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Combating the Proliferation of Nuclear Weapons: A Stronger Role for the UN Security Council?

BY CHRISTIAN SCHALLER

What is the role of the Security Council in the fight against the proliferation of Weapons of Mass Destruction (WMD)?

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What differences exist between the United States and Germany on the role of the Security Council in authorizing the use of force?

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Under which conditions should the Security Council act as a quasi-legislator in order to close loopholes in existing non-proliferation regimes?

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How can the Security Council best contribute to enforcing compliance with the NPT and related safeguards agreements?

On 29 March 2006 the United Nations Security Council for the first time addressed the issue of Iranian non-compliance with the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).¹ Since the wording of the presidential statement, which had been heavily disputed among the five permanent members of the Security Council (P5), has been significantly watered-down, the statement does not predetermine any specific future action by the Security Council. For the moment, it is hard to predict whether the Security Council could agree on any more resolute steps should Iran refuse to cooperate.

In fact, the current role of the Security Council in the fight against the proliferation of weapons of mass destruction (WMD) is rather marginal: The most serious cases of non-compliance with the NPT have not yet been decisively addressed by the Security Council. Also, the Security Council has never taken any binding decisions in cases in which states managed to acquire nuclear weapons while refusing to become a party to the NPT altogether. Similarly, no individual state or non-state network has so far been sanctioned by the Security Council for illegally proliferating nuclear weapons, related know-how, technology, or material. Finally, when it comes to robustly countering the proliferation of WMD, key players like the United States often prefer to pursue these efforts outside the UN system.

The Security Council should, however, play a more pivotal and proactive role in combating the proliferation of such weapons—not only in order to reinforce the NPT and other WMD regimes but also with a view to revitalizing the UN system of collective security. To foster the role of the Security Council in this regard is a central objective of the European Union as stipulated in its Strategy against the Proliferation of WMD.²

From an international legal point of view, under Chapters VI and VII of the UN Charter, the Security Council is vested with all authority necessary to investigate critical situations and to authorize measures aimed at preventing and eliminating threats that arise from the proliferation of WMD by states and non-state actors. If it determines the existence of a threat to peace according to Article 39 of the Charter, it may issue specific decisions that are binding on all member states. It may also impose non-military sanctions or military measures to enforce its decisions. In determining whether such a threat exists, the Security Council enjoys a wide margin of discretion. Already in a presidential statement in 1992, the members of the Security Council declared that the proliferation of all WMD constitutes a threat to international peace

and security. Moreover, they committed themselves “to working to prevent the spread of technology related to the research for or production of such weapons and to take appropriate action to that end.”³ This commitment has since been reaffirmed several times by the Security Council.

Therefore, the decisive question is not so much of a legal but of a political nature: In which cases and under which conditions are the P5, who have the right to veto substantive decisions, willing to let the Security Council play this role? Leaving aside the various political disputes surrounding each specific case, the principal aim of this Issue Brief is to highlight some situations in which the Security Council should be allowed to seize

its primary responsibility for the maintenance of international peace and security as provided for by Article 24 (1) of the UN Charter. In doing so, the paper will mainly focus on a point that is currently under debate in the case of Iran: How can the Security Council best contribute to enforcing compliance with the NPT and related safeguards agreements?

Before turning to this question, however, two other important issues will be discussed briefly, i.e. the prospect of a more active engagement of the Security Council in legalizing and legitimizing specific counter-proliferation measures and closing loopholes in international non-proliferation regimes.

The Security Council and Robust Counter-Proliferation

“Counter-proliferation” is sometimes used as a generic term for a wide range of proactive and robust measures to deter and prohibit states and non-state actors from acquiring WMD. Such action includes, inter alia, the interdiction of WMD shipments pursuant to the Proliferation Security Initiative (PSI) as well as targeted military operations. Thus, both the U.S. National Security Strategy and the U.S. National Strategy to Combat WMD define counter-proliferation as a principal pillar,⁴ while the EU Strategy against the proliferation of WMD does not even introduce this term.

