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DISARMAMENT AND NON-PROLIFERATION

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Today the world's **attention** is focused on **North Korea's** missiles and testing of a plutonium bomb and the development by **Iran** of a uranium enrichment capacity, which could be used at some future date to produce highly enriched uranium for bombs. There are also concerns that **terrorists** might acquire nuclear weapons or at least 'dirty bombs' – i.e. bombs containing radioactive material – or biological or chemical weapons.

All this focusing on non-proliferation and terrorism is justified but it **ignores** some unwelcome realities. It is true that nuclear weapons and other weapons of mass destruction may be particularly dangerous in some hands, but they are dangerous in anybody's hands. And there are still **some 27.000 nuclear weapons** in the world. Most of these weapons are in US and Russia and large numbers are on hair trigger alert.

Further, the world spent about one trillion dollars on military expenses last year. We do not discuss it much. The risk of a **world war** fortunately seems **remote** and the horror vision of the nuclear weapons has faded in the public mind. However, the world missed the opportunity to make a new peace order after that long war and despite some valuable progress in arms control and disarmament we are actually in a phase of rearmament. The US is developing a new standard nuclear weapon. The UK is getting ready for a decision on a new nuclear program. Space is being rapidly militarized and might be weaponized.

This is the background of the report which I presented on 1 June this year to the President of the UN General Assembly and to the Secretary-General of

the UN. It was written by an independent international commission that I had chaired: **WMDC: Weapons of Terror. Freeing the World of Nuclear, Biological and Chemical Weapons**".

The report and its 60 recommendations were unanimously adopted by the Commission's 14 experienced experts, who came from all over the world.

The Commission now hopes that governments, media, think tanks and the public will read the report and agree that it is time to wake up and **reduce the threat of weapons of mass destruction**, notably nuclear weapons.

The threat can be reduced or eliminated in two different ways:

- *First, if states respect the restrictions in the UN Charter on the threat or use of force there will be no use of any weapons. No armed conflict – no use of weapons of mass destruction..*
- *Second, arms control and disarmament measures could physically eliminate weapons or restrict their use, development or deployment. No weapons – no use.*

Which are the restrictions on the threat or use of force – and how effective are they?

After the Second World War and the use of nuclear weapons in Hiroshima and Nagasaki important restrictions were laid down in the UN Charter. They constituted a **leap forward** in humanity's efforts to restrict the use of armed force and advancing the idea of '**collective security**'.

The Charter stipulated (in art. 2:4) that members **must not use force** against the territorial integrity and political independence of any state. Only **two exceptions** were made from the rule:

- A right was preserved (in art. 51) to individual and collective **self-defense**, when an **armed attack** occurred, until the Security Council has taken the necessary measures.
- The other exception allowed the Security Council to intervene – if need by authorizing military force – to stop "**threats to the peace, breaches of the peace or acts of aggression**" and members

undertook – in article 25 – to accept and carry out the decisions of the Council.

How have the restrictions worked to prevent the use of armed force?

Although, fortunately, no use has been made of nuclear weapons and only rare use of other weapons of mass destruction, the restrictions on the use of force have often been ignored.

During the Cold War the Council was certainly no instrument for collective security. It was mostly inoperative as a result of the veto of each of the P 5 in the Security Council and member states had to rely on individual or collective self defense. An **exception** was the UN authorization in **1950** for intervention in **Korea** in the case of the North Korean aggression. It did not meet a veto because the Soviet Union was absent from the Council. In the 80s Iraq under Saddam Hussein attacked Iran and even used chemical weapons extensively – without the Security Council intervening.

After the end of the Cold War consensus between the five permanent members in the Security Council became – and still remains – possible.

The **most important joint UN action** made possible by the new political climate was, of course, the authorization given by the Security Council in 1991 to the broad alliance created by President George H. Bush to **stop Iraq's naked aggression against of Kuwait**. For some time this collective action gave the world hope that **a new will of the five great powers to cooperate** would at long last make the Charter work as originally envisaged – to stop the use of arms for other purposes than self-defense. President Bush spoke of **a new 'international order'**,

The Iraq war in 2003

However, in 2003 the war in Iraq was launched by a number of states without the authorization of the Security Council. Indeed, they were perfectly aware that that their action **would not** obtain an authorization of the Council. The **political justification** given for the Iraq war was above all the contention that Iraq retained **weapons of mass destruction** in violation of Security Council resolutions

There was no threat or use of weapons of mass destruction by the Alliance, but, as we know, the evidence of Iraqi weapons of mass destruction was faulty and the reports of UNMOVIC and IAEA inspections were ignored by the states launching the war.

