

## Treaty Regimes and International Law

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### RECOMMENDATIONS OF THE WMD COMMISSION

Disarmament and non-proliferation are best pursued through a cooperative rule-based international order, applied and enforced through effective multilateral institutions, with the UN Security Council as the ultimate global authority. (*Weapons of Terror*, 18)

There is a need to revitalize and strengthen *multilateral cooperative* approaches, because of both their legitimacy and their potential effectiveness in addressing WMD threats. (*Weapons of Terror*, 57)

Governments know that treaties are indispensable. They see many multilateral treaties as an essential part of a commonly agreed and commonly managed world order, which most want to strengthen. The Commission supports that view. (*Weapons of Terror*, 167)

Global norms and treaty regimes play an indispensable role in controlling and eliminating nuclear, biological, and chemical (NBC) weapons. Norms are rule-framed expectations of conduct grounded in patterns of behavior, practical considerations, morality, policy statements and political commitments, and law including requirements set out in treaties. In the case of NBC weapons, law is at the core of the relevant norms. The possession and use of biological and chemical weapons is prohibited by the Biological Weapons Convention (BWC) and Chemical Weapons Convention (CWC). For almost all states, the possession of nuclear weapons is prohibited by the Nuclear Non-Proliferation Treaty (NPT), and their use is at least generally prohibited by international law as set forth by the International Court of Justice. The regimes give institutional life to the norms through regular meetings of states in review processes, and in the case of the CWC and the NPT, through implementing agencies engaged in monitoring compliance, the Organization for the Prohibition of Chemical Weapons (OPCW), and the International Atomic Energy Agency (IAEA). States around the world participate in these processes, monitoring systems, and organizations and thus commit in-depth to the rules on non-use and non-possession of NBC weapons.

One of the greatest strengths of *Weapons of Terror* is its clear explanation

of the importance of norms and regimes. It also effectively conveys that regimes work when there is reciprocity and cooperation. For example, for non-nuclear weapons states to accept enhanced inspection powers of the IAEA to monitor civilian nuclear power programs, they need to see substantial movement on the disarmament side of the regime. The report is refreshingly frank about the lack of reciprocity in the nuclear sphere, stating that it is “easy to see that the nuclear weapon states parties to the NPT have largely failed to implement” their NPT nuclear disarmament obligation.<sup>1</sup>

### *Advantages of Treaty Regimes*

The WMD Commission cogently explains why states rely on treaty regimes, observing that:

- Multilateral treaties have emerged over a long period of time as the principal instrument that the world community uses to create clear rules and standards designed to bind all states.
- Participation in the negotiation of a treaty of universal reach, or joining such a treaty, allows a state to feel ownership of and responsibility for the rules that are adopted....
- The procedure of national consent may involve both the executive and the legislative branches of a government, thereby anchoring the international rules more firmly in the national consciousness.
- Rights and obligations are defined by the treaty. A measure of stability is created when states parties are able to predict that other parties are likely to conduct themselves in accordance with the obligations they have assumed. At the same time there is some protection against arbitrary demands and accusations.
- The treaty may offer a basis for monitoring, verification, inspection, resolution of disputes or other action, such as periodic review and follow-up.<sup>2</sup>

A book released in 2003, *Rule of Power or Rule of Law?*,<sup>3</sup> the product of a collaboration between the Institute for Energy and Environmental Research and the Lawyers’ Committee on Nuclear Policy, identifies related benefits, explaining that:

Treaties by their very nature involve some sacrifice of sovereignty. In exchange, treaty regimes contribute to national and global security in important ways, including by:

- articulating global norms;
- promoting and recognizing compliance with norms;
- building monitoring and enforcement mechanisms;
- increasingly the likelihood of detecting violations and ef-

fectively addressing them;

- providing a benchmark for measurement of progress;
- establishing a foundation of confidence, trust, experience, and expertise for further progress;
- providing criteria to guide states' activities and legislation, and focal points for discussion of policy issues.<sup>4</sup>

*The role of international law.* Reliance on treaty regimes and global norms—on international law—is, or at least should be, greatly bolstered in the United States, a country historically dedicated to the rule of law, by the fact that treaty-based law is part, as the Constitution says, of the “law of the land.” Article VI, clause 2 of the Constitution provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; *and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land;* and the Judges in every States shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. [Emphasis supplied.]

