

**CARNEGIE INTERNATIONAL NONPROLIFERATION
CONFERENCE**

INNOVATING THE REGIME

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PETER HAYES: Okay. If you could take your seats, we'll begin this panel. My name is Peter Hayes. I'm chairing the panel. I'm from the Nautilus Institute in San Francisco, Seoul, and Melbourne.

And this panel is entitled "Innovating the Regime," the nonproliferation regime. And I'm delighted to have three specialists, who are deeply expert in different aspects of this regime, to speak today. And our plan is to speak for about 15 minutes each, and then to spend a substantial amount of time in Q&A – in question and answer dialogue. So we will be keeping to that format. And you can think ahead of your questions. That would be very helpful.

So our first speaker on this very important topic is Dr. Monika Heupel. Did I get it right? Thank you. Who is a lecturer at the Otto-Suhr-Institute for Political Science at the Freie Universität Berlin.

And she will be addressing the issues related to the implementation of the U.N. Security Council 1540 obligations on non-state actor transfer of material and technology related to WMD transfer, and in particular, what kinds of strategies – politically, diplomatically, legally – could lead to innovations in the regime and how the Obama administration may reinforce the compliance of states with their 1540 obligations.

So, Monika.

MONIKA HEUPEL: Thank you. United Nation Security Council 1540 is certainly one of the most remarkable innovations to the nonproliferation regime of recent years. There's a widespread consensus that its potential is enormous. However, there are also critics. Some point to the slow pace of implementation, others point to the vast amount of legitimacy deficits also associated with a so-called quasi-legislative resolution such as Resolution 1540.

So the jury is still out on whether Resolution 1540 is a powerful innovation to the nonproliferation regime and whether it should be used as a model or a precedent to make generic, far-reaching obligation binding on all U.N. member states or not.

What I intend to do in my presentation here today is to outline what the conditions are under which quasi-legislative resolutions such as Resolution 1540 can be a powerful innovation to the nonproliferation regime. It is already predicted by some that the nonproliferation regime will, in the future, increasingly evolve via Security Council resolutions, so I think it is a very important question to be addressed.

But before I do that, I will briefly outline what Resolution 1540 demands from U.N. member states, in what way it differs from previous nonproliferation instruments, what its potential is, and what factors account for the actual slow pace of implementation.

Resolution 1540 has been adopted by the U.N. Security Council in April, 2004, in the wake of the exposure of the A.Q. Khan network. The resolution, for the first time in the history of the U.N., declared WMD proliferation per se to be a threat to international peace and security, and established universal, generic, binding obligation for all U.N. member states.

All U.N. member states had to establish domestic controls to prevent the proliferation of WMD, the delivery means, and related material. What is more, all states had to adopt and enforce laws that prohibit the involvement of non-state actors in such proliferation activities. And what is also noteworthy is that the resolution also provided for the establishment of a Security Council committee, the so-called 1540 Committee which is mandated to manage implementation.

In what way do Resolution 1540 and its follow-up resolutions constitute an innovation to the nonproliferation regime? Before the adoption of the resolution, the nonproliferation regime did not contain any universal mandatory obligations. The regime's cornerstones were and still are certainly its main treaties and conventions, in particular, of course the NPT.

The treaties and conventions, of course, do impose binding generic obligations on their members. However, every state is free to decide whether it wants to become a member and whether therefore it wants to be bound by these obligations. Another vital element of the regime are, of course, the more informal regimes such as the Nuclear Suppliers Group, membership in which equally optional however.

Resolution 1540 constitutes a clear deviation from the traditional nonproliferation architecture. What the resolution does is that it imposes far-reaching generic, binding obligation on all U.N. member states which means that states do not have the freedom anymore to decide whether they want to be bound by these obligations or not.

What is more, states that have not been represented in the Security Council at the time of the adoption of the resolution have not had any meaningful opportunity to impact on the content of the resolution, which would have most likely been the case if a treaty or a convention had been negotiated.

As I said before, there's a widespread consensus that the potential of the resolution is enormous. Proliferation will certainly be more difficult if there were effective controls at least in key risk states. Proliferation will also be less attractive if the chances but also the costs of detection were higher.

The dismantlement of proliferation networks such as the A.Q. Khan network would be easier if national legislation was introduced that outlaws the involvement of non-state actors in proliferation activities.

And finally, the dynamics and the momentum that could be created by effectively implementing the resolution could be used to advance other ideas to strengthen the nonproliferation regime.

However, despite this widespread consensus that the potential of the resolution is enormous, there's also been widespread concern about the slow pace of implementation that has so far lagged behind expectations.