UNMOVIC had carried out some **700 inspections** of some 500 different sites, dozens of them proposed by the intelligence organizations, and had reported no finds of wmd. We had expressed doubts about some of the evidence that had been presented. The pleas of the majority of the Council that inspections should be continued were ignored by the states launching the war. So this was not a case of armed force authorized by the Security Council. Was it a case of self defense against an armed attack by Iraq? Of course, not! I agree with SG Kofi Annan and most international lawyers in the world that the action was not ‘consistent with the UN Charter’, or – more plainly – it was a violation of the Charter.

Indeed, it was even more seriously a repudiation by the US of the Charter restrictions on the use of force. A **US National Security Strategy** published in September 2002 stated flatly that **a limitation of the right unilaterally to use armed force in self-defense** to cases where “armed attacks” were occurring or were “imminent” **would be insufficient** in the era of missiles and terrorists. That is to say: we are ready to ignore the limitation in UN Charter Article 51.

The position taken in 2002 by the US was confirmed in the National Security Strategy of 2006 and through many statements by the US President and other officials to the effect that in the cases of Iran and North Korea **“all options are on the table”**. One must conclude that the current US administration feels free to use force, if it so chooses, without any authorization by the Security Council, even if there is no armed attack or imminent attack. This is to say: preemptively or preventively.

A statement by the current US ambassador to the UN confirms that in his view restrictions in the UN Charter on the use of force are simply not relevant to the US. He said:

*“Our actions, taken consistently with Constitutional principles, **require no separate, external validation to make them legitimate...**” (2003)*

It is evident that, although the current US administration is ready to ignore the UN Charter art.51 and the Security Council, it may, nevertheless **seek and welcome the support of the UN Security Council**. Such support can be politically valuable and allow the adoption by the Council of non-military sanctions mandatory for all UN members – and thus bring the pressure of the whole world community.

How will the Security Council make use of its authority now that the veto is not automatic and consensus between the five permanent members is within the realm of the possible?

A crucial question is what the Council judges to be “threats to international peace and security” because such a judgment is a necessary precondition for mandatory sanctions; another issue is whether it feels an obligation to be consistent – to treat equal cases equally.

The Council did determine that **Iran’s program of enrichment of uranium** constituted a threat to international peace and security and ordered (demanded) that it should be suspended. In the same period it had nothing to say about North Korean production of plutonium.

The recent **testing** of a plutonium bomb **by North Korea** was unanimously condemned – as were the nuclear tests by India and Pakistan in 1998. The North Korean test was deemed to constitute a threat to international peace and security and non-military sanctions were imposed.

Yet, we cannot fail to note that neither the US nor China nor North Korea have ratified the comprehensive test ban treaty and that important voices in the US urge that new nuclear weapons should be tested. Can we conclude that it is now the unanimous view of the Council that even in the absence of an operative comprehensive test ban treaty no state may undertake nuclear weapons tests? If so, I think it would be time for a new general effort to get that treaty ratified and operative.

It is welcome that the **Security Council** takes seriously the threats posed by nuclear weapons and programs that may be designed to lead to such weapons. Council decisions have weight: under Article 24: 1 Members of the UN agree that in carrying out its duties to maintain peace and security the Council **“acts on their behalf”**.

Implicit in this delegation of power to the Council is, I think, that the fifteen members – and not least the five states that have been given permanent membership – are expected to pursue the interest of the broad membership, which they are asked to represent. In the maintenance of peace and security, the Council could and should **act as an authority striving for a more peaceful world order**– not simply as a committee dominated by **a cartel of nuclear weapon states with the privilege of permanent seats**.

Now, if the Council and its members are entitled to expect all UN members to respect **their** duty under the Charter to implement Council decisions, the membership should also be entitled to expect the Council and its members to respect the Charter.

I would draw two conclusions from this reasoning:

- When the Council and its members demand that states shall abide by their obligations under the UN Charter, notably the restrictions on the use of force, consistency requires that all Council members, themselves, should be guided by the rules of the Charter; and, more specifically,
- When nuclear weapon states members of the Council demand that other states shall renounce nuclear weapons testing and programs designed to lead to nuclear weapons, consistency requires that they, themselves, move in good faith to nuclear disarmament.

Non-proliferation and disarmament measures

If eliminating the use of armed force generally is one way to try eliminating the threat of WMD, a more direct way is to eliminate the weapons themselves. The **best guarantee against any use** of nuclear weapons would be to secure the **absence** these weapons through bans on production, acquisition and stocking. No weapons – no use... In 1946 the General Assembly declared its determination to physically **eliminate “atomic weapons”** and other weapons of mass destruction. Even 60 years later **their elimination has not been attained, while in the case of B and C weapons comprehensive conventions have been concluded**.

