvement of the General Assembly should be ensured in the light of the shared responsibility under the Charter for maintaining peace and international security. The effectiveness of universal measures benefits from the support of the whole international community. To achieve this support, cooperation between the Security Council and the General Assembly should be close and continuous, in accordance with the provisions of the Charter. A steady flow of information and communication between the Security Council and the members of the General Assembly is conducive to avoiding misunderstandings and to maintaining a sense of community on which the success of such critical measures rests. In addition, successful and effective implementation by Member States is more easily achieved when the objective of such measures is clearly understood and their scope and direction are clear.

Recommendation

♦ *When the Security Council is considering measures in response to and for the prevention of the proliferation of weapons or other means of mass destruction, the General Assembly should be fully informed about the Council's deliberations and the views of General Assembly members should be taken into account. Close consultations and open sessions of the Security Council are useful in this regard.*

The Secretary-General, under Article 99 of the United Nations Charter, may bring any subject relating to the maintenance of international peace and security before the Security Council. It is thus within the powers of the Secretary-General to alert the Council to any case of real or supposed non-compliance or to other cases of proliferation of weapons of mass destruction to states or non-state actors which, in his view, presents a threat to international peace and security. The Secretary-General may sometimes dispose of information not generally available or may deem it necessary to take the initiative to bring a specific security-related issue to the attention of the Security Council. In any case, the UN Secretary-General would consult closely with members of the United Nations when considering making use of article 99.

Recommendation

♦ *The Secretary-General should make use of his article 99 authority whenever, in his opinion, this is necessary to face a threat to international peace and security, including those emerging from the proliferation of weapons of mass destruction.*

♦ *To be kept abreast of current developments, the Secretary-General should bring together regularly the heads of the OPCW, the IAEA, the CTBTO and the World Health Organisation to be briefed about events, findings and insights relevant to peace and international security.*