This becomes clear, for example, if we look at the most recent report of the 1540 Committee that has been published in July last year. What the committee has done, it has broken down the obligations that have been established in the resolution into more than 300 elements, and in its most recent report it has come to the conclusion that the majority of the states that have actually handed

in implementation reports have not even implemented half of these elements while no state has so far implemented all of these elements.

So what accounts for this slow pace of implementation? I think there are three factors that are important here.

Firstly, the resolution is just very ambitious, so it shouldn't be too surprising and it shouldn't be too disheartening that implementation takes time, and it's most likely to be – supposed to be a long-term process.

Secondly, many states still lack the domestic capacities to implement the obligations laid down in the resolution on their own without outside support. The 1540 Committee and other relevant actors are perfectly aware of that and they have taken major steps to facilitate capacity building. Many states, IOs and NGOs have actually provided assistance to states that are in need of such assistance. And it's important to note here that the United States has been particularly active in this regard.

The 1540 Committee itself is also a very important actor here because it tries to act as a clearing house. It tries to forge contacts between states that need assistance and actors that are willing to provide assistance. It also has engaged in a variety of different outreach activities to reach out to states to raise awareness of the importance of the resolution but also to have states assess their capacity needs.

So a lot is done by a great many of actors. However, all these efforts still do not match the urgency of the challenge.

Thirdly, implementation of Resolution 1540 is for many states no priority. There are several reasons for why that is the case. Developing countries frequently face threats they consider to be more pressing to them, such as poverty and disease. Another reason, however, is that many states question the legitimacy of the resolution. Some states argue that the council has actually overstepped its competency and engaged in so-called hegemonic international lawmaking when it imposed sweeping legislative and technical obligations on all U.N. member states. They argue that such obligations should rather be agreed upon in a convention or a treaty so that every state can decide whether it wants to be a member or not.

Other states point to the overall lack of legitimacy of the global proliferation regime. They observe and criticize a trend that on the one hand more and more restrictions are imposed upon the non-nuclear weapon states, whereas on the other hand the nuclear weapon states fail to fulfill their share of the grand bargain. And then, in their view, the Resolution 1540 is just another example of this trend of putting more and more restrictions on non-nuclear weapon states.

So what can we learn from the experience of Resolution 1540? Are generic Security Council resolutions that impose far-reaching obligations on all U.N. member states a powerful innovation to the regime, or, more precisely, what conditions need to be in place or to be created to make such quasi-legislative resolutions a powerful innovation to the regime? I believe that there are three main lessons learned from the experience with Resolution 1540.

The first lesson is that there absolutely needs to be a sustained readiness of a broad array of different actors to invest in capacity building to have states comply with their implementation obligations. The Security Council should, therefore, only adopt such resolutions if it is, A, willing to set up powerful and well resourced committees, and if it, B, anticipates that other actors are willing and ready and capable to provide assistance. The relevant actors in this regard are capable states, IOs and NGOs, their readiness to provide assistance needs to be secured.

A second lesson is that there must be efforts to create a sense of ownership among U.N. member states. If states sense that far-reaching obligations are imposed on them in a top-down manner, they are not very likely to be enthusiastic in complying and then implementing these kind of obligations.

There are several ways of how to create a sense of ownership among U.N. member states. One way is to open up deliberations on Security Council resolutions, to states that are not represented in the council. The Security Council has exactly done that with respect to 1540 in a rather unprecedented way, it invited other states that were not represented in the council to join deliberations and offer their opinions.

However, when it then came to the actual wording of the resolution and to the finalizing of the actual text, it has become obvious that the proposals that have been brought forward by states not represented in the council have actually not been taken into account, which has disappointed quite a number of states.

Another way to create a sense of ownership among U.N. member states is endorsement of such resolutions by bodies that are more representative than the Security Council such as plenary bodies of international organizations, for example. Many of such endorsements have taken place with regard to 1540, and I believe this has certainly strengthened its acceptance and legitimacy.

The third lesson, finally, is that there must be an acknowledgement that quasi-legislative resolutions such as Resolution 1540 are part of the overall nonproliferation regime. So if the overall regime is not considered to be fair and legitimate, this will certainly impact on the readiness of U.N. member states to engage in implementation. Therefore, steps need to be taken to make states perceive the overall regime to be fair and legitimate.

Obviously, the most pressing need here is for the nuclear weapon states to honestly consider meaningful disarmament steps. This will, of course, be no magic bullet but it's quite likely that it will at least increase the readiness of non-nuclear weapon states to accept further restrictions.

