Enforcing the Rules in a Nuclear Weapon Free World

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Going to „zero" is not a simple thing. Notably the last step will be contingent on favourable conditions

// This notion of the need to *„create the conditions for a world without nuclear weapons* " was emphasized in the UNSC nuclear security summit in September 2009, in the NPT Review Conference in 2010, and in NATO's New Strategic Concept

// It is particularly France insisting on this formulation – it serves as a pretense for not doing much now and as an indication that „zero" might be unachievable.

// Nevertheless, the French have got a point there: In order to go to zero from a few hundred warheads, majority coalitions in the political elites in all nuclear weapon states must be convinced that it is the right thing to do and that national security will not suffer but gain.

// In order to form such coalitions, therefore, we must be able today to convince people that the conditions for going to zero without a loss of security can be built, and it must be evident that they exist when the last step is seriously considered.

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What is the nature of these conditions?

- Interestingly enough, those who emphasize these conditions never tell us what they are.
- Here is my own take of what they might be:
    - A very reliable verification system
    - A convincing record of the nuclear history in all nuclear weapon states, and a complete register of warheads, fissile materials, and infrastructure in which everybody has high confidence
    - A completely transparent nuclear energy and science sector with sensitive parts under multinational control
    - A viable relationship amongst the great powers
    - A moderation or pacification of the most burning regional conflicts
    - A reliable system of enforcing the rules in a world without nuclear weapons
- In this presentation, I focus on the latter and touch briefly on great power relations, because a good enforcement system must rely on them.

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Reliable enforcement: Definitions

// Enforcing the rules means that the international community is prepared to use persuasive and, if non-violent measures do not succeed in bringing a rule-breaker back to compliance, coercive means to prevent any actor to acquire nuclear weapons (or to dig out concealed weapons which were clandestinely exempted from the disarmament process).

// The term „enforcement" is used here to signify an actual or possible breach of the core rule of a nuclear weapon free world, namely the absolute prohibition of all nuclear weapons and efforts to acquire them. Minor violation of the rules (e.g. failure to send complete regular reports; technical incapability of accounting for all fissile materials on one's soil etc.) require management, not enforcement tools.

// An enforcement system is reliable if it provides feasible procedures for all necessary steps of an enforcement process and if there is a high likelihood that a determined response will answer the challenge of a serious breach of the rules.

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Enforcement: The necessary steps

// Discovery of the breach (this is contingent on a high-proof verification system which is not the subject of this lecture)

// Determination of the breach, its seriousness, and the time span available for a response.

// Decision about an answer

// Selection of the appropriate and proportionate means

// Response action

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Enforcement options

- // The present system: Verification by the IAEA, discovery by inspection (the Secretariat); determination of a breach by the IAEA Board of Governors, reference to the UNSC, decision by the UNSC, action by member states in a position to act.

- // Virtual deterrence: Selected nations are capable to bring back virtual arsenals into reality and thus to deter the rule-breaker from using its nuclear capability

- // Unilateral conventional response: Preventive action by states in a position to act (Preventive war doctrine)

- // A new system

- // I will argue that only a new system would do.

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Weaknesses of the present system

// The present system has not worked too well.

// In the cases where proliferation was stopped or reversed by means of international action, this happened as a collateral benefit from collective action motivated by other reasons (South Africa, Iraq 1991, Libya 2003)

// When the system worked well determining that no breach was there, unilateral preventive war happened and created chaos (Iraq 2002)

// When the system worked well up to UNSC level, the UNSC was able to mount only inconclusive action (North Korea and Iran) and did not even follow up its own resolutions.

// The IAEA Secretariat did a very good job since about 1992. The Board of Governors, despite some heavy politicking, performed also reasonably well. In the UNSC, the P-5 pursued their own national interest agendas, with negative collective outcome. This lack of responsibility and the veto position of the P-5 invalidated the system.

