The War on Terror and the Nonproliferation Regime

by Seema Gahlaut and Gary K. Bertsch

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After 9/11, it seemed almost axiomatic that multilateralism would be the preferred U.S. approach to arms control, disarmament, and nonproliferation. In the war on terror and WMD, it was assumed, the United States would need to strengthen the transatlantic alliance, hold together the loose counterterrorism coalition in the Middle East and Asia, and forge new relationships around the world.¹

Instead, evidence soon mounted of growing U.S. unilateralism. Rather than finding a new equilibrium between the tools of national and international security, Washington appeared to be actively undermining most of its international agreements in favor of unilateral solutions. By September 2002 it had removed the head of the Chemical Weapons Convention implementing organization, rejected an international agreement to add monitoring capabilities to the Biological Weapons Convention, and weakened the Nuclear Non-Proliferation Treaty (NPT).²

Much of the criticism of U.S. nonproliferation policy stems from the perception that Washington is willfully undermining international agreements that strengthen the international legal system, moving instead towards limited, conditional, and therefore unregulated cooperation.³ A 2002 NGO-sponsored analysis of the U.S. response to eight major international agreements, including the NPT, the Comprehensive Test Ban Treaty (CTBT)


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and the ABM Treaty, found that the United States had “violated, compromised or acted to undermine in some crucial way every treaty under the study.”

The Bush administration stated the basic tenets of a new U.S. strategy when it began the war on Iraq: “We will not hesitate to act alone, [and] if necessary, act preemptively.” While the administration denies charges that it sees alliances or international agreements as unnecessary restraints on its exercise of power, most observers agree that U.S. behavior in Iraq has shown that the initial predictions of multilateralism have been dashed. What does this say about the assumptions and hypotheses that guided those predictions? This uniquely unipolar moment may provide a way to shape the future role of the nonproliferation regime and international security.

Just as contemporary security studies have suffered from a tendency to “juxtapose force and diplomacy as competing if not contradictory strategies,” most nonproliferation studies have tended to equate multilateralism with formal treaties, and unilateralism with the U.S. preference for informal multilateral agreements. But no assessment of challenges to the nonproliferation regime is complete unless it defines the regime to include not just formal treaties, but also the informal arrangements that make up the nonproliferation community’s toolkit. This approach would illuminate such questions as, What are the strengths and liabilities of the traditional treaty-based approach? How can a regime designed for a world of state actors be adapted to deal effectively with non-state threats? How can recent experiences help strengthen enforcement of the nonproliferation regime?

For these purposes, we define “nonproliferation regime”—which seeks to oversee chemical, biological, nuclear, and missile technologies—to include the international treaties, organizations, conventions, and agreements aimed at preventing the spread and use of WMD. Just as force and diplomacy are mutually supportive instruments of policy, any effective nonproliferation regime will have to make use of both formal and global (universal membership) treaties, along with informal and limited-membership agreements based on political commitments generated through diplomacy.


5 In 2002, e.g., then-State Department director of policy planning Richard Haass asserted that “the principal aim of American foreign policy is to integrate other countries’ and organizations into arrangements that will sustain a world consistent with U.S. interests and values.” Haass, “Defining US Foreign Policy in a Post-Post-Cold War World,” The 2002 Arthur Ross Lecture, Remarks to Foreign Policy Association, New York, Apr. 22, 2002; at www.state.gov.


In this light, the new U.S. approach to nonproliferation is neither irrational nor unprecedented. For all its aggressive unilateralism, the actions of the Bush administration actually follow recommendations that were offered by several U.S. experts well before 9/11. Even earlier U.S. administrations that inclined more toward multilateralism often found the formal and global agreements to be less than satisfactory and accordingly focused on building limited but effective coalitions. In bypassing the grand arrangements, however, the Bush administration in effect narrowed the scope of multilateral cooperation to coordination with its closest allies and those states with which its interests converge. Recent insights from regime theory suggest that almost all of today's formal treaties had their origins in this kind of rational adaptation to international political realities by negotiating states. International regimes, whether in the economic or non-economic spheres, vary widely according to the willingness of participating states to formally codify their participation. Given the many diplomatic and political challenges the nonproliferation regime will face in the coming years and the difficulties associated with limiting state sovereignty, one would err by focusing narrowly on one type of international tool—global nonproliferation treaties. We consider both informal multilateral arrangements and formal bilateral agreements as crucial complements to the global treaties.