In addition to treaty-based law, the Supreme Court has held, customary international law is “part of our law.”<sup>5</sup> Customary law is based on the practices of states accompanied by a sense of legal obligation, and in some cases also reflects fundamental humanitarian and moral factors. A classic example is the rule of diplomatic immunity; it was rooted in the practice of states of protecting other countries' representatives long before it was codified in agreements. An example relevant here is the ban on use of biological weapons, contained in the 1925 Geneva Protocol and reinforced by the Biological Weapons Convention. For states not party to either of those agreements—and for decades the United States did not ratify the Geneva Protocol—it is universally accepted that they are nonetheless bound by the ban. The International Court of Justice relied on customary international law—founded largely on treaties with broad participation—for its conclusion that the threat or use of nuclear weapons is generally illegal. Like the United States, all states have mechanisms, which may vary substantially, for integrating treaty- and custom-based international law into their national legal systems.<sup>6</sup>

The case for employment of treaty regimes and global norms to address the multiple security challenges faced by the world is thus a strong one, based both upon a pragmatic view of the need for effective cooperation and the force of the appeal to law. Following the dismantlement of the Berlin Wall and the breakup of the Soviet Union, hopes were high that this approach would be expanded to lower the risks posed by nuclear, chemical, and biological weapons and that other major initiatives would be taken to build global security. During the first decade of the post-Cold War era, those expectations were partially met. The NPT was indefinitely extended in

1995 and negotiations on the Comprehensive Test Ban Treaty (CTBT) were completed in 1996.

Negotiations on the Chemical Weapons Convention were concluded in 1993 and it entered into force in 1997. By 2001, seven years of negotiations by states parties to the Biological Weapons Convention had yielded a draft protocol that would have added a verification regime to the treaty. There were also important steps taken outside the realm of nuclear, biological, and chemical weapons. Notably, the Rome Statute of the International Criminal Court was negotiated in 1998 and entered into force in 2002. By the first decade of the 21<sup>st</sup> century, however, the surge of multilateral efforts had peaked and indeed had been rolled back.<sup>7</sup> The United States, as *Weapons of Terror* makes clear, bears the lion's share of responsibility for this development.<sup>8</sup>

### *The Erosion of Treaty Regimes*

*Chemical Weapons Convention.* The CWC is the most far-reaching disarmament measure ever put into force. It bans the development, acquisition, transfer or use of chemical weapons, requires the destruction of all stockpiles, and obligates states parties to declare chemicals and production facilities that could be used in a manner prohibited by the convention. Declared chemicals and facilities are subject to routine inspections. The CWC was championed by the senior George Bush, and its negotiation at one time seemed a harbinger of a robust multilateralism that would be applied to control of biological and nuclear weapons as well. Instead, the hard-fought Senate battle over ratification of the CWC in 1997 was a signal that the multilateralist agenda was in serious trouble. The Senate eventually did approve ratification, but U.S. compliance is subject to restrictions imposed first by the Senate in the ratification package and then by implementing legislation passed by Congress. The restrictions include a narrowing of the facilities subject to declaration and inspection; prohibition of transfer of samples outside of the country for analysis; and a presidential right to refuse inspections on national security grounds. The CWC does not permit these limitations and contains thorough safeguards for the protection of confidential information. It is in the U.S. interest to support effective inspections in order to verify compliance. But the U.S. restrictions, not surprisingly, are being imitated by other countries, including India and Russia. Despite these defects in the developing regime, it is generally considered a major success. As *Weapons of Terror* explains, the regime does face significant challenges. Among them are ensuring that destruction of stockpiles is completed in a timely fashion and preventing the development and deployment of incapacitating—but often lethal—chemical agents.<sup>9</sup>

*Biological Weapons Convention.* The BWC was ratified by the United States in 1975 and entered into force that same year. It prohibits state parties from developing, producing, stockpiling, acquiring or retaining biological agents or toxins when they have no justification for defensive or other peace-

ful purposes. It also flatly prohibits “weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.” But the BWC is only a bare ban on possession, lacking any provisions for declarations formally accounting for research facilities and destruction of stockpiles or for inspections to verify compliance. In negotiations beginning in 1995, BWC member states sought to remedy this deficiency by negotiating a comprehensive supplementary agreement known as a protocol.