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Forget deterrence, if you want a nuclear weapon free world

- If the great power relationship continues to be based for the indefinite future on the concept of deterrence, a nuclear weapon free world will never be achieved and would never function.
  - Deterrence is not just a strategy, it is a social relationship built on institutionalised distrust and worst-case thinking under the assumption of actual or potential enmity.
  - It is maintained by a extensive institutional and physical infrastructure which reproduces itself into eternity by the production of enemy analyses at home and the production of distrust abroad.
  - It sediments itself in a fixated mindset that works like an autistic psychosystem until the unlikely moment that somebody with supreme power breaks out of the trap, as Gorbachev did in the late eighties.
  - For that reason, not only the weapons, but also their components and related infrastructures – the material basis for the deterrence mindset - must be dismantled if the term nwfw shall become meaningful.

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Forget virtual arsenals as end-state in a nwfw

// Virtual arsenals don't reside in the physical capabilities of nations, but in the institutional and intellectual structures that put a potential military purpose behind nuclear assets. Separated Pu in Switzerland does not represent a virtual arsenal, separated Pu in Russia does.

// Keeping physical and technical capabilities to weaponise fissile material as a hedging, virtual deterrence strategy defies the notion and purpose of a nuclear weapons free world. It is neither compatible with the meaning of Art. VI, nor does it satisfy the demands of NPT non-nuclear weapon states, nor does it help to create the great power relations necessary to uphold a nwfw.

// It is also an impractical proposition. If great powers continue to believe that they need this capability for their security, they are much more likely to prefer having a handful of readily employable weapons just in case.

// The existence of multiple virtual arsenals creates an inherent incentive to race towards the last turn of the screw. It will probably be impossible to prevent today's non-nuclear weapon states from seeking the same posture.

// Bottom line: Virtual arsenals might serve as a transitory state, but are unfit as end-state. We are not keen to obtain a short-lived holiday from the nuclear addiction, but to get rid of it.

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The preventive war doctrine is also a non-starter

// The self-authorization to act preventively to enforce a nuclear weapons free world is doubly counterproductive:

   // First, it enhances international insecurity rather than diminishing it, and therefore enhances rather than diminishes the motivation to get rid of nuclear weapons and not to seek any: The Iraq war of 2003 has shown that such unilateral action might be conducted on the basis of unproven suspicion and false accusations.

   // Second, it requires strong conventional capabilties by all would-be enforcers. This, in turn, is highly probable to lead to a conventional arms race which, in turn, might induce those less well endowed with financial ressources to seek rescue in the „more bang for the buck" which nuclear weapons seemingly provide.

// A nuclear weapon free world is a world of rules. The notion of unfettered military self-help does not fit this type of international order at all.

A new system (1)

- We are thus put between a rock and a hard place: The present system is strictly legal, but does not work because it prevents action, unilateral preventive action is the system with the highest likelihood of action, but it is strictly illegal and thus undermines the nuclear weapon free world.
- To remedy these shortcomings, I propose the following, layered system
  1. Determination by an international agency (the IAEA) that a state seeks nuclear weapons and is within a threatening time range to achieve this aim.
     - Tasking an international agency with this mission avoids the inevitable national biases of intelligence agency.
     - It prevents the misuse of technical data for politicking.
     - The IAEA has immense experience that will be further enhanced by its involvement in verifying disarmament. It has proven its worth in Iraq, North Korea, and Iran.
  2. The determination of a serious breach of the rules and an imminent danger then triggers the right of preventive self-defense for states and their coalitions of the willing under Art. 51 of the UN Charter, pending the preparation of collective action. This enhances the likelihood of action as well as of a serious attempt by the UNSC to tackle the problem. Unilateral action as an interim measure is legalised and thus not a fundamental challenge to the whole system.

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A new system (2)

2. Prompt emergency meeting of the UNSC to decide on collective action. It is likely that the permanent members are motivated to act seriously, as unilateral action is always detrimental to their status as the guardians of global peace and security, and as their own interests are at stake if somebody goes nuclear.

3. Prompt emergency meeting of the UNGA under the Uniting for Peace procedure if the UNSC remains blocked by a veto (if the veto in these situations is not formally abolished with the entry in a nuclear weapon free world which should be explored by international lawyers).

4. Global conventional arms control provides for the guarantee that the international community (or major coalitions of the willing) disposes of the necessary means to overwhelm the defense of a rulebreaker.

   // Conventional arms control can shape national conventional postures in a way that some states – or, even better, groups of states - are capable to strike against a small nuclear complex elsewhere, but are not capable for a devastating offensive.