As far as specific counter-proliferation operations affect the sovereign rights of other states or the general prohibition on the use of force under Article 2 (4) of the UN Charter, which constitutes a norm of jus cogens in customary international law, these operations must be conducted on the basis of a special legal authorization. Such an authorization may either be granted by the Security Council according to Chapter VII of the Charter or by the right of individual or collective self-defense as enshrined in Article 51, which is also part of customary international law. However, the scope of application of this right, especially with regard to its time limits, is not only subject to diverging interpretations among legal scholars; it has also led to fundamental divisions between political decision-makers across the Atlantic. While leading scholars and political elites in Germany and other European countries advocate a narrow interpretation based on the wording of Article 51 (“if an armed attack occurs”), the U.S. Strategy, also backed by prominent schools of thought, rests on a far more extensive construction of the right of self-defense. Understanding this controversy is essential to understanding how national governments define the role and importance of the Security Council. The more extensively the right of self-defense is interpreted by a particular state, the less likely this state will be to call on the Security Council for a special mandate in situations where it feels compelled to act quickly and decisively in order to defend itself against a perceived threat.

The current controversy surrounding the legality of non-mandated preventive action may be best summarized by a quotation from the report of the High-level Panel on Threats, Challenges, and Change that reflects in principle the EU Strategy and the German position: “[...] a threatened State, according to long established international law, can take military action as long as the threatened attack is imminent, no other means would deflect it and the action is proportionate. The problem arises where the threat in question is not imminent but still claimed to be real: for example the acquisition, with allegedly hostile intent, of nuclear weapons-making capability. Can a State, without going to the Security Council, claim in these circumstances the right to act, in anticipatory self-defence, not just pre-emptively (against an imminent or proximate threat) but preventively (against a non-imminent or non-proximate one)? [...] The short answer is that if there are good arguments for preventive military action, with good evidence to support them, they should be put to the Security Council, which can authorize such action if it chooses to. If it does not so choose, there will be, by definition, time to pursue other strategies, including persuasion, negotiation, deterrence and containment—and to visit again the military option.”⁵

In contrast, the U.S. National Security Strategy argues that: “It is an enduring American principle that this duty obligates the government to anticipate and counter threats, using all elements of national power, before the threats can do grave damage. The greater the threat, the greater is the risk of inaction—and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy’s attack. There are few greater threats than a terrorist attack with WMD. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively in exercising our inherent right of self-defense. [...] The new strategic environment requires new approaches to deterrence and defense. [...] When the consequences of an attack with WMD are potentially so devastating,

we cannot afford to stand idly by as grave dangers materialize. This is the principle and logic of preemption.”⁶

Whereas the EU Strategy expressly claims that the UN Security Council should play a central role if the use of force is to be envisioned as a last resort, the Security Council clearly does not play any role in the U.S. counter-proliferation Strategy. Taking into account this factor, as well as any broader political dissent concerning the use of force within the Security Council membership, it is unlikely that the Security Council will take a

more active role in authorizing robust counter-proliferation measures in the future. This presumption is bolstered by the fact that the Security Council failed to endorse the PSI when it passed a resolution against the proliferation of WMD by non-state actors.⁷ Even the far-reaching disarmament sanctions imposed by the Security Council against Iraq after its 1990 invasion of Kuwait constitute a unique example of unity among the P5 that, given recent and fundamental changes in the international system, cannot be considered a precedent for future Security Council actions.

The Security Council as a Quasi-Legislator in Non-Proliferation Matters

Insofar as the existing treaty-based non-proliferation regimes are not prepared to address a threat that is still abstract but likely to materialize in the near future, the Security Council is the only international organ with the competence to close this gap in an effective and timely manner by issuing a universally binding resolution under Chapter VII of the UN Charter. The Security Council, in Resolution 1540 of 28 April 2004, determined that the illicit trafficking in WMD and their means of delivery “adds a new dimension to the issue of proliferation of such weapons and also poses a threat to international peace and security.”⁸ On the basis of this determination, and invoking Chapter VII, the Security Council for the first time imposed extensive obligations on all states designed to prevent non-state actors from developing, acquiring, transferring, or using WMD and their means of delivery. In particular, the resolution obliges states to refrain from providing any form of support to non-state actors and to adopt and enforce appropriate laws. Moreover, all states are obligated to develop and maintain border and export controls, law enforcement efforts, and measures for the physical protection of related materials.