In July 2001, the Bush administration successfully disrupted the nearly completed negotiations.<sup>10</sup> Then, in a remarkable display of its intense opposition to multilateralism, the administration continued to oppose the protocol despite the September 11, 2001 attacks and the subsequent anthrax attacks. In November 2001, it blocked consideration of more limited international agreements on verification mechanisms. Instead, the administration advocated that states voluntarily implement national measures like adoption of laws criminalizing biological weapons-related activities and promulgation of security standards for handling of pathogens. For the most part, the proposals were already on the international agenda. One reason for U.S. opposition to the protocol may be a reluctance to open the U.S. “biodefense” program to international scrutiny.<sup>11</sup> As part of that program, the United States constructed a model bio-bomb and weaponized anthrax,<sup>12</sup> activities which appear to violate the BWC ban on production of such weapons. Those and other projects, such as work on a genetically enhanced super-strain of anthrax, have been carried out in secret, making it impossible for other states to assess whether the projects comply with the BWC.

In rather marked contrast to the strong positions it takes regarding nuclear weapons, *Weapons of Terror* does not call for a renewed effort to negotiate an agreement establishing a verification regime, though it does not preclude this either. Rather it says more generally that a “multifaceted approach is required—one that strengthens the multilateral normative and legal prohibition regime, while linking it with other kinds of governmental and non-governmental, national and international measures.”<sup>13</sup> Nor does the report address the massive U.S. “bio-defense” program (*see box*).

*Other multilateral agreements.* Considered by many to be the most significant contribution to international law since the creation of the United Nations at the end of World War II, the Rome Statute of the International Criminal Court establishes the first permanent global tribunal to prosecute crimes against humanity, genocide, and war crimes, as well as aggression once agreement is reached on its definition. Together with associated improvement of capabilities in national legal systems, the court will deter the commission of large-scale atrocities, including those perpetrated with nuclear, biological, and chemical weapons. Although President Clinton signed the Statute at the very end of his term, in an unprecedented move the Bush administration notified the United Nations that the United States does not intend to ratify it, and on multiple fronts is working to block the Court’s jurisdiction over U.S. nationals.

### **The U.S. Biodefense Program**

Since the terrorist attacks of September 2001, the Bush administration has dramatically increased spending on biodefense research and capabilities.<sup>1</sup> These increasingly secretive biodefense programs threaten to undermine the integrity of the 1972 Biological Weapons Convention (BWC), pose significant risks to local communities, and develop and spread knowledge about the weaponization of the most deadly and incurable biological agents known.<sup>2</sup> From 2001 to 2006, the United States has spent \$36 billion on biodefense programs.<sup>3</sup> The annual budget for these programs, about \$8 billion spread among 11 different government agencies, now exceeds annual spending for nuclear warhead maintenance, research and development—which is about \$7 billion, not including delivery systems, command and control, etc.

The Bush administration's 2004 policy statement, "Biodefense for the 21<sup>st</sup> Century," describes the continuing development of "an aggressive research program to develop better medical countermeasures" and the construction of new biodefense laboratories.<sup>4</sup> The new labs include at least 20 facilities given the highest containment designations, biosafety level 3 (BSL-3) and 4 (BSL-4). Such labs create and conduct research on the most virulent biological warfare agents.<sup>5</sup> The BSL-4 labs are designed to conduct research on pathogens for which there is no known cure, such as Ebola or Marburg.<sup>6</sup> The increase in the number of these labs, which house facilities such as aerosol chambers where deadly agents are tested on animals, increases the risk that agents will escape containment and threaten local communities.