Four Challenges to the Nonproliferation Regime

Blurred Distinction between Proliferators and Non-proliferators. Early in the war on terror, Washington focused on bringing as many nations as possible into the counterterrorism coalition, downplaying differences among coalition members—potentially at the expense of nonproliferation. The first challenge for the nonproliferation regime, therefore, came from the blurring of the line separating proliferators from non-proliferators in the lineup of allies. New recruits included states that had long been targets of the nonproliferation regime (India and Pakistan) and states with questionable commitment to nonproliferation (Russia and China). Yet the United States' strict reading of international nonproliferation accords and its own laws forecloses any possibility of exploring a new approach toward either the South Asian nuclear conundrum or proliferation from Russia and China.

India and Pakistan developed their nuclear weapons and ballistic-missile capabilities in defiance of international norms. The sanctions against these two states had proven ineffective long before 9/11, creating a dilemma

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8 See the special issue of International Organization devoted to "Legalization and World Politics," Summer 2000.
for the nuclear nonproliferation regime that it would have had to deal with even without the declaration of a war on terror. There were early suggestions that the United States ought to seek to redefine the nuclear nonproliferation regime "in a more realistic fashion" and "de-link nuclear safety from nuclear proliferation."10

Indeed, in 1998, after India's and Pakistan's nuclear tests, some U.S. analysts stressed the need to allow limited technical support to both countries, to ensure both the security of their nuclear facilities and the non-proliferation of weapons from South Asia.11 These suggestions gained urgency five years later with reports that uranium enrichment technology had been transferred from Pakistan to North Korea and that India was stepping up its conventional arms and exploring missile exports. Fears that Pakistan may proliferate to fellow Islamic states and reports that it may have swapped nuclear centrifuge technology with North Korea in return for Nodong missiles have created additional problems for the Bush administration. But the very precision of the prohibitions against nuclear proliferation imposes inflexibility, leaving the international community no viable intermediate options between imposing sanctions and merely exhorting Pakistan and India to renounce their unconventional arsenals.

There is a similar lack of options with regard to Russian and Chinese proliferation behavior. Both Russia and China have sought better relations with Iran through nuclear and missile-related transfers. Russian cooperation with India has included supplying nuclear fuel for the Tarapur reactor, agreeing to supply two new nuclear power reactors at Koodankulam, and cooperating on a range of dual-use technologies that have applications in missile and conventional-weapons development. Russia continues to obfuscate the extent of its biological-weapons program, claiming that its stockpile is merely an inheritance of its Soviet precursor's violation of its Biological Weapons Convention commitments. Russia's refusal to share with U.S. scientists a bioengineered strain of anthrax and its failure to provide a complete history of its decades of secret work on biological and chemical weapons have created serious misgivings in Washington about continuing to provide Moscow with financial and technical aid to promote WMD security and help dismantle the massive Soviet-era arsenal.12

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For its part, China has supplied technology, including missiles and missile-related technology, to Pakistan. It has helped build a nuclear power plant at Chashma and an unsafeguarded plutonium-reprocessing plant, and it provided equipment for Pakistan's secret heavy-water production plant at Khushab. U.S. sanctions on Pakistan and China were applied on September 1, 2001, when a U.S. satellite spotted a shipment of parts intended for Pakistani missiles as it crossed the Sino-Pakistani border. These sanctions, however, were removed immediately as part of the Pakistan sanctions waiver. Chinese officials reportedly admitted to U.S. ambassador Joseph Prueher in March 2001 that three Chinese telecommunications firms had violated UN sanctions against Iraq by selling and installing an underground fiber-optic communications network. However, in August 2001, China stated that its investigations had not yielded evidence that its companies were providing such assistance to the Iraqi military.

In sum, the international community, working within the legal confines of the nonproliferation regime, was unable to act decisively to discourage India, Pakistan, Russia, and China from proliferating, instead relying largely on the United States to apply pressure in its bilateral negotiations on aid and trade. To blame the United States for subverting the regime by "rewarding" these countries for their role in the war on terror appears somewhat unfair, especially since these countries can further complicate the tasks of the nonproliferation regime by further proliferating beyond their borders, with or without the war on terror.