Although this resolution was finally backed by all members of the Security Council, earlier drafts promoted by the United States and the United Kingdom created some opposition from China and other Security Council members. Apart from the contentious question of whether to include in the resolution any

reference to the PSI, more general arguments were made concerning the quasi-legislative character of the resolution. Indeed, the primary international legal instrument for establishing specific long-term obligations on sovereign states with regard to armaments is not a Security Council resolution but a multilateral treaty. Therefore, the Security Council may be seen as a secondary line of defense against WMD-related threats that should get involved if the instruments provided for by an existing regime are deemed inadequate to respond to a certain situation. Thus, one could make the argument that such emergency quasi-legislation by the Security Council should be of a temporary nature until states are able to effectively close these loopholes by way of negotiating equivalent treaty provisions.⁹

If the Security Council decides to enact such quasi-legislative obligations for all states, it should, at the same time, provide for an appropriate infrastructure in order to assist states with the implementation of these regulations. As in the case of Resolution 1373 of 28 September 2001, which contains a catalogue of counter-terrorism measures, the Security Council should establish a special committee and staff it with adequate resources and expertise so that the committee can offer states effective guidance and support, inter alia, by developing minimum standards for implementation, promoting model legislation, and facilitating state-to-state assistance.

The Security Council as an Enforcer of the NPT Regime

The nuclear non-proliferation regime as established by the NPT in 1968 suffers from severe erosion that “could become irreversible and result in a cascade of proliferation.”¹⁰ This process of erosion is closely linked to structural flaws within the regime itself. Inter alia, the verification regime, as established by the International Atomic Energy Agency (IAEA), is still insufficient to ensure that all parties live up to their treaty obligations. Thus, there is a palpable risk that some states, under cover of their right to develop the research, production, and use of nuclear energy for peaceful purposes as enshrined in Article IV of the

NPT, will covertly and illegally develop full-scale weapons programs. Similarly, a member of the NPT could acquire the know-how, technology, or material and then withdraw from the treaty with the aim of subsequently launching a nuclear weapons program, thus evading the IAEA safeguards mechanisms. With a view to promoting a stronger role for the UN Security Council the following two questions are of vital importance for the future of the NPT:

- What measures can and must be taken in order to prevent, sanction, and remedy violations of the NPT and related safeguards agreements?
- How can it be assured that a state exercising its right to withdraw from the NPT according to Article X does not threaten international peace and security by using the nuclear know-how, technology, and material acquired under NPT membership?

The political and legal complexity of these issues—non-compliance and withdrawal—is best illustrated by the cases of Iran and the Democratic People’s Republic of Korea (DPRK). Against this backdrop, the EU Strategy against the proliferation of WMD emphasizes a policy of both reinforcing compliance with the NPT as well as strengthening the “role of the UN Security Council, as the final arbiter on the consequence of non-compliance.”¹¹ In particular, in the run-up to the 2005 NPT Review Conference, Germany came up with some stimulating proposals on how to strengthen the NPT against withdrawal and non-compliance.¹²

The Problem of Non-Compliance with the NPT

Article II of the NPT bans all non-nuclear-weapon state parties from receiving, manufacturing, or otherwise acquiring nuclear weapons or other nuclear explosive devices, as well as from seeking or receiving any assistance in the manufacture of such weapons and devices. For the purpose of verifying treaty compliance and preventing the diversion of nuclear energy from peaceful uses to nuclear weapons programs, Article III states that each non-nuclear-weapon state party must accept safeguards as set forth in an agreement to be negotiated and concluded with the IAEA. Such safeguards agreements are concluded in each individual case along the lines of different models, the most important of which are the 1972 comprehensive safeguards agreement model and a 1997 additional protocol model.¹³ Since the authority of the IAEA under the first type of agreement is rather limited, it is essential that all state parties accept safeguards as outlined in the additional protocol.