Although intended to develop biodefense countermeasures, these laboratories and programs inevitably train scientists and engineers in biowarfare techniques, and threaten to erode international mechanisms designed to guard against biological weapons. Further, the "de facto" creation of "biowarfare pathogens," admitted by a former Homeland Security assistant secretary for science and technology,<sup>7</sup> blurs the line between offensive and defensive biological weapons research, and is likely incompatible with the provisions of the BWC. The lack of transparency in these programs and the construction of BSL-3 and -4 labs at restricted access nuclear weapon laboratories effectively makes U.S. biodefense facilities unaccountable under the treaty. Barbara Hatch Rosenberg, chair of the Federation of American Scientists' working group on the BWC, said the choice of nuclear weapon labs as BSL sites "makes

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it possible for the government to say we can't allow any kind of inspections or visits from outside the government because nuclear security depends on it.”<sup>8</sup>

Also troubling is that the U.S. model has served as the foundation for a “global biodefense boom” where an increasing number of governments are building high-security labs in order to study deadly biological agents.<sup>9</sup> This has led to fears that other countries might seek to exploit these same loopholes and develop latent bioweapons capabilities under the guise of “defensive” research programs. The Bush administration’s rejection of verification for the BWC further undermines the capacity of the international community, and the U.S. government, to assess whether such programs are actually masking the development of biological weapons. Absent increased transparency in the field of biodefense, best attained through an international inspection regime, the proliferation of these types of programs could paradoxically decrease global security against state and terrorist use of biological weapons.

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- 1 “Federal Funding for Biological Weapons Prevention and Defense: Fiscal Years 2001 to 2007,” Center for Arms Control and Non-Proliferation, Washington, D.C., 2006 (“*Federal Funding*”).
  - 2 See Joby Warrick, “The Secretive Fight Against Bioterror,” *Washington Post*, July 30, 2006 (“*Warrick*”).
  - 3 *Federal Funding*, p. 1.
  - 4 “Biodefense for the 21<sup>st</sup> Century,” The White House, 2004.
  - 5 *Federal Funding*, p. 3.
  - 6 Marylia Kelley and Jay Coghlan, “Mixing Bugs and Bombs,” *Bulletin of the Atomic Scientists*, September/October 2003.
  - 7 Quoted in *Warrick*.
  - 8 *Id.*
  - 9 *Warrick*.

The list of security-related multilateral agreements rejected by the United States goes on. The Clinton administration refused to sign the 1997 Mine Ban Treaty prohibiting anti-personnel landmines. However, President Clinton developed a plan for eventual U.S. participation. Reversing that policy course, the Bush administration has announced that the United States will not join the treaty. The Bush administration rejected the 1997 Kyoto Protocol aimed at taking initial steps to reduce emissions of carbon dioxide which contribute to global warming. The severe or catastrophic effects projected from climate change could negatively impact security, not only by affecting livelihoods and settlement patterns, but perhaps also by causing conflict within or among nations due to refugee flows.

*Nuclear Non-Proliferation Treaty.* Finally, despite the rich history of U.S.-initiated or supported nuclear arms control treaties, U.S. resistance to law-governed multilateralism extends to the nuclear sphere, as the United States rejects commitments undertaken in the Nuclear Non-Proliferation Treaty and its review process. It has rejected ratification of the Comprehensive Test Ban Treaty, implementation of the START process, and preservation of the ABM Treaty; failed to apply the principles of verification, irreversibility, and transparency to the U.S.-Russian reductions agreed in the 2002 Strategic Offensive Reductions Treaty; and expanded, rather than diminished, the role of nuclear weapons in the U.S. military posture. The nature of commitments undertaken in the NPT context and the U.S. record with respect to them are detailed in sections 1.2 and 2.1.