Geoeconomics and geopolitics. The second challenge to the nonproliferation regime, therefore, is to acknowledge that members must consider the larger picture, including geoeconomics and geopolitics, as it looks for new ways to elicit nonproliferation cooperation from the countries in the "gray area." Some of this is already happening. By 2001 there was growing consensus among U.S. policymakers that most of the post-1998 U.S. sanctions on India had to be removed. Sanctions against Pakistan had already weakened due to U.S. concerns about the loss of a market for U.S. wheat and the need to avert economic and subsequent political collapse in Pakistan. The main obstacle to waiving sanctions against Pakistan was the Foreign Assistance Act, which required imposing sanctions where a recipient country lacked a democratic regime. Ironically, it was the administration's inability to waive sanctions on Pakistan that delayed lifting post-1998 sanctions on India until just after 9/11. There was little political will to lift the sanctions on India without doing the

\[13\] Nuclear Fuel, June 12, 2000; see also Nucleonics Week, Mar. 23, 2000.
\[14\] As of April 2004, twenty entities in Iran, Pakistan, and China were operating under U.S. sanctions for proliferation activities, many of which had previously been sanctioned.
\[16\] For an overview of the range of these U.S. strategies, see Ariel Levite, "Never Say Never Again: Nuclear Reversal Revisited," International Security, Winter 2002/03.
same for Pakistan, which was only done once the administration needed to recruit that country for the war on terror. India was already working with the United States in a joint working group on counterterrorism even before 9/11, notwithstanding the sanctions, and it was one of the few Asian countries that had allowed the FBI to set up operations for gathering and sharing terrorism-related information.  

North Korea's and Iran's pursuit of uranium enrichment capabilities is also instructive. The international community appears to be more interested in discussions with North Korea than in planning counterproliferation actions, since the region's political and security architecture includes Japan and South Korea, U.S. allies that are opposed to any U.S. military action there, and China, a benefactor of the North Korean regime and the biggest emerging market for U.S. and European goods. Although China was a source of some of the very North Korean capabilities that are causing global concern, it was the first country the international community turned to in seeking to restrain North Korean nuclear brinkmanship. Most observers fear that Iran may not benefit from similar latitude and patience or from Russia's serving as an intermediary for dialogue with it.

In other words, the nuclear nonproliferation regime continues to officially distinguish between proliferators and nonproliferators based on the NPT, whereas in practice it recognizes observable distinctions based on political and economic factors. Thus, the nuclear-weapons aspirations of Iran, Iraq, and North Korea were deemed illegal for the identical reason—because they had signed onto the NPT as non-nuclear-weapons states—but the strategies to counter their violations differ. Conversely, India, Pakistan, and Israel were not legally bound to obey the NPT, so the sanctions against them were based on the international norm undergirding the NPT. Despite the near-universal membership of the NPT, the United States and Japan were alone in instituting sanctions against India and Pakistan, and Israel is almost never mentioned as a proliferation problem, except in discussions about the future of the NPT itself. Russia and China were sanctioned in the past for supplying other states with nuclear technology, but as formal nuclear states, they are also courted by the United States and others in an effort to persuade them to abide by their commitments in this area, no matter how egregious their violations.

Even within the existing paradigm of the NPT, the clear-cut distinction between the "good guys" and the "bad guys" has broken down. From the

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perspective of NPT signatories, transfers of nuclear-weapons technology are illegal. Yet there has been little discussion about the liability incurred by states such as Canada, France, the UK, Germany, and the Netherlands for having contributed to the nuclear programs of Israel, India, Pakistan, Argentina, Brazil, and South Africa.

Insufficiency of Global Norm. All of this highlights the third challenge to the nonproliferation regime: that the presence of even a global norm—e.g., restraining proliferation—does not ipso facto determine the particular strategies that should be pursued to uphold it. More often than not, nations' or alliances' interests have determined how sanctions are actually applied.