Iran, for example, has been bound by a comprehensive safeguards agreement since 1974¹⁴ and has signed but not yet put into force an additional protocol agreement. Nonetheless, Iran voluntarily committed itself to cooperating with the IAEA under the provisions of this protocol after negotiations with France, Germany, and the United Kingdom started in October 2003. In February 2006, Iran suspended this cooperation following a decision by the IAEA Board of Governors to report Iran’s case to the UN Security Council.

The legal basis for the IAEA reporting to the UN Security Council is contained in the Statute of the IAEA and a special

agreement between the IAEA and the UN.¹⁵ According to these provisions, the IAEA notifies the Security Council whenever questions related to IAEA activities that fall within the competence of the Security Council arise.¹⁶ In particular, the IAEA Board of Governors shall report to the Security Council any case of non-compliance with the NPT and relevant safeguards.¹⁷ This requirement is additionally specified in each individual safeguards agreement.¹⁸

The term “referral,” which is sometimes used instead of “reporting,” has to be understood in a non-technical sense since it is not a procedural category in the IAEA Statute. In this context it is also important to clarify that, on the one hand, the Security Council is not in any way procedurally dependent on a notification or reporting by the IAEA in order to address a specific issue relating to NPT compliance. Instead, the Security Council at any time may investigate such a situation on its own initiative and request the IAEA to provide information and assistance. On the other hand, the Security Council is under no obligation to take up every issue that is formally reported to it by the IAEA. Although the IAEA, via the UN Secretary-General, may propose items for consideration by the Security Council, it is understood that the members of the Security Council are free to decide which issues they will consider as specific items under its agenda, and which issues will only be discussed informally.

In the case of Iran, the IAEA Board of Governors on 4 February 2006 formally requested the Director General to report the issue to the UN Security Council.¹⁹ Prior to this, the P5 had already agreed that the Security Council should await the Director General’s March report before deciding to take action. This most recent report states that “the Agency is not at this point in time in a position to conclude that there are no undeclared nuclear materials or activities in Iran.”²⁰ Already in September 2005 the IAEA Board had formally declared that the conduct of Iran constituted non-compliance in the context of the IAEA’s Statute. Moreover, it declared that the history of concealment of Iran’s nuclear activities, the nature of these activities, and other issues brought to light in the course of verification, as well as the resulting absence of confidence that Iran’s nuclear program is exclusively for peaceful purposes, have given rise to questions that are within the competence of the Security Council.²¹

In deciding on how to enforce compliance with the NPT and reinforce the authority of the IAEA, the Security Council should always take into consideration some general objectives:

- Ensure, as far as possible, complete, accurate, and impartial fact-finding and analysis;
- Send a strong signal to the non-compliant state right from the beginning, but leave enough space for resuming diplo-

matic efforts outside the Security Council and utilizing “carrots and sticks” approaches;

- Proceed in a way that allows for a deliberate and progressive escalation of measures, and maintain, as long as possible, a certain leverage effect;
- Signal readiness to take stronger action only if prepared to act accordingly, and if necessary, act decisively and promptly;
- Ensure enforcement of decisions, in particular, provide for an effective and universal implementation of sanctions and secondary sanctions.

In cases like Iran, the Security Council may first send a strong signal by scheduling a formal meeting and dealing with the case under a separate new agenda item. Substantive steps would include issuing a formal presidential statement or even a resolution. Such a resolution may also contain legally binding decisions if the Security Council acts under Chapter VII of the UN Charter. Whereas presidential statements usually build on a consensus among all Security Council members, a substantive resolution according to Article 27 (3) of the Charter requires an affirmative vote of nine members with the P5 not exercising their veto right.

Such a statement or decision should always explicitly endorse the preceding actions of the IAEA and require the non-compliant state to live up to its obligations under the NPT and relevant safeguards agreements. The presidential statement on Iran issued by the Security Council on 29 March 2006 contains rather low-key wording. It “calls upon Iran to take the steps required by the IAEA Board of Governors” in its latest resolution.²² These steps, which the Board itself merely “deems [...] necessary for Iran” to build confidence, inter alia, include the full and sustained suspension of all enrichment-related and reprocessing activities, the prompt ratification and full implementation of the additional protocol, and other transparency measures as requested by the Director General of the IAEA.²³ On the other hand, by initially pursuing a low profile approach the Security Council deliberately placed special emphasis on working towards a diplomatic, negotiated solution. Furthermore, by requesting the Director General to report back not only to the Security Council itself but also to the Board of Governors, the Security Council was careful not to take over the matter completely but to further support the role of the IAEA.