### ***U.S. Denigration of International Law***

As the world's leading military and economic power and key architect of post-World War II international institutions, and as a progenitor of the concept of the rule of law, the United States is uniquely positioned to shape the development of the framework formed by the NPT, CWC, BWC, the United Nations Charter, and other security-related treaties. As recounted above, despite generally cooperative relations among major powers and the new awareness of the terrorist threat, the United States recently has refused to comply with commitments made under existing treaties or to enter into new agreements. Instead, the United States increasingly relies upon other modes of exerting power and influence. Among them is the doctrine of preemptive (really preventive) war against states with links to terrorism that seek to acquire NBC weapons, employed as a rationale for the invasion of Iraq without explicit Security Council authorization, and the related doctrine of "counterproliferation" envisaging military action against NBC weapons capabilities (*see section 2.2*). Accompanying steps are: the formation of an ad hoc coalition of states (the Proliferation Security Initiative) prepared to interdict disfavored states' shipment of NBC weapon-related equipment, materials, and delivery systems; Security Council imposition of rules (resolution 1540) aimed at preventing acquisition of and trafficking in NBC weapon-related items by terrorists and other non-state actors (*see section 1.3*); and a G-8 program aimed at securing NBC weapons and materials in Russia and perhaps other countries.

*Weapons of Terror* captures the essence of this sharp turn in U.S. policy:

Some of the current setbacks in treaty-based arms control and disarmament can be traced to a pattern in US policy that is sometimes called 'selective multilateralism'—an increased US scepticism regarding the effectiveness of international institutions and instruments, coupled with a drive for freedom of action to maintain an absolute global superiority in weaponry and means of their delivery.

The US is clearly less interested in global approaches and treaty making than it was in the Cold War era. In the case of Iraq, the US chose in 2003 to rely on its own national intelligence and to disregard the results of international verification, even though the latter turned out to be more accurate. More importantly, the US has been looking to what is called ‘counter-proliferation’—a policy envisaging the unilateral use of force—as a chief means to deal with perceived nuclear or other WMD threats.

As seen in the war to eliminate WMD in Iraq, and in official statements regarding North Korea and Iran, the US has claimed a right to take armed action if necessary to remove what it perceives as growing threats, even without the authorization of the UN Security Council.

The overwhelming majority of states reject the claims by the US or any other state to such a wide licence on the use of force....<sup>14</sup>

The new U.S. approach does *not* imply the rejection of working together with other countries, often allies, on matters of security (*see box*). But it does centrally involve the rejection or minimizing of institutions and norms of near-universal scope, like those based on the treaties on NBC weapons. An accompanying theme has been the downgrading, even the deriding, of international law. John Bolton, U.S. ambassador to the United Nations from 2005 to 2006, has been the foremost exponent of this theme. He has expressed himself most virulently when out of office, as in this 1999 statement:

It is a big mistake for us to grant any validity to international law even when it may seem in our short-term interest to do so—because, over the long term, the goal of those who think that international law really means anything are those who want to constrain the United States.<sup>15</sup>

While Bolton and others are not so undiplomatic when in the government, the sentiment accurately conveys a key tenet of present U.S. policy. Sorely lacking is any appreciation of international law and institutions as means for working with other nations in a cooperative, problem-solving approach that can redound to all nations’ benefit. Some of the consequences of this nihilist approach to international law have been visible to all in the Bush administration’s policies of torture and indefinite detention without trial, in stark violation of the Geneva Conventions and other humanitarian/human rights international legal instruments as well as customary international law.

Bolton and others have also criticized international law on the ground that it is not enforceable.<sup>16</sup> Addressing this criticism is a major concern of the WMD Commission. The Commission observes that most states accept the need for law, and honor and implement their obligations concerning NBC weapons and want to be seen as doing so as respectable, law-abiding members

### **Selective Multilateralism**

The U.S. turn away from global norms, regimes, and institutions has been accompanied both by an increased emphasis on military means of combating proliferation and by increased reliance on initiatives in which the United States works with ad hoc groups of states to accomplish policy aims. Thus the United States has not renounced, and indeed has vigorously pursued, cooperative engagement with selected other countries on matters of security. This is demonstrated by G8 programs, export control arrangements, and the Proliferation Security Initiative.