We all know that President Obama has committed himself to many steps that would greatly enhance the overall legitimacy of the nonproliferation regime. He has, as we just heard today and yesterday, openly committed himself to the vision of the world free of nuclear weapons. And we all know that he has repeatedly endorsed multilateralism as a guiding principle of his foreign policy.

So I believe that if he follows through with his pledges, he will definitely make a great contribution to creating the necessary conditions for making Resolution 1540 and possibly other generic Security Council resolutions a powerful innovation to the nonproliferation regime.

Thank you.

(Applause.)

HAYES: Thank you very much. Our second speaker is Dr. Pierre Goldschmidt. Dr. Goldschmidt is the non-resident senior associate at the Carnegie Endowment for International Peace. He was previously deputy director general, head of the Department of Safeguards at the IAEA, and also worked extensively in the nuclear industry. So we're very grateful he's joined us today.

And he will be addressing concrete steps to improve the nonproliferation regime. And I urge you all to get a copy of the longer version of his paper, which was just published. It's available at the Carnegie Endowment booth, cover blue. Good reading.

Pierre?

PIERRE GOLDSCHMIDT: Thank you. Mr. Chairman, ladies and gentlemen, today's nuclear nonproliferation regime is increasingly challenged by states that exploit ambiguity in rules and rifts in the international community to pursue nuclear weapons capabilities without fear of reprisal. Observers differ on the political feasibility of persuading the world to adopt the necessary nonproliferation measures and comply with them. Yet, all who think the nonproliferation regime is failing, or who agree that it is too valuable to let fail, would generally agree on steps that could be taken to strengthen it.

My objective today is to counter the view that the nonproliferation regime is terminally weak and cannot be made more effective. I will offer specific policy recommendations addressing three areas.

First is the necessity for the IAEA to fully exercise its existing verification authority; second, the necessity to rapidly detect and report cases of noncompliance with safeguards agreements; and third, the necessity to adopt generic legally binding U.N. Security Council resolutions, such as 1540, to better prevent future proliferation crises. These and other recommendations can indeed be found in detail in my Carnegie paper.

With respect to the necessity for the IAEA to fully exercise its existing verification authority, it is useful to highlight two recent examples: Syria's repeated refusal to allow the IAEA access to specified locations, and Iran's refusal to provide early design information and access to nuclear facilities under construction.

The IAEA has the legal authority under comprehensive safeguards agreements, I quote, "to conduct special inspections insofar as these relate to the verification of the existence or non-existence of undeclared activities," end quote.

In November, 2008, the IAEA reported that Syria had denied the agency access to three locations as well as to relevant documentation and information. This non-cooperation prevented the agency from fulfilling its verification responsibilities, including the determination of the origin of manmade uranium particles found at the Dair Alzour site bombed by Israel in September, 2007.

The IAEA report further raised suspicion of large-scale concealment activities based on analysis of satellite imagery. The latest IAEA report on Syria released in February this year acknowledged that Syria continues to deny access required by the agency. It indicated no progress in determining whether the building destroyed by the Israeli raid was a nuclear facility under construction. The origin of the manmade uranium particles also remains in question.

As my colleague James Acton has noted, I quote, “Syria is the textbook definition of a case in which a special inspection is merited. If the IAEA fails to ask for one, it will hand future states suspected of noncompliance an extraordinary powerful precedent to use in opposing a special inspection request,” end quote.

I therefore propose that the IAEA Board of Governors adopt a resolution determining that the information made available by Syria is not adequate for the agency to fulfill its responsibilities under Syria’s safeguards agreement; deciding under Article 18 of Syria safeguards agreement that action by Syria is essential and urgent, and requesting the director general to undertake without delay the necessary special inspections in Syria.

A little noticed but most important provision of comprehensive safeguards agreements is the obligation for the state to provide the IAEA with early design information on all existing as well as new nuclear facilities, as specified in the subsidiary arrangements.

The 1976 version of the Subsidiary Arrangements General Part, so-called Code 3.1, stipulated that states should provide the agency with a complete design information questionnaire for new facilities no later than 180 days before the facility is scheduled to receive nuclear material for the first time.

After the discovery of Iraq’s undeclared nuclear program in 1991, this language was revised and instead recommended that states submitted complete questionnaires for new facilities based on preliminary construction plans as early as possible and not later than 180 days prior to the start of construction, not six months before introducing nuclear material.

In February, 2003, Iran became the last state with significant nuclear activities to adopt the revised Code 3.1 through an exchange of letters between Iran and the IAEA which is the standard procedure.

