

no 12

The New Proliferation Game

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WMDC

THE WEAPONS OF
MASS DESTRUCTION
COMMISSION

www.wmdcommission.org

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THE NEW PROLIFERATION GAME

A Paper prepared for the Weapons of Mass Destruction Commission, June 2004

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The proliferation wheel of fortune has been spinning wildly in recent months: Iraq, North Korea, Iran, and Libya. Where it next will stop no one knows. What is certain, is that existing rules of the nonproliferation game are inadequate for keeping track of the players and their winnings as nuclear material, technology, and know-how move from source to middleman to ultimate consumer.

At least two fundamental changes have occurred in the diffusion process involving nuclear weapons-relevant technology. The first and more widely recognized development is the emergence of a new set of nuclear fuel cycle suppliers.

In the old version of proliferation, the principal nuclear suppliers were, for the most part, members of the Nuclear Non-Proliferation Treaty (NPT), who also subscribed to both formal and informal codes of conduct for international nuclear exports such as the Zangger Committee, the London Club, and the Nuclear Suppliers Group. These traditional exporters included both the original nuclear weapons states and countries without nuclear weapons such as Belgium, Canada, Germany, Italy, the Netherlands, Norway, Sweden, and Switzerland.

Although analysts were aware of another body of potential, second-tier suppliers -- countries such as Argentina, Brazil, India, Japan, Pakistan, South Africa, and South Korea -- the conventional wisdom, until recently, was that these states lacked the combination of technical and financial capabilities and economic and political incentives to have much impact on the international marketplace.

It is now apparent that these assumptions were very much off the mark as Pakistan figures prominently in the nuclear histories of North Korea, Iran, and Libya. All of these countries either do not belong to the NPT or have acted without regard to its central obligations. More ominously, at least three of them also appear to constitute a network in which they have routinely interacted with one another to circumvent both nuclear and missile export controls.

Less obvious but potentially even more significant than the emergence of a new nuclear supplier network of pariah states is the development of a nuclear chain or pathway in which suppliers, brokers, transshippers, and end-users all may be acting without state sanction. In other words, criminals and/or terrorists have become both nuclear suppliers and would-be recipients.

In fact, commercial firms have long circumvented national export controls or relied upon their absence to supply states with a variety of fuel cycle technologies and know-how. In 1991, for example, the defeat of Saddam in the first Gulf War quickly led to the discovery that most of

the major components for Iraq's gas centrifuge program to enrich uranium were supplied by firms from countries such as the United States, Germany, Switzerland, France, and the United Kingdom, but without the knowledge or export approval of these governments. Revelations of the role played by German firms in the underground nuclear bazaar were important in the major overhaul and tightening of German exports controls in the 1990s.

Only very recently, however, has evidence emerged to suggest that individuals and organizations may have operated independently of their governments as purveyors of direct nuclear weapons assistance. Dr. A. Q Khan, the father of Pakistan's nuclear weapons program, now appears to have played a seminal role in the weapons programs of Iran and North Korea.

If Khan is the 21st Century's nuclear paladin, whose calling card was "Have Centrifuge, Will Travel," his market place is a still obscure and ill-defined landscape consisting of pariah states and non-state organizations for whom nuclear weapons represent the great equalizer.

Although Libya may have dropped out of the proliferation game because of the high stakes and the perceived opportunity to realize its objectives by other means, al Qaida remains at the table, likely to be joined by other terrorist and/or criminal elements who perceive the odds to be moving in their favor. Some are in it for the money--especially the middlemen and brokers, who specialize in matching suppliers with potential consumers. Others play for the chance to detonate nuclear explosives in our cities.

It is clear that the old house rules for nonproliferation no longer provide adequate protection for the international community. A revised set of rules for nuclear trade is required. They should include at least three new provisions.

(1) First and foremost, national governments should be held accountable for any illicit transactions emanating from their territory. Failure to prosecute and punish violators should deprive states of the opportunity to do business in the international nuclear marketplace.

In this regard, United Nations Security Council Resolution 1540 is an important step in the right direction. In addition to raising the salience of the issue of illicit trafficking internationally, it properly reaffirms the principle that the proliferation of weapons of mass destruction is a threat to international peace and security, and calls upon all states to put in place stringent WMD physical protection, accounting, export control, and implementing measures.

What remains very unclear, however, is the mechanism by which implementation/enforcement of the resolution will be accomplished. The role--passive or active--to be played by the Security Council committee that was established to examine implementation of the resolution has yet to be determined, a state of affairs that reflects the ambivalence of some key Security Council members toward the resolution and the committee. If the committee assumes a function that is more than simply monitoring progress (or lack thereof) in implementing the resolution, it is likely to have a hard time reaching consensus on any significant recommendations. Although the Department of Disarmament Affairs might be in a position to provide assistance to the committee, its relationship to the committee has yet to be determined. It also has received no additional funds to support the work of that body.