The United States is spending billions of dollars on a G-8 program aimed at securing nuclear, chemical, and biological warheads and materials in Russia and, to a limited extent so far, other countries.<sup>1</sup> The program builds on the existing U.S.-Russian Cooperative Threat Reduction (“Nunn-Lugar”) program. The Commission views the Cooperative Threat Reduction and G-8 programs in a positive light, and in Recommendation 48 calls for geographical and functional broadening of the latter. The U.S. 9/11 Commission more fulsomely praised the Cooperative Threat Reduction program, emphasizing the importance of preventing terrorists from gaining access to weapons of mass destruction.<sup>2</sup> In a related development, the 2006 G8 summit on July 15, 2006 announced a “Global Initiative to Combat Nuclear Terrorism,” which would undertake or reinforce cooperation on measures like the “development of technical means to combat nuclear terrorism.”<sup>3</sup>

The United States also continues to rely heavily on long-established political arrangements with allies and selected other states to restrict or deny exports of technology or materials to non-favored states when the exports would contribute to acquisition of missiles and nuclear, chemical, and biological weapons. Such arrangements include the Missile Technology Control Regime,<sup>4</sup> the Nuclear Suppliers Group,<sup>5</sup> and the Australia Group (chemical and biological material and equipment).<sup>6</sup> The WMD Commission provides a balanced and sound discussion of export controls. It calls them “a valuable part of the overall effort to combat WMD proliferation,” but also notes that critics consider them “exclusive clubs or cartels that have no right to try to dictate global standards,” and that a “growing number of producers of sensitive commodities are not members.”<sup>7</sup> The Commission envisages a far-reaching reform of export controls, spurred on by the requirements of Security Council resolution 1540. Recommendation 47 calls for the existing export control groups to

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broaden their membership, and for the establishment of a “universal system of export controls providing harmonized standards.” The Commission elaborates that there is a need

to move from a system of control based on barriers to exports to one that addresses all aspects of the potentially dangerous ownership and circulation (both within and between states) of WMD-related goods [that is] grounded in permanent cooperation with the business sector and [requires] proliferation-sensitive transactions to be assessed against universally agreed criteria, regardless of the location of the end-user.<sup>8</sup>

As a provocative extension of the export control regimes, the United States has formed an ad hoc coalition of some 16 states, with cooperation by a total of about 80 countries, known as the Proliferation Security Initiative (PSI). By means including armed interdiction, the states have agreed to prevent disfavored states’ shipment of NBC weapons-related equipment, materials, and delivery systems.<sup>9</sup> States have the right to regulate commerce within their national jurisdiction and control, for example in a harbor, and to board ships when the “flag state” has given its consent. However, absent Security Council approval or a compelling reason of self-defense, a non-consensual interdiction would violate the established international law principle of freedom of navigation. The United States maintains that questions of permissibility will be addressed on a case by case basis, and that “we do not intend to proceed with interdictions without a clear national or international authority.”<sup>10</sup> Indeed, where interdictions are not *clearly* authorized by existing law, authorization should be sought from the Security Council or another appropriate body. The Commission reserves judgment about PSI, noting that little information has been made available about its application, and that critics “prefer a more multilateral approach, tied more closely to the treaty regimes and the UN Security Council.”<sup>11</sup> Former U.S. Secretary of Defense William Perry, a member of the WMD Commission, has observed that it is “wishful thinking to believe that” interdiction could prevent smuggling of a small package of plutonium sufficient to make a bomb.<sup>12</sup>

The U.S. doctrine of military counterproliferation, U.S. emphasis on export control regimes, and the U.S.-led Proliferation Security Initiative represent a sort of selective, political multilateralism,<sup>13</sup> with a built-in discriminatory approach: some states can be trusted with extremely dangerous materials and devices, others cannot. It

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shows, by contrast, what the United States is turning away from, namely legally binding norms and global institutions that apply universally, based on a conviction that NBC weapons are dangerous in anyone's hands.