However, in March, 2007, Iran informed the agency that it had suspended the implementation of the new Code 3.1 and reverted to the 1976 version. The agency immediately asked Iran to reconsider its decisions, explaining that in accordance with Article 39 of Iran safeguards agreement, agreed subsidiary arrangements cannot be modified unilaterally.

Since then, the director general has reported six times that there has been no progress on this issue and three times since December, 2007, that Iran has refused to provide the agency with the requested preliminary design information for the nuclear power plant Iran is to build in Darkhovin.

To make things worse, contrary to Article 48 of its safeguards agreement, in October 2008, Iran refused to allow the agency to carry out the scheduled design information verification at the heavy water reactor research reactor under construction in Arak. The agency reiterated its right to

carry out design information verification is a continuing right. Iran repeated its refusal in February, 2009.

This issue cannot simply fade with the passage of time due to lack of progress. The obligation to provide design information as specified in the subsidiary arrangements is an integral part of comprehensive safeguards agreements, and Iran's unilateral decision to suspend its implementation constituted a breach of its safeguards agreement.

One has to realize that without the obligation to provide early design information, Iran could construct an undeclared enrichment facility and hot cells suitable for reprocessing activities without having to inform the agency until six months before introducing nuclear material.

I therefore propose that the IAEA Board of Governors adopt a resolution declaring that Iran's multiple and continuous breaches of Article 48 of its safeguards agreement and of Code 3.1 of its subsidiary arrangements constitute a case of noncompliance under the IAEA statute.

The purpose of such a resolution is not to increase penalties on Iran but to avoid establishing the wrong precedent. The agency should not be complaisant toward states that are violating their obligations, if it wants to avoid signaling to potential cheaters that doing so will have no consequence.

With this concern in mind, it is of great importance to promptly expose and respond to all cases of noncompliance. The failures and breaches committed by South Korea and Egypt which were reported to the board of governors in 2004 and 2005 respectively should be unequivocally recognized as cases of noncompliance and reported to the U.N. Security Council.

The board should therefore adopt a resolution declaring that the failures and breaches committed by those two countries were cases of noncompliance under the IAEA statute and requesting the director general to transmit all reports concerning those two states to the Security Council for information purposes only while commending them for their proactive cooperation with the agency and for the action taken to remedy their noncompliance exactly as the board did with Libya in 2004.

Failure to adopt such a resolution would result in a dangerous precedent that lowers the standards for compliance with comprehensive safeguards agreement and could seriously undermine the credibility of the safeguards regime.

Ensuring enforcement is a major component of deterrence. If a state has been found to be in noncompliance with its safeguards undertakings and refuses to promptly, fully, and proactively cooperate with the agency, it must trigger a number of well-defined and credible consequences agreed to by the Security Council.

Experience has taught us, in particular in the cases of North Korea and Iran, that when a state is found to have been in noncompliance with its safeguards agreement, the agency will temporarily need expanded verification authority. This expanded authority needs to go beyond that granted under a comprehensive safeguard agreement and the additional protocol. Greater authority will be necessary in these circumstances to provide in a timely manner an adequate level of assurance

that there are no undeclared nuclear material and activities in that state and that no previously undeclared nuclear activities have been sought to serve military purposes.

To give the IAEA the verification tools it needs in cases of noncompliance, I propose that the Security Council adopt a generic – non-state specific – resolution under Chapter Seven of the Charter stating independently of any specific case, that if a state is found by the IAEA to be in noncompliance with its comprehensive safeguards agreement, the Security Council would, at the request of the IAEA automatically adopt a specific resolution requiring that state to grant the agency extended access rights.

These rights defined in a so-called Temporary Complementary Protocol, TCP, annexed to the Security Council resolution would be terminated as soon as the agency secretariat and the board of governors draw the conclusion that there are no undeclared nuclear material and activities in the state and that its declarations are correct and complete.

The resolution and the corresponding Temporary Complementary Protocol are detailed in my recent Carnegie paper. It foresees consequences in case the state refuses to implement the TCP.

The great benefit that the NPT brings to the international community could be dangerously eroded if countries violating their safeguards agreements, or the treaty, felt free to withdraw from it, develop nuclear weapons and enjoy the fruits of their violation with impunity as was recalled this morning.

To address this issue, I propose the Security Council to adopt under Chapter Seven another generic and legally binding resolution stating that if a state withdraws from the NPT – an undisputed right under Article 10 of the treaty – after being found by the IAEA to be in noncompliance with its safeguards undertakings, then such withdrawal would constitute a threat to international peace and security as defined in the U.N. Charter.