For nuclear weapons, a fragmentary approach has been taken

- The **deployment** of these weapons in various **environments has been prohibited by various conventions** (the Antarctic, the sea-bed and outer space),
- **The testing of nuclear weapons has been limited** by the partial test ban treaty.
- The possession of the weapons has been banned through treaties establishing nuclear weapon free **zones**; all countries in the Southern hemisphere is covered by such zones;
- The development and possession of nuclear weapons has been limited through **commitments** under the **NPT**; and
- The nuclear weapon states parties to the NPT have committed themselves to pursue negotiations in good faith toward **nuclear disarmament**;

This fragmented approach has taken us forward, but still leaves us a long way from a nuclear weapons free world. Can we get there?

The EU strategy against proliferation of WMD counsels that

*“The best solution to the problem of **proliferation** of WMD is that countries should no longer feel they need them. If possible, political solutions should be found to the problems, which lead them to seek WMD. **The more secure countries feel, the more likely they are to abandon programmes...**”*

While the **EU strategy** conveniently counsels only how to avoid a further spread of WMD and ignores the spread that has already taken place (to states such as the EU members France and the UK), the advice is probably valid also for states which **have** nuclear weapons. To phase out their weapons they should feel and conclude that they do not need them, as South Africa did.

The WMDC notes – in line with the EU strategy – that in many cases **“perceived threats to security have been the incentive** for the acquisition of nuclear weapons and – conversely – security guarantees of various kinds have offered disincentives.” (p. 66).

The Commission goes on to say more specifically:

*“It is not unreasonable to think that the governments of **Libya, Iran and North Korea**, often isolated, have convinced themselves that their security was threatened. In the case of **Iran** there was also a very real threat from Iraq, which armed itself with WMD and used chemical weapons against Iran during the long war of the 1980s. It is possible that in such cases incentives to acquire nuclear weapons may be reduced by **offers of normal relations** and by assurances that **military intervention** or subversion aiming at regime change **will not be undertaken.**” (pp. 66-67).*

In the case of **North Korea** the six power talks, which have been suspended for about one year and the revival of which are sought, seem to have proceeded on the basis of this philosophy and offered the DPRK both security guarantees and a normalization of relations. Regrettably, such offers do not seem to have been made in the case of Iran.

Now let me turn **to the Non-Proliferation Treaty**. We often hear warnings that the most central global instrument in which states committed themselves against the acquisition of nuclear weapons and to nuclear disarmament, risks to collapse. The WMDC readily recognizes that the treaty is **under strain but** notes that the world is **not full of would-be violators** and that the overwhelming commitment to the treaty remains of tremendous value.

Iraq and Libya were found to be in violation of the NPT and although they have been brought back to observance of the treaty confidence in the treaty suffered. In the case of two other countries – **North Korea and Iran** – the world is currently very actively seeking solutions. Are there any other problematic cases? Not to my knowledge.

A momentous problem with the NPT is the implementation – or lack of implementation – of **Article 6**, which enjoins the nuclear weapon states parties to negotiate toward nuclear disarmament. The NPT is seen as a double bargain aiming at a world free of nuclear weapons:

- the non-nuclear weapons states parties commit themselves not to acquire the weapons; and
- the nuclear weapons states parties commit themselves to negotiate toward nuclear disarmament.

The WMDC submits – in its very first recommendation – that all parties to the treaty need “**revert to the fundamental and balanced non-**

proliferation and disarmament commitments that were made under the treaty and confirmed in 1995 when the treaty was extended indefinitely”.

Among non-nuclear weapon states parties there is a strong feeling of frustration, even of being cheated by the nuclear weapon states parties, for instance, when the have-states are in the process of deciding the development of **new types of weapons rather than** examining how they could manage their defense needs with other weapons than nuclear. (Recommendations 20 and 23).

The negotiations with the DPRK and Iran would not be easy under any circumstance, but I suspect that they might be somewhat less difficult, if the nuclear weapon states participating could show that they, themselves, were **actively moving toward** and leading the world toward nuclear disarmament.

While the Commission pleads for the goal of a **convention** “outlawing” nuclear weapons in a way similar to what has been done regarding biological and chemical weapons (Recommendation 30) there are **many other steps, some small some large** that could and should be taken without much delay.

Before I describe some of these steps, let me make two general observations:

First, the security of states and people need to be sought more through and negotiation and **positive incentives** and **less** through military threats, force and **sanctions**. The disasters in Iraq and Lebanon show the tragic consequences of an **excessive reliance on armed force**.

Second, a **boosting of the role of nuclear weapons** by states that have them, especially if combined with military threats, seems more likely to **encourage** nuclear proliferation in states which feel threatened, than dissuading them from such proliferation.

Let me now tell you about some of the specific recommendations of the WMDC, starting with some important organizational items:.