Finally, it is also worth taking a short look at some theoretical options that could be pursued in order to increase pressure on a state that is in constant material breach of its obligations under the NPT and, by decision of the Security Council according to Article 39 of the UN Charter, found to threaten international peace and security. One option for the Security Council on the basis of Article 41 would be to impose farther-

reaching constraints on the nuclear program of the targeted state and subdue it under a mandatory and specifically tailored safeguards regime that may even provide for stricter monitoring and verification than the additional protocol. These measures could be combined with special sanctions targeting the transfer of relevant know-how, technology, and material. Nevertheless, such a regime would be difficult to enforce if the target state has already managed to avail itself of non-state proliferation networks and other black-market channels in order to acquire sanctioned items. Aside from this, verification could become almost impossible if the target state forcefully resists the presence of international inspectors on its territory. In this case, the only solution for the Security Council would be to further increase pressure through additional economic sanctions, inter alia, by prohibiting the export and import of certain strategic goods and proscribing foreign investments; implementing targeted financial sanctions and travel restrictions against individual decision-makers; and, finally, authorizing military action. Yet, even limited military operations, such as the destruction of certain facilities, could easily lead to an overall escalation with unforeseeable consequences for international peace and security.

With regard to the case of Iran, it has to be noted that most of these measures, at least until now, seemed not to be feasible due to fundamental divisions among the P5, which are linked to particular political and economic interests. However, although the Russian Federation and China initially indicated their opposition against imposing sanctions on Iran, the option of addressing the issue under Chapter VII is not completely off the table, since the extremely confrontational stance taken up by Tehran during the first half of the month of April contributed to a serious aggravation of the conflict.

The Problem of Withdrawal from the NPT

According to Article X paragraph 1 of the NPT, “[e]ach Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other Parties to the Treaty and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.”

The issue of withdrawal first became a matter of concern when in March 1993 the DPRK gave notice of its intention to withdraw from the NPT. This notification triggered a report by the IAEA to the UN Security Council. At that point in time, the Security Council, in a non-binding resolution, called upon the DPRK to reconsider its announcement, honor its obligations under the NPT, and comply with its safeguards agreement.²⁴

One day before the withdrawal was due to take effect, the DPRK and the United States agreed to continued dialogue and the DPRK announced “unilaterally to suspend as long as it considers necessary the effectuation of its withdrawal.”²⁵ On 10 January 2003 the DPRK finally declared an “automatic and immediate effectuation of its withdrawal from the NPT” and asserted that it is “totally free from the binding force of the safeguards accord with the IAEA.”²⁶ This declaration notwithstanding, the IAEA, in the aftermath, confirmed that the safeguards agreement with the DPRK remains binding and in force and that North Korea was in further violation of the agreement.²⁷ Consequently, the IAEA again reported the issue to the Security Council. This time, however, the Security Council took no action but left the dispute to be pursued through other diplomatic channels. Only recently, the problem of withdrawal from the NPT arose again when President Ahmadinejad in February 2006 publicly warned that “the Iranian nation will revise its strategies” with regard to continuing its nuclear program within the framework of the NPT and the IAEA.²⁸

Both cases illustrate the risk that a state, during its membership in the NPT and under the guise of the right to develop research, production, and use of nuclear energy for peaceful purposes, will acquire weapons related know-how, technology, and material and then withdraw from the treaty. Although Article X, as quoted above, provides for some procedural requirements of withdrawal, this clause constitutes one of the major flaws within the nuclear non-proliferation regime. Neither the NPT nor the Statute of the IAEA provide for any mechanism to respond to a notification of withdrawal. In order to prevent that this procedural gap will be played out by more and more states, the NPT regime has to be adjusted quickly.