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- 1 "G-8 Adopts \$20 Billion WMD Non-Proliferation Programme," *Disarmament Diplomacy*, No. 66, 2002. The G-8 is comprised of Canada, France, Germany, Italy, Japan, Russia, the United States, and the United Kingdom. See also Richard Lugar, "The Next Steps in U.S. Nonproliferation Policy," *Arms Control Today*, December 2002; Claire Applegarth, "Modest Hike in Threat Reduction Budget," *Arms Control Today*, March 2005; Michael Nguyen, "Albania to Receive Nunn-Lugar Assistance," *Arms Control Today*, December 2004.
  - 2 The 9/11 Commission, "Final Report of the National Commission on Terrorist Attacks Upon the United States," U.S. Government Printing Office, Washington, 2004, p. 381; 9/11 Public Discourse Project, "Report on the Status of 9/11 Commission Recommendations, Part III: Foreign Policy, Public Diplomacy, and Nonproliferation," 2005, p. 3.
  - 3 See G8, "Global Initiative to Combat Nuclear Terrorism: Joint Fact Sheet," 2005. Online at <http://en.g8russia.ru/docs/7.html>.
  - 4 For a description and critique, see Andrew Lichterman, Zia Mian, M.V. Ramana, and Jürgen Scheffran, "Beyond Missile Defense," *International Network of Engineers and Scientists Against Proliferation Briefing Paper*, No. 8, March 2002, pp. 5-6.
  - 5 See Rodney W. Jones and Mark G. McDonough, *Tracking Nuclear Proliferation: A Guide in Maps and Charts*, Carnegie Endowment for International Peace, Washington, 1998, Appendix F.
  - 6 See "Australia Group Adopts New CBW Export Control Guidelines," *Disarmament Diplomacy*, No. 66, 2002.
  - 7 *Weapons of Terror*, pp. 152-153.
  - 8 *Id.*, p. 154.
  - 9 See Paul O'Sullivan, "Chairman's Statement," Proliferation Security Initiative (PSI) meeting in Brisbane, July 9-10, 2003; The White House, Office of the Press Secretary, "Statement on the Proliferation Security Initiative," September 4, 2003; See also Devon Chaffee, "Freedom or Force on the High Seas? Arms Interdiction and International Law," *Science for Democratic Action*, Vol. 12, No. 3, June 2004.
  - 10 U.S. Department of State, "The Proliferation Security Initiative," Background Briefing, *Federal News Service*, September 9, 2003.
  - 11 *Weapons of Terror*, p. 154.
  - 12 William Perry, "It's Either Nukes or Negotiation," *Washington Post*, July 23, 2003.
  - 13 Cf. *Weapons of Terror*, p. 25.

of the international community. By adhering to treaties on NBC weapons, the Commission says, “many states may also want to join the mainstream and help gradually build up a world order that, while demanding restraints for themselves, also gives them a fairly high assurance that others will exercise the same restraints.”<sup>17</sup> Regarding enforcement of obligations, the Commission highlights the power of the Security Council “to mandate or authorize a broad array of measures—from negotiations and recommendations to fact finding, intrusive inspections, economic or other sanctions and full-scale military action.”<sup>18</sup> While the Commission arguably places too much emphasis on the role of the Security Council (*see section 1.3*), on the whole its reasoning is persuasive and indeed could have been more forceful.

First, there is widespread agreement on the importance of respect for law in the international as well as the national spheres. Bill Graham, then Canadian Minister of Foreign Affairs, stated this point well:

Our societies are based on the rule of law, and the sustainable, shared global future we seek must have the same basis, however difficult it may be to obtain universal acceptance of the rules and establish effective means of enforcement.... [W]e do not dispense with domestic law because we know some will defy the law.<sup>19</sup>

Second, far more than is commonly understood, states seek to avoid formal international condemnation of their actions, which has significant adverse consequences for their political and economic standing in the world. Further, a range of sanctions is available, including withdrawal of privileges under treaty regimes, embargoes, travel bans, reductions in international financial assistance or loans, and freezing of state or individual leader assets. Issues of non-compliance can also be taken up by international bodies including the IAEA and the OPCW, states parties to treaty regimes acting collectively, the Security Council, the International Court of Justice, which adjudicates disputes among states, and in extreme cases involving individuals’ alleged commission of international crimes, the International Criminal Court as well as national legal systems under the doctrine of universal jurisdiction.<sup>20</sup>

### ***Recommendation for U.S. Policy***

- The United States should respect international law and work to strengthen rule-of-law based cooperative security through the development of effective treaty regimes on nuclear, biological, and chemical weapons.