This generic resolution which is annexed also – you will find it in my Carnegie paper – provides that in case of a state's NPT withdrawal, all material and equipment made available to the state would be frozen by the IAEA, removed from the withdrawing state and would subsequently remain under agency safeguards.

The concrete steps I recommend would significantly strengthen the nonproliferation regime without requiring modification of the NPT or of comprehensive safeguards agreements. They are straightforward procedural changes that would make a real difference in protecting against proliferation and should be adopted before the next proliferation crisis takes place. It depends now on key government to make this a priority.

I thank you for your attention.

(Applause.)

HAYES: Thank you, Pierre. So our first two speakers have raised in the first instance with Monika I think three or four very specific ideas on how to strengthen the regime that relates to non-state actors and the proliferation of weapons of mass destruction. Our second speaker has raised

five ways to make the interstate NPT, IAEA safeguards system not terminally ineffective which sure means make it forever effective in the long run. Very concrete ideas. Thank you for those.

Our third speaker this afternoon is Dr. Ramesh Thakur, who is a distinguished fellow at the Center for International Governance Innovation in Waterloo in Canada. Dr. Thakur is the founding director of the Balsillie School of International Affairs also in Waterloo. He was previously vice rector and senior vice rector at the U.N. University in Tokyo.

I knew him first when he was director of the Peace Research Center in Canberra, Australia, where he made some powerful contributions. And he was – he's the author of many important reports, but he was one of the principal authors of the "Responsibility to Protect" report.

He will address the topic of the flaws and anomalies in the nonproliferation regime whereby seeking the good in the nonproliferation treaty has become the enemy of the best nuclear weapons abolition with a proposal for a nuclear weapons invention to replace or complete the NPT.

Ramesh, please.

RAMESH THAKUR: Thanks, Peter. I'll stay here. This wasn't set up in advance, but I am actually going to articulate the view that Pierre discounted. And I'm willing to do that by focusing very much on the politics of all this rather than anything else.

Let me walk you back through some of these recurring criticisms of the NPT regime. By the way, this is a concluding chapter of an edited book on the United Nations and nuclear orders that will be published in the next two months by the U.N. University Press.

By failing to include clearly timetabled, legally binding, verifiable and enforceable disarmament commitments, the NPT in effect, though not necessarily in intention, legitimized the nuclear arsenals of the N-5, N-5 meaning – the five NPT licit nuclear weapon powers.

The imbalance of reporting verification and compliance mechanisms between nonproliferation and disarmament in the NPT regime has also overtime served to erode the legitimacy of this centerpiece of the global nuclear arms control effort.

By relying on the promise of signatories to use nuclear materials, facilities, and technology for peaceful purposes only, it empowered them to operate dangerously close to a nuclear-weapons capability. It proscribed non-nuclear states from acquiring nuclear weapons, but it failed to design a strategy for dealing with non-signatory state parties. It permits withdrawals much too easily.

Because there is no standing agency or secretariat, the NPT depends on five-year review conferences for resolving implementation problems and for advancing the regime. Even these prepcoms operate by the consensus, which does not make for decisive resolution of contentious issues.

Verification and enforcement are one step removed to the extent that the IAEA acts as a buffer between the NPT and the Security Council.

And we now have a situation very much along the lines that Monika was outlining where questions of the legitimacy of the NPT regime itself have to be enforced by the Security Council, which is itself being perceived as increasingly illegitimate in terms of the fossilized power equations of 1945 where the P-5 equals the N-5.

The many inconsistencies and tensions notwithstanding, the NPT has been the symbol of the dominant arms control, disarmament, and nonproliferation paradigm, hence this description as it being good. Over the course of four decades, however, several significant anomalies have accumulated and now weigh it down close to the point of rupture.

First, the definition of a nuclear weapon state is chronological: a country that manufactured and exploded a nuclear device before 1st January, 1967. India, Pakistan, Israel, North Korea, perhaps even Iran could test, deploy and even use nuclear weapons, but cannot be described as nuclear powers. Conversely, Britain and France could dismantle their nuclear edifice and destroy their nuclear arsenals, but would still count as nuclear weapon powers. This is an Alice-in-Wonderland approach to affairs of deadly seriousness. But can the NPT definition be opened up for revision through a formal amendment of the treaty with all the unpredictable consequences?

Second, even as the threat from non-state actors has grown frighteningly real, multilateral treaties like the NPT can regulate and monitor the activities only of states. A. Q. Khan's underground nuclear bazaar that merrily sold