- **Given the setbacks** in arms control and disarmament, notably at the UN summit in 2005 and the continued stalemate, there is a need to give new impetus. The Commission suggests that the **General Assembly should convene a World Summit on disarmament**, non-

proliferation and terrorist use of WMD. Thorough preparations would be necessary and planning should start as soon as possible.

(Recommendation 59)

- The **Conference on Disarmament in Geneva**, the principal international forum for negotiation on WMD related issues, has been unable to adopt a **program of work** for almost a decade. The WMDC suggests that the CD should be able to adopt a program of work, by a **qualified majority** of two thirds. (Recommendation 58).
- The WMDC report suggests that the Security Council should establish a **small subsidiary unit** that could provide professional technical information and advice on matters relating to weapons of mass destruction. (Recommendation 56) Such independent advice would have been of interest on the question of the nature of the test explosion in North Korea.
- The NPT should be given a **standing secretariat**. (Recommendation 4).

I continue with **a number of the substantive measures that the Commission recommends**

- No measure could be more urgent, important in substance and as a signal that arms control and disarmament are again on the world agenda than the signature and ratification of the **Comprehensive Nuclear-Test-Ban Treaty** by states, which have not yet done so. (Recommendation 28). If the treaty were not to become operative, there would be an increased risk that some state might restart weapons tests. Demanding in negotiations with **North Korea** that the country should deposit its ratification of the treaty – which is necessary for the treaty to enter into force – would be easier if all the states participating in the six power talks had, themselves, ratified the treaty.
- Negotiating without further delay a treaty **prohibiting the production of highly enriched uranium and plutonium for weapons (FMCT)** is the next most urgent issue to tackle. (Recommendation 26). The combination of a continued reduction in the number of existing nuclear weapons and a verified closing of the tap for more weapons material would gradually reduce the world inventory of bombs. A draft treaty has been presented in Geneva. It has important weaknesses but should be discussed.
- The WMDC is of the view that such a treaty, to be meaningful, must provide for effective **international verification** of all enrichment and reprocessing activities. If there is no effective international

verification, any controversy about respect for the treaty would have to be discussed on the basis of evidence coming only from national means of verification. We know from the case of Iraq that this would not be satisfactory. Moreover, without independent verification suspicions about violations might arise and lead to a race between some countries in the production of fissile material. Independent international verification is already carried out by EURATOM in enrichment plants in two nuclear weapon states -- France and the UK. Enrichment plants in Brazil and Japan are subject to IAEA safeguards verification.

- **Further steps**, by all nuclear weapon states, towards **reducing strategic nuclear arsenals** would be significant. The WMDC recommends that the US and Russia, which have the most weapons, should **take the lead**. With increasing cooperation between Russia and EU, Russian nuclear weapons should be withdrawn from forward deployment to central storage and US nuclear weapons should be **withdrawn** to US territory. (Recommendations 20, 21 and 22).
- In the view of the WMDC all states that have nuclear weapons should commit themselves categorically to a policy of **no first use** (Recommendation 15) and the US and Russia should reciprocally take their nuclear weapons **off hair trigger alert**. (Recommendation 17).
- As the reliance on nuclear power is expected to go up, the need for a **greater production of low enriched uranium fuel** and for the disposal of spent fuel can be anticipated. This must occur in a manner that does not increase the risk of diversion of material and the risk of proliferation. The **IAEA should be the forum** for exploring how this can be done. (Recommendation 8).
- **Regional approaches** should also be further developed, especially in sensitive areas. It would, for example, be desirable to obtain commitments from the states on the Korean peninsula and in the Middle East (including Iran and Israel) that they would accept a **verified suspension** for a prolonged period of time of any **production of enriched uranium and plutonium** while obtaining international assurances of the supply of fuel for any civilian nuclear power. (Recommendation 12)
- Lastly, you will not be surprised to hear me submit that **international professional inspection**, such as it has been practiced under the UN, the IAEA and the Chemical Weapons Convention, is an important and economic **tool for verification**. Such inspection does not stand in any

contradiction to national means of verification. Rather these two means of fact-finding **supplement** each other. Many states have no national means that they can use and should not have to be dependent upon the intelligence of other states. States which operate intelligence may, in one-way traffic arrangements, provide information to the international verification systems. (Recommendation 55).

- The safeguards system of the IAEA needs to be strengthened through universal acceptance of the **additional protocol**. (Recommendation 3). The effective operation of the safeguards system should never have to suffer for **financial** reasons. It is paradoxical for the world community to spend billions on inspections to ensure that no material or equipment of nuclear relevance is transported in containers or baggage in air travel and to deny the safeguards system the fullest support.

The world can afford verified disarmament. It cannot afford war.