A purely normative approach to proliferation has proven inadequate to solve the problem of secondary proliferation, i.e., the emergence of former recipients of proliferation-relevant technology as new suppliers. This, when combined with intelligence reports indicating that subnational and transnational terrorist groups have been trying to acquire WMD capabilities, presents a number of horrific scenarios. It is becoming increasingly likely that terrorists might acquire WMDs, either directly from the unsuspecting "good guys" through subterfuge, or covertly from the emerging suppliers. Even among the emerging suppliers, the reasons for helping the terrorist groups might vary; these may include the supplier government's ideological affinity with a terrorist group, its desire to deflect attention from itself, its need for hard currency and other resources, or just plain incompetence within its government.

The emerging suppliers are only too aware of the realpolitik uses of their own proliferation behavior. A recent assessment of the impact of the U.S. policy of engaging with and providing space assistance to China concluded that, although these efforts have encouraged China to establish "more robust and less opaque" arms-export regulations, it is not clear that Beijing is implementing and enforcing many of the regulations. Moreover, the empirical record of Chinese arms exports leads inexorably to the conclusion that Beijing's decision-making about arms exports is determined by larger strategic issues.19

The U.S. approach to counterterrorism and war-fighting, therefore, will not necessarily mean the end of the nonproliferation regime, although it might involve recategorizing target states into friendly/unfriendly and focusing attention on non-state actors. Such a reorientation would not be without precedent. The nonproliferation regime has faced similar trade-offs at least twice in recent history: the first time was during the Cold War, when the Soviet Union and its allies were specifically targeted by COCOM (the Coordinating Committee for Multilateral Export Controls, since superseded by the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies). The second was immediately after

the end of the Cold War, when Russia and the former Soviet states were accepted by the United States as allies in the war against proliferation in the developing world. Even the CTBT, widely viewed as an important milestone towards disarmament, grew out of a compromise on the sharing of technology for computer-simulated testing. Parties to the CTBT included not just the "good guys" (the United States, the UK, and France), but also Russia and China. This kind of opportunistic approach should not surprise the nonproliferation community.

Sub-state Actors. Finally, much of the pre-9/11 discussion about the impact of globalization on the nonproliferation regime acknowledged that sub-state actors could be as much of a threat as states. The events of 9/11 dramatically reinforced this notion. Therefore, the fourth challenge before the nonproliferation regime is to acknowledge that it cannot effectively track and deal with sub-state actors without states' cooperation, even if conditional.

Again, seeking conditional cooperation in a worthy cause is not unprecedented. The establishment of the NPT in the 1960s, the participation of Japan and Western European states in multilateral export-control arrangements, and the growth in the number of signatories to the Geneva Protocol of 1925 all began with conditional, self-interested cooperation that became less so only over time. Thus in international regime formation, states that can shape the agenda help establish international agreements; those that cannot do so begin by conditionally accepting the established agreement. The current flux and uncertainty in the nonproliferation regime may be yet another such historical juncture.

Recent U.S. unilateralism would seem a logical response to a world that does not fall neatly into the black-and-white categories of a static nonproliferation regime. In 1998 Richard Haass observed that "discrimination is at the heart of the entire non-proliferation regime in that it treats five countries (the United States, Russia, China, Great Britain and France) different[ly] from everyone else." Haass went on to note that the reasons for this were obvious:

The reality is that not all proliferation is equally bad. We have long held that nuclear weapons in responsible hands such as our own can be stabilizing, a deterrent to the use of conventional, chemical, biological or nuclear weapons by others. . . . We also long viewed India, as well as Pakistan and Israel, as in a different category than Iran, Iraq, Libya and North Korea. Double standards—and triple standards if need be—are what a realistic and successful foreign policy is all about.

In practice, the nonproliferation community itself has maintained just such distinctions. Concerns regarding terrorists' acquisition of WMD have led many

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20 For pre-9/11 discussion, see e.g. David Rapoport, "Terrorism and Weapons of the Apocalypse," National Security Studies Quarterly, Summer 1999. The Proliferation Security Initiative established in May 2003, which is intended to create international agreements and partnerships allowing the U.S. and its allies to search planes and ships carrying suspect cargo and to seize illegal weapons or missile technologies, reflects a similar assessment.

policymakers and experts to seek greater security of India's and Pakistan's sensitive facilities. Ways around the NPT prohibitions will have to be devised, not unlike the process by which Russia and China have justified their own sensitive transfers. States could follow the letter of the NPT, which forbids helping non-nuclear weapon states to "develop, acquire, or produce nuclear weapons." Limited help to India and Pakistan, which already possess nuclear weapons, would not be proscribed. They could also channel informational assistance via non-state actors, since the NPT binds states as signatories, limit assistance to securing sensitive facilities rather than the weapons themselves; or interpret and evaluate prospective technology transfers in the spirit of the NPT—i.e., with the goal of reducing nuclear dangers by whatever means feasible.