   // A global regulation of long-range offensive capabilities would avoid the risks of conventional arms races which a system of unregulated, unilateral conventional enforcement would entail.

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Ballistic missile defenses, if reasonably configured, may support the enforcement system.

- // While the unconstrained build-up of BMD is likely to prevent nuclear disarmament, agreed configurations might be supportive to the process and to stability, once a nuclear weapon free world is achieved.

- // Two configurations are conceivable:

  - // National systems strong enough to deny bm aggression by single actors, but not strong enough to avoid saturation by collective action.

  - // An international system that can be put out of function by collective action, but not by individual states.

- // In reducing the utility of breakout-small arsenals while diminishing the risks of enforcement at the same time, such systems might add to the dissuasive effects of the enforcement system.

- // You might call this system collective deterrence erga omnes. But it is so much different from today's deterrence thinking, that using the term would be intellectually confusing and politically counterproductive.

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Great power relations must shift from mutual deterrence to „Concert" – updating the classic institution of the early 19th century.

- A „concert" is built on the mutual respect for vital interests and equal participation in governance. This creates and maintains an interest of all major powers in the stability of the system.
- The concept of „concert" has a honorable historical model: The "concert of Europe" was installed at the end of the Napoleonic wars to prevent another clash of the Great Powers.
- The concert encompassed Britain, France, Prussia, Austria and Russia.
- It developed its own set of norms, rules and procedures, all serving war prevention and conflict management.
- The basic principles of the classical Concert remain valid:
  - Great powers guarantee each other's existence and territorial integrity and recognize each other's vital interests
  - Great powers commit not to change the status quo by force
  - Revisionist ambitions of smaller powers are to be contained
  - Restraint on unilateral intervention in other states' internal affairs
  - Joint crisis management through intensive consultations

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A Concert for the 21th century

Today, we would have to complement these principles:

- All great powers enter arms control/disarmament agreements with a view to establish equal security

- All renounce a strive for absolute superiority and large-scale offensive options

- All submit to international law and related procedures

- All renounce geostrategic rivalry at the regional level: Regional crises and middle power "spoilers" have to be contained by common efforts.

Is it conceivable to install such a great power concert in the years to come

- // Today's great powers are not entangled in deadly rivalries

- // Nuclear disarmament, including the dismantlement of the infrastructure of deterrence, enhances their common interest considerably: Breakout attempts become tremendous threats to both security and status once the cheap option of fallback to nuclear deterrence has been eliminated.

- // The nuclear disarmament process is likely to build up confidence among them.

„Concert" is a precondition for achieving and maintaining a nwfw

- A concert fosters a nuclear weapon free world, notably enforcement, in five aspects:
    - It helps to get to zero in the first place – as it mitigates the threat environment
    - It gives the prerequisite for collective action to manage regional crises and conflict that today and tomorrow may motivate third actors to go nuclear
    - It shapes great power interests in a way as to give priority to enforcement above regional geopolitical games.
    - It gives the deterrence effect of an enforcement system very high credibility.
    - It minimises temptations for the great powers themselves to consider breakout.

- The challenge is to phase out the deterrence system while phasing in the Concert system.

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Conclusions

// The final steps towards a nuclear weapons free world are contingent on political conditions.

// These conditions require considerable change as compared to today.

// This requirement is demanding, but not impossible (contrary to what nuclear pundits maintain).

// Among those conditions is a reasonably reliable system of enforcement of the rules of a nuclear weapon free world, notably the core rule of a total prohibition of nuclear weapons.

// Enforcement systems based on the status quo, deterrence, and conventional unilateralism are bound to fail.

// A new system must be designed to project a high certainty of action, to avoid blockagecollateral consequences which would lead to new motivations for holding or acquiring nuclear weapons.

// The key determination of a breach of the rules should be rescued from bodies where the risk of politicking is high and be handed over to a neutral international agency.

// A layered system enhances the likelihood of action, i.e. the deterrent value.

// It would rely on global conventional arms control which would prevent a high conventional attack threat while enabling the international community to take effective action against a rule-breaker

// BMD is not a necessary, but under certain circumstances facilitating element of such a system.

// Cooperation between the great powers – a „concert" – is the key condition.

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