In order for most states to take seriously the resolution and to enact its core provisions, they will need to become convinced that the threats of WMD proliferation and terrorism directly threaten their wellbeing. In addition, they will need considerable technical and financial assistance to put in place and implement the requisite laws and regulations. One possible approach to accomplish these objectives is to engage the expanded G-8 Global Partnership Against the Spread of Weapons and Materials of Mass Destruction in pursuit of the objectives of the UN Security Council resolution. In addition to providing technical assistance, it would be appropriate for the Global Partnership to embrace nonproliferation education and training as a means to communicate to more member states the risks posed by WMD proliferation and terrorism. The various export control regimes and multilateral nonproliferation bodies such as the IAEA and OPCW also need to make a more concerted effort to increase awareness about the threats of WMD and ways to combat these dangers, for example by the accelerated training of customs, law enforcement, and licensing authorities in states that may not be fully aware of the nature of the problem, the commodities to be controlled, and how to determine whether or not an export/transfer is destined to an illegitimate end-user.

(2) Illicit trafficking in highly enriched uranium and plutonium should be made an international crime, as should all international commerce in technology and equipment related to its manufacture that is not subject to International Atomic Energy Agency (IAEA) safeguards. Future A. Q. Khans should be deprived of safe havens and brought to justice based upon international criminal codes. As a first step in support of this objective, the United Nations General Assembly should endorse conclusion at an early date of an international convention to criminalize illicit trafficking in fissile material, items that are easily definable and not subject to dispute.

Unfortunately, the record of international cooperation in intelligence sharing on issues of illicit nuclear trafficking is poor, and in the case of US-Russian cooperation it is non-existent despite frequent summit pronouncements to the contrary. Although the International Atomic Energy Agency and other national government and international bodies maintain useful databases on trafficking incidents, they typically are reluctant to share sensitive data with one another. In particular, national governments have failed to provide IAEA authorities with relevant information and, on occasion, probably have reported data of questionable veracity. As a consequence, there exists no comprehensive or up-to-date collection of data on nuclear trafficking incidents. Moreover, little effort appears to have been expended in seeking new information about old cases or analyzing in a comparative fashion those relatively few confirmed cases of proliferation significance. At a minimum, if law enforcement is to be informed by past patterns of illicit nuclear trafficking, there is a vital need for greater sharing and coordination of trafficking information among government agencies, international organizations, and academic/NGO research centers, the latter of which historically have been the first to break stories regarding significant trafficking incidents.

3. Adherence to the Additional Protocol of the IAEA must become the sine qua non for a nuclear business licensed. Nations that seek to acquire civilian nuclear energy technology in the future should only be allowed to do so if they sign an Additional Protocol with the IAEA specifying the highest level of safeguards for all their nuclear facilities. This provision must be applied uniformly or we are bound to repeat the Iran experience.

The most important target audience for this initiative should be the members of the Nuclear Suppliers Group, whose support would be essential if one were subsequently to seek to have the states parties at the NPT Review Conference endorse this interpretation of their Article III

safeguards obligations.* Important as this initiative is, it will be a hard sell for a number of NSG members who at this moment are divided on the issue of the urgency of the Additional Protocol. A special effort will need to be made to secure the support of Russia, which on occasion has pursued an approach to export controls that have stretched the intent of the NSG guidelines. Although not directly linked, Russian support for the kind of nuclear export conditionality suggested here might be increased were more states to support the draft text of the Convention for the Suppression of Acts on Nuclear Terrorism--another useful measure to address the growing risk of nuclear violence by non-state actors and one to which Russia has attached special importance.

Implementation of these measures may not end illicit nuclear trade, but they will raise the risks to a level that even most inveterate gamblers may not tolerate. At that point, some may cash in their chips and withdraw from the game as Libya has promised to do. Those who continue to play will know that the odds have changed in favor of the house in an unforgiving form of nonproliferation roulette.

*The Chairman's Paper from the 2004 NPT Prep Com, which was not annexed to the report of the Prep Com, contains language that may provide a basis for forging a consensus on the issue of the Additional Protocol. The Commission might wish to endorse such an approach at the 2005 Review Conference. The language from two paragraphs of the Chairman's Paper is as follows:

"States parties, reaffirmed the inalienable right of all States to develop the research, production and use of nuclear energy for peaceful purposes without discrimination in conformity with Articles I, II and III, of the Treaty. In this context, they stressed that ownership of the capability that could be utilized to develop nuclear weapons places a special responsibility on the States concerned to build confidence with the international community that would remove any concerns about nuclear weapons proliferation. Such States need to ensure that the IAEA is able to verify that these capabilities are being used for peaceful purposes only, including through the mechanisms available under the Additional Protocol for strengthened safeguards"

"States parties, particularly those with advanced nuclear programmes, were called upon to conclude, bring into force and implement an Additional Protocol to their comprehensive safeguards agreement at the earliest opportunity. States parties recognized that such undertakings will enhance the confidence of States Parties and helps eliminate concerns regarding their nuclear programmes."

List of published studies and papers

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- No 1** "Review of Recent Literature on WMD Arms Control, Disarmament and Non-Proliferation" by Stockholm International Peace Research Institute, May 2004
- No 2** "Improvised Nuclear Devices and Nuclear Terrorism" by Charles D. Ferguson and William C. Potter, June 2004
- No 3** "The Nuclear Landscape in 2004: Past Present and Future" by John Simpson, June 2004
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