Similar arguments have been made in support of revamped bilateral cooperation with Russia. Many Russian and U.S. experts consider the May 2002 nuclear arms-control agreement between the two countries not an abrogation of U.S. arms-control principles, but a means to adapt their bilateral relationship to new realities. Graham Allison and Andrei Kokoshin, for instance, wrote in 2002 that "Adopting lessons learned in U.S.-Russia cooperation in the campaign against Bin Laden and the Taliban, the new effort should be heavy on intelligence sharing, preemption, disruption and active controls on the sale of materials and know-how to nuclear wannabes." Equally, it might be necessary to induce China into a more cooperative mold by linking its contributions to proliferation with its preeminence and responsibility in Asia. Thus far, China's privileged position within the nonproliferation regime and in the UN Security Council has not induced it to be more responsible about its sensitive exports. Quite the opposite: China has used its willingness to proliferate as a bargaining chip in trade and security issues, as have two of its traditional allies, North Korea and Pakistan. Both have forced the international community to heed their economic and security

24 The authors thank Nathan Bush for bringing this point to our attention.
27 In 2003, China announced a series of regulations for controlling its sensitive exports. Then, on January 26, 2004, it applied for membership in the NSG. Although the international community welcomed this as a sign of greater nonproliferation commitment from China, doubts continue to surface about China's ability and commitment to implement its export control regulations.
concerns by engaging in nuclear brinkmanship. However, a different mix of strategies will be needed to deal with each of these three states, given the differences between them—most of which do not derive from their positions with respect to the nuclear nonproliferation regime.

In sum, the international nonproliferation community cannot devise effective strategies to deal with proliferation in a new environment characterized by ambiguity. The United States, therefore, might find it expedient to craft strategies that are based on the narrower conception of community, i.e., those who share the U.S. vision of threats. This again is hardly a new trend—almost all the post–Cold War institutions and regimes, including the NPT, originated as tools to ameliorate perceived future threats to the United States.

Using Existing Nonproliferation Tools

Recent U.S. assessments suggest that there are two alternatives to arms control treaties: informal agreements and reciprocal unilateral initiatives.\(^2^8\) The literature on international regimes confirms that this distinction accurately reflects the fact that international actors tend to choose “softer” forms of legalized governance when those forms offer superior institutional solutions.\(^2^9\) In contrast, “hard law” refers to legally binding obligations that are precise and that delegate authority for interpreting and implementing the law.\(^3^0\) Soft legalization facilitates compromise and cooperation between actors with different interests, time horizons, and relative power. Over time, it also allows actors to learn about each other’s trustworthiness, about the impact of the agreements, and about escape clauses that can be included to reduce contracting costs.

The cases of South Asia, on the one hand, and Russia and China, on the other, are excellent examples of the limitations of a strictly legalistic approach. The international community is unable to reach a rapprochement with India and Pakistan because of the NPT cut-off date, regardless of those countries’ behavior or needs. At the same time, sanctions cannot be imposed on China and Russia for violations of their explicit nonproliferation commitments after a point because of their NPT Nuclear-5 status. Several Indian officials have noted that repeated violations by China are downplayed by the United States in order to obtain procedural cooperation on export controls, whereas a near-perfect record of unilateral export controls gains


India nothing.\textsuperscript{31} Simply speaking, in the case of India and Pakistan, the nonproliferation community argues on principles, but on China and Russia it argues on strategic exigencies.