First of all, each state intending to withdraw from the NPT should be required, before notifying its final decision, to formally indicate its intention in the form of a written communication within a certain period of time to all other state parties. This indication should already contain a substantial formulation of what

“extraordinary events, related to the subject matter of this Treaty” it considers to have jeopardized its supreme interests. This information would enable other state parties to consult at an early stage and, if appropriate, to convene an extraordinary conference of the entire membership. To facilitate a coordinated approach in such an emergency, state parties should develop a procedure for expedited communication within the NPT system.

At this stage, all efforts should be made to scrutinize the information presented and to explore possible options for preventing the state from leaving the NPT. In addition, any such formal indication of withdrawal should trigger an immediate and comprehensive assessment by the IAEA with the aim of verifying that no material covered by the safeguards was diverted to nuclear weapons or other explosive devices. If the IAEA is unable to do so, the right to withdraw from the NPT should be subject to an automatic suspension until the issue is clarified. If, after further investigation, the relevant state turns out to have actually committed a material breach of the NPT and its safeguards agreement by acquiring nuclear weapons or by diverting nuclear material, specific sanctions similar to those provided for under the Statute of the IAEA should come into force under the NPT. Thus, in the event that a state fails to take fully corrective action to remedy its non-compliance, Article XII paragraph C of the IAEA Statute, for example, authorizes the Board of Governors to directly curtail or suspend any assistance being provided to that state by the IAEA or by a member of the IAEA and call for the return of materials and equipment. In addition, the IAEA may also suspend any non-complying member from exercising the privileges and rights of membership. Moreover, the IAEA shall then immediately report the matter to the UN Security Council. Establishing a similar mechanism for cases of withdrawal from the NPT would provide state parties with some options for exerting pressure on a state that intends to abandon the NPT in bad faith.

Concluding Thoughts

From an international legal perspective, it is clear that a state found in violation of its treaty obligations remains responsible for this conduct even after having effectively withdrawn from the treaty. This fundamental issue already is governed by the general international norms of state responsibility and the Vienna Convention on the Law of Treaties.²⁹

However, when it comes to enforcing decisions taken by the membership of the NPT in reaction to such a violation, the responsibility again would rest with the Security Council, which is the only international organ competent to impose universally binding sanctions or authorize the use of armed force. Thus, the decisive question once again is: In which cases would the P5 be willing to let the Security Council play this role? In the case of Iran every endeavor has to be made to further work towards a diplomatic, negotiated solution. Nevertheless, in the event of sustained Iranian non-compliance the P5 must stand together and ultimately be ready to act decisively under Chapter VII of the UN Charter. At best, this could be a first step to reinforce general compliance with the NPT regime. On the other hand, any failure to do so would not only weaken the regime and the authority of the IAEA but would also further impair the credibility of the Security Council itself.

NOTES

1 UN Doc. S/PRST/2006/15, 29 March 2006.

2 *European Union Strategy against the Proliferation of Weapons of Mass Destruction*, EU Doc. 15708/03, 10 December 2003 (<<http://ue.eu.int/uedocs/cmsUpload/st15708.en03.pdf>>).

3 UN Doc. S/23500, 31 January 1992.

4 *The National Security Strategy of the United States of America*, September 2002/March 2006 (<<http://www.whitehouse.gov/nsc/nss.pdf>>, <<http://www.whitehouse.gov/nsc/nss/2006/nss2006.pdf>>); *National Strategy to Combat Weapons of Mass Destruction*, December 2002 (<<http://www.whitehouse.gov/news/releases/2002/12/WMDStrategy.pdf>>).

5 *A More Secure World: Our Shared Responsibility, Report of the High-level Panel on Threats, Challenges and Change*, UN Doc. A/59/56, 2 December 2004, para. 188 et seq.

6 *U.S. National Security Strategy 2006*, supra note 4, 18 et seq.

7 UN Doc. S/RES/1540 (2004), 28 April 2004.

8 Supra note 7.

9 Cf. UN Department for Disarmament Affairs (Ed.), *Multilateral Disarmament and Non-Proliferation Regimes and the Role of the United Nations: An Evaluation*, DDA Occasional Papers No. 8, October 2004, 53 et seq.

10 *Report of the High-level Panel on Threats, Challenges and Change*, supra note 5, para 111.

11 *EU Strategy against the Proliferation of WMD*, supra note 2, para. 17.

