



photo: US Navy

The Non-Proliferation Treaty Review Conference: Breakthrough or Bust in '05?

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Counter-proliferation in a Non-proliferation World

Background

Counter-proliferation—the taking of active steps to interdict or counter weapons of mass destruction (WMD), their components, or the tools used to manufacture them—covers everything from anthrax vaccinations, to ballistic missile defences, to preventive war. While the United States is the staunchest advocate and main proponent of counter-proliferation, other states have also embraced the doctrine. For example, Defence Secretary Hoon recently stated that one of the United Kingdom's goals for the 2005 NPT Review Conference is to make the case for stronger and more effective counter-proliferation measures.

The Clinton administration developed the 1993 Defense Counterproliferation Initiative in response to the dissolution of the Soviet Union and the resultant 'loose nukes' fears of Russian weapons falling into the hands of "irresponsible states or terrorist groups". Secretary of Defense Les Aspin announced the new policy, stating:

The Defense Counterproliferation Initiative in no way means we will lessen our nonproliferation efforts. In fact, DoD's work will strengthen prevention. What the Defense Counterproliferation Initiative recognizes, however, is that proliferation may still occur. Thus, we are adding protection as a major policy goal.

The Bush Administration agreed that counter-proliferation was complementary to non-proliferation but after the terrorist attacks of 9/11, the US perspective turned sharply. In 2002 the Bush Administration moved counter-proliferation to centre-stage, as set out in two new policy documents. The National Security Strategy declared:

The gravest danger our Nation faces lies at the crossroads of radicalism and technology. ...In the new world we have entered, the only path to peace and security is the path of action.

The Nuclear Posture Review asserted that:

- US nuclear weapons could be used against non-nuclear forces;
- current US nuclear arsenals were insufficient, particularly in combating hard and deeply-buried targets; and
- missile defences were to become one leg of a new strategic triad.

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Counter-proliferation now headed US efforts to combat WMD proliferation. Non-proliferation still included traditional multilateral efforts, but US policy actively promoted new methods to improve states' capability to prevent unauthorised WMD-related transfers and to criminalise proliferation activities.

The relationship between counterproliferation and the NPT

Some specific US counter-proliferation policies, such as preventive war doctrine and missile defence, have less to do with supporting or enforcing the NPT and the international regimes and more to do with the consolidation and extension of unilateral options and military power.

However, the United States has taken some significant counter-proliferation and non-proliferation initiatives to address the nuclear proliferation threat in a post-9/11 world. They mainly deal with efforts to disrupt and eliminate trafficking networks, cooperative threat reduction or controls to limit the legal spread of proliferation enabling technology. These goals are worthy and have contributed to some major successes, including uncovering the A.Q.Khan trafficking network, and the decision by Libya to renounce its WMD programmes. The key counter-proliferation elements, which are more controversial, include:

Preventive War

The role of military force in pursuit of NPT objectives has been moved to centre stage by recent pre-emptive and preventive war debates. The term 'pre-emptive war' refers to the use of force in self-defence against an imminent attack. But what the US National Security Strategy calls pre-emptive war, is really 'preventive war' to "act against such emerging threats before they are fully formed". Preventive war is indistinguishable from outright aggression and has no legal justification.

The United States led a "coalition of the willing" and invaded Iraq in what is the most aggressive example of counter-proliferation doctrine to date, despite the widely held belief that a combination of containment and international inspections had nullified the Iraqi WMD threat. Yet the United States continues to assert the right to all options when dealing with states thought to be acquiring nuclear weapons programmes, including preventive war. While the UN High Level Panel recently reaffirmed states' rights to take pre-emptive military action (against an imminent or proximate threat), it maintained that UN Security Council (UNSC) authorisation is needed before a state may act preventively (against a non-imminent or non-proximate threat).

The Proliferation Security Initiative

Unveiled in 2003, the Proliferation Security Initiative (PSI) is, as the US Administration likes to say, an activity not an organisation. It aims to



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enable interdiction of WMD materials in the air, on land, or at sea, through a number of initiatives, including bilateral boarding agreements. Seventeen states form the core of the PSI, while another 60 states have indicated their support, although concerns persist regarding the legality of some aspects of the initiative. Without a truly multilateral framework, it remains to be seen how effective another ad hoc, 'coalition of the willing' effort will be in the long run. Early evidence suggests that the PSI has much merit and growth potential.

(<http://www.basicint.org/pubs/Research/04PSI.htm>).

UN Security Council Resolution 1540

Recently, the United States has pursued its counter-proliferation objectives through the UNSC, citing Chapter VII of the UN Charter as its legal basis. In particular, UNSC Resolution 1540, adopted unanimously on 28 April 2004, is designed to strengthen the non-proliferation regime, particularly with regard to non-state actors. It calls on all states to establish domestic controls to prevent WMD proliferation, including new legislation, enhanced export controls, new enforcement procedures and international cooperation. It also establishes a special UNSC committee to oversee the implementation of the resolution and requests states to report on their progress. Only about one-third of the membership has so far provided reports.

The effectiveness of counter-proliferation partly depends on accurate, timely intelligence to detect illicit activity and potential threats. The lesson from Iraq, however, was that the intelligence was poor and few states agreed with the US assessment of the Iraqi threat.

Implications for the 2005 NPT Review Conference

A critical part of ensuring compliance with the NPT's obligations is enforcement. Compliance and enforcement were not addressed at a general level in the 2000 Review Conference Final Document, although the specific challenges of North Korea and Iraq were discussed. US-led counter-proliferation initiatives have attempted to fill this void. All of these initiatives need much hard work to make them more effective and more congruent with international law. Some appear selective in their application and overly reliant on military force.

But with further compliance challenges coming to the fore in the last five years, it seems likely that counter-proliferation initiatives, such as the PSI, will feature in the 2005 Review Conference. In exchange for PSI recognition, however, States Parties might attempt to place restrictions on its activities or call for its universalisation, as recommended by the UN High Level Panel.

Two other issues that the Review Conference may chose to explore are

Tools in the wider context of non-proliferation *and* nuclear disarmament



first, the linkage between movement on nuclear disarmament commitments under the NPT and broadening support for the PSI, and second, the extent to which certain aspects of the counter-proliferation portfolio (such as preventive war) actually encourages nuclear proliferation. The PSI and other counter-proliferation initiatives should not be seen as a separate activity in a losing war against weapons proliferation, but as tools in the wider context of non-proliferation *and* nuclear disarmament.

Recommendations

We urge:

1. All States Parties to:

- reaffirm the primacy of the NPT as the key ingredient in the international nuclear non-proliferation framework;
- strengthen the NPT by granting it institutional support to enhance accountability and fortify compliance monitoring; and
- review, in good faith, the counter-proliferation toolbox and endorse and further develop those tools that strengthen compliance.

2. The United States to:

- pursue good faith efforts to formalise current counter-proliferation efforts through appropriate UN processes;
- build confidence in intelligence and threat assessments with allies (i.e. within NATO), and where possible, within the necessary authorising agency of legitimate force (i.e. the UNSC); and
- build on recent positive indications of intent to move away from confrontational diplomacy and unilateral action towards constructive engagement and multilateral, law-based solutions, as exemplified by the NPT.

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