It may be time to consolidate the gains of past efforts that recognized that some states have common interests regarding the management of nuclear materials and technology, and that their membership in the NPT is only marginally relevant to this commonality of interests. For instance, the CTBT has identified a larger set of states (44) that have an interest in cooperating on verification and monitoring of the test ban, and both the recently proposed conventions on the physical security of nuclear materials seek to constrain unilateral behavior by states that are not bound by overarching treaties such as the NPT. Perhaps a new deal on nuclear nonproliferation could create the category of nuclear-capable states: those states that have civilian and/or weapons capability and share a common interest in ensuring at least a minimal level of safety and security for their nuclear assets and activities.

The CWC is the only disarmament treaty to entirely make a whole category of weapons illegal, but full implementation is still several years away. Interest-based decisions have reigned, as was seen in the removal of the Director of the Organization for the Prohibition of Chemical Weapons in April 2002.\textsuperscript{32} In choosing between the use of unilateral U.S. might in Iraq or forcing Iraqi compliance with the demands of the UN Monitoring, Verification and Inspection Commission, the international community—especially nations opposed to U.S. action—gave greater weight to the political fallout in the Arab/Muslim world than to the legal precedent set by preemptive military action. Anne-Marie Slaughter, dean of the Woodrow Wilson School of Public and International Affairs at Princeton University and an international law expert, wrote that "by giving up on the Security Council, the Bush administration has started on a course that could be called 'illegal but legitimate'."

Likewise, the 1972 Biological and Toxin Weapons Convention (BTWC) has proven ineffective at detecting free-riding and noncompliance. In November 2001 a Protocol aimed at strengthening the BTWC failed to be approved after Washington criticized it as a trust-based approach to nonproliferation. Though renegotiation of the Protocol's principles began in November 2002, it remains unclear whether any progress can be made.

In this situation, the only effective means of sharing intelligence and coordinating policies regarding the trade in chemical and biological technology may be through the Australia Group, the informal suppliers'
arrangement on these technologies' precursors. The Group's membership is determined not by adherence to a formal treaty, but by subjectively determined common interests.

The Zangger Committee, established to implement Article III.b of the NPT on dual-use technologies, is likewise limited in its effectiveness, given constraints on obtaining International Atomic Energy Agency (IAEA) certification of violation required for this technology to be denied to NPT members. Most decisions to deny nuclear technologies to suspected proliferators have been enabled by the informal Nuclear Suppliers' Group (NSG) arrangement. Another such arrangement, the Missile Technology Control Regime, has also been helpful in developing trade and transfer rules regarding missile and space technology.

In short, the nonproliferation community's obsession with formal treaties and international legalization has prevented it from recognizing the existence of processes such as realpolitik, limited convergence of state interests, and soft legalization, all of which have contributed significantly to the nonproliferation regime. This reality should help moderate the reactions to proposals for modifications to the regime. It should rein in both the irrational exuberance of nonproliferation critics and the inconsolable pessimism of the legalists in the nonproliferation community. Both tend to see any proposed modification as the beginning of the end of the NPT, if not the entire regime.

Ethical concerns aside, self-selected informal groupings should become more attractive in the war on terror, due to the ease of coordination among a limited number of members that share similar interests. Mutually intertwined commercial and technological interests reinforce the nonproliferation-relevant ties among the members. These efforts could take their lead from the financial tools developed to deal with the financial crises of the late 1990s:

What proved far more effective in strengthening the global financial system was the adoption of a range of smaller, less glamorous and more technical measures, many of which entailed new and more systematic forms of collaboration between countries. Mechanisms that ensure that better information is available, more surveillance of potential trouble spots, more reliable early warning methods and new tools to act preventively are now in place. These changes, while no panacea, have certainly aided stability.34

Reconsidering and Retooling the Nonproliferation Regime

The formality and the effectiveness of nonproliferation efforts sometimes appear to be inversely related. The larger, comprehensive, normative, and formal treaties—e.g., the NPT and CWC—have proven stronger than their informal counterparts on legitimacy but weaker on implementation. The NPT

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has set the strongest norm, yet has been unable to deter proliferation by either non-members (India, Israel, Pakistan) or members (Iraq, Iran, North Korea). Nor has it been able to convince the Nuclear-5 to acknowledge the need for their disarmament. There has been some success in encouraging possessor states to declare their chemical weapon stockpiles, agree to intrusive inspections, and schedule the destruction of chemical weapons stockpiles, but diplomatic wrangling over the legalities of verification and compliance monitoring continues to delay implementation. Nor can the NPT, CTBT, CWC, and BTWC ensure that the normative consensus they represent is not violated by free-riders and the opportunistic pursuit of parochial interests by individual members.