12 Preparatory Committee for the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Working papers submitted by Germany: *Strengthening the NPT Against Withdrawal and Non-compliance*, Doc. NPT/CONF.2005/PC.III/WP.15 (<<http://www.reachingcriticalwill.org/legal/npt/prepcom04/papers/GermanyWP15.pdf>>); "Compliance," Doc. NPT/CONF.2005/PC.III/WP.16 (<<http://www.reachingcriticalwill.org/legal/npt/prepcom04/papers/germanyWP16.pdf>>).

13 IAEA Doc. INFCIRC/153 (Corrected), June 1972; IAEA Doc. INFCIRC/540 (Corrected), September 1997.

14 IAEA Doc. INFCIRC/214, 13 December 1974.

15 *Statute of the International Atomic Energy Agency*, 23 October 1956 (<<http://www.iaea.org/About/statute.html>>); *Agreement Governing the Relationship Between the United Nations and the International Atomic Energy Agency*, 10 August 1959, IAEA Doc. INFCIRC/11, 30 October 1959.

16 Article III, para. B-4 IAEA Statute, supra note 15; Article III, para. 1 (b) INFCIRC/11, supra note 15.

17 Article XII, para. C IAEA Statute, supra note 15; Article III, para. 2 INFCIRC/11, supra note 15.

18 Cf. para. 19 of INFCIRC/153 (Corrected), supra note 13: The Board may report if it "finds that the Agency is not able to verify that there has been no diversion of nuclear material required to be safeguarded under this agreement, to nuclear weapons or other nuclear explosive devices."

19 IAEA Doc. GOV/2006/14, 4 February 2006.

20 IAEA Doc. GOV/2006/15, 27 February 2006, para. 53.

21 IAEA Doc. GOV/2005/77, 24 September 2005, para 2.

22 Supra note 1.

23 Supra note 19, para. 1.

24 UN Doc. S/RES/825 (1993), 11 May 1993.

25 Joint Statement of the DPRK and the United States, New York, 11 June 1993.

26 Statement by the DPRK, reported by the Korean Central News Agency (KCNA), Pyongyang, 10 January 2003 (<<http://www.kcna.co.jp/item/2003/200301/news01/11.htm>>).

27 IAEA Doc. GOV/2003/14, 12 February 2003. A legal substantiation of this view is presented in IAEA Doc. GOV/2003/4, 22 January 2003, para. 4 et seq.

28 Islamic Republic News Agency (IRNA), "Ahmadinejad: Iran could revise its nuclear strategy," Tehran, 11 February 2006 (<<http://www.president.ir/eng/ahmadinejad/speeches/index1.htm>>).

29 Article 70 para. 2 and 1(b) of the Vienna Convention determine that the withdrawal from a multilateral treaty does not affect any right, obligation or legal situation created through the execution of the treaty prior to the date when such withdrawal takes effect.

AICGS Initiative on the United States, Germany, and the United Nations

In the transatlantic debate over the Iraq war, the German government and the Bush administration espoused very different perspectives on the role of multilateral institutions and international law in guaranteeing international peace and security. These differences were particularly evident with regard to the United Nations, which became the forum for a direct confrontation between the opponents of the Iraq war, including France and Germany, and the United States. While bilateral relations have stabilized, the German and U.S. governments remain divided over the function, purpose, and prospects for reform of the United Nations, as well as on the broader, underlying issues concerning the role of multilateral institutions and international law in the global system. These differences have become more salient in recent years, particularly in light of current efforts to reform the UN. Unless German and American views on the purpose, structure, and role of the United Nations can be resolved, new transatlantic fissures are likely to surface.

The AICGS Initiative on Germany, the United States and the United Nations aims to explore different aspects of UN reform, seeking to enhance mutual understanding of German and American views on the purpose, structure, and role of the United Nations, and to identify areas where opportunities for coordinated engagement on issues of mutual concern exist. The project was made possible through the generous support of The German Marshall Fund of the United States. For more information, please see:

http://www.aicgs.org/Projects2/view.aspx?ID=53&origin=results&QS='&union=AND&viewby=50&startrec=1&top_parent=155

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