One way to spur cooperation and coordination among “relevant” supplier states would be to revamp informal, multilateral suppliers' arrangements, such as the NSG, the Zangger Committee, the Missile Technology Control Regime, the Australia Group, and the Wassenaar Arrangement. These arrangements rely on narrower membership, non-transparent decision-making, and flexibility in offering incentives and disincentives to members and non-members to help forge greater consensus about the regulation of technology exports. What these arrangements lack in formal legal status, they make up for in the cohesion of implementation measures.

Indeed, research into the effectiveness of the technology controls overseen by the informal mechanisms indicates a clear trend among major supplier states towards deeper coordination on the nuts-and-bolts issues of implementing nonproliferation measures. These include coordination among experts from frontline agencies such as customs and intelligence; tracking and sharing information on financial networks, brokerage firms, and warehousing agents; and harmonizing commodity classifications to yield greater transparency on exports. Officials from member states insist that the informal coordination mechanisms should be preserved and strengthened, precisely because of the advantages they offer as compared to the broader, legally binding, global agreements.

Formal treaties must recognize that the norms they embody deter only those actors that have something to lose but mean little to non-state or trans-state actors, or state actors that comprehend the inability of the norms to translate into collective sanctions. Moreover, the nontraditional actors often provide perfect cover for state actors working in bad faith. Thus, global formal agreements will likely reinforce moral or normative imperatives but will fail to superintend enforceable regulations due to considerations of state sovereignty, industrial espionage, verification teams, and plausible deniability by state actors when the violations occur through sub-state actors. Even with shortcomings, formal global agreements attaining the lowest achievable common denominator represent a degree of progress, but equity, justice, and national interests will probably continue to have a greater impact on general compliance with formal agreements than their inherent morality.
To date, informal arrangements have worked comparatively well, securing consensus on the “control lists” of technologies, materials, and target states and entities. However, such consensus has been under growing strain since the end of the Cold War, and the war on terror is likely to place additional strains on the structure of and tools deployed by these arrangements. The counterterrorism coalition, unlike those informal arrangements that have used distinctive interpretations of nonproliferation treaties to categorize targets, will likely include among its members some of the states targeted by the arrangements—notably Russia, China, India, Israel, and Iran. Even before 9/11, some members of the informal arrangements were unable or unwilling to comply with all of the export rules. Since the informal arrangements will inevitably need to collaborate with some of the previously targeted states, they should consider graduated membership within the informal technology control arrangements.

This would mean an additional level of membership. Countries such as India, Pakistan, and Israel would be inducted into entry-level, second-tier membership, to which some of the privileges of intelligence-sharing and preferential technology treatment transfers would not pertain. Member countries that fail to meet procedural or behavioral standards would also be demoted to this second tier. Candidates for demotion might include not just Russia and China, but also European states that have weak export-control mechanisms. Both types of states would be required to demonstrate commitment to the shared goals of the arrangement for a specified period of time if they aspired to full membership.

There is even some merit to proposals to combine some or all of the four multilateral export-control arrangements. First, it has become abundantly clear that some dual-use goods and technologies span the different kinds of WMD. Administering four separate sets of rules results in duplication of effort in the export-control bureaucracies and confusion for industry. Second, reconciling the control lists among four multilateral export control arrangements exacts a significant toll on member states. A unified regime would help pool and use national resources more efficiently. Third, if thus far the arrangements have been able to get by on the basis of voluntary obligations and fuzzy membership criteria, the challenges posed by counterterrorism will require more than an informal commitment from members, who will need to share both intelligence and the costs of controlling the trade in dual-use items. A unified regime with clear rules would help focus high-level political attention on issues that often seem too technical for the majority of nonproliferation policy analysts, not to mention political leadership. Finally, a unified regime would reorient multilateral efforts towards implementing, enforcing, and

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coordinating WMD and dual-use export controls. It would give existing member states the opportunity to renew their commitment, and it would formally embrace other supplier states that wanted to join the nonproliferation effort.

Yet unification is only one piece of the puzzle. Common, cross-referenced databases across arrangements are needed to track financial transactions. Also, informal arrangements should reconsider their biases against exports to state actors. Prior to 9/11, most industry groups and a majority of experts within member states were recommending that the arrangements move towards a policy of emphasizing the monitoring and verification of end uses, rather than an outright presumption that transfers should be denied. Given the current problems with tracking the activities of shadowy trans-state networks, it might be better to allow exports to state entities, namely states of moderate concern. A shift in emphasis would establish that the importing state was responsible for assuring that imported items were put to legitimate uses, while pinpointing liability for items that were illicitly re-exported or diverted. This would also solve the problem of inadvertent re-exports from sub-state entities within states that have promised to adhere to the arrangements.

In addition to these efforts to shore up the informal multilateral arrangements, a number of issues are being discussed and implemented on national, bilateral, and multilateral bases. With recent disclosures about lax monitoring of intra-arrangement exports in mind, some states are already exploring the idea of a national registry of authorized end-users. Governments are exploring how to forge a closer partnership with business, in order to help identify both emerging technologies of concern and new and dangerous uses to which obsolete technologies might be put. For example, the United States has already signed agreements with several European trading partners authorizing U.S. personnel to conduct random pre-shipment inspections of cargo containers headed toward U.S. shores.

The criticism of narrower, less formal, and more exclusive non-proliferation tools ignores that on any international issue, states choose from various approaches, which is also why many levels of legalization exist. While over time informal institutions may metamorphose into formal treaties and the reiteration of common principles may lead to more concrete actions, such transformations are neither inevitable nor inevitably desirable.

Conclusion

Clearly, both formal and informal arrangements buoy the ideals underpinning the nonproliferation regime. Even before 9/11, both had come under pressure because of the dynamics produced by globalization and the end of the Cold War. The formal treaties such as the NPT, the BTWC, and the CWC appear to have been overtaken by events. While they continue to represent the international community's moral opprobrium against the
acquisition of WMD, they have been unable to muster sufficient majorities to fully implement the norms they espouse. They have failed to impose sanctions for violations by even their own members. As with all legal procedures, the bar for proving culpability is quite high. Determined violators have exploited this Achilles heel in the formal accords. Offenders have included both member states such as Iraq and North Korea and leaders such as the Nuclear-5. The former typically cite state interests, sovereignty, and national security to justify “digressions,” while the latter often point to domestic pressure groups as the reason for “imperfect implementation.” Both have used the fine print of treaties to undermine their spirit.

Efforts have been made to imbue the informal arrangements with the moral credibility and legitimacy needed to bolster their implementation capabilities. Each export control arrangement has sought to acquire legitimacy beyond its limited membership by associating itself with the formal treaties. However, the arrangements’ attempts to give their activities a moral or normative veneer have obscured the more pragmatic principles on which each was established. As things stand, their dilemma is acute: if they emphasize merit or need-based membership, i.e., the need to induct most of the relevant suppliers of WMD technologies, they risk diluting the ideological and economic unity they inherently seek. If they continue as before and move further toward explicitly linking their objectives to the formal nonproliferation treaties, they will ineluctably lose flexibility. A perfect example of this is the conundrum facing the NSG regarding India and China: despite the clear contrast in their nonproliferation records, India cannot be considered for NSG membership because NSG has linked itself too closely with the IAEA and NPT—that is, it requires full-scope safeguards as a condition for membership. China, as a Nuclear-5 state, will not be bound by this requirement.

Technology diffusion and market expansion on a near-global scale mean that more countries that fall in the gray area between ally and rogue state are an increasingly attractive market for multinational businesses. States such as China, India, and Israel have become attractive markets for technology-embedded capital and are also useful partners for collaborative development of certain technologies. The range of technologies that can be categorized as dual-use has also expanded exponentially. Cold War-era bases for classifying member target states are not likely to remain effective beyond a point. Finally, many countries in the gray zone are critical to fighting proliferation in the contemporary age.

The challenge before the United States and the international community is to modify the existing nonproliferation regime in a way that balances legalism and normative concerns with the new international imperative to monitor the activities of non-state actors, establish culpability for violations, and devise actionable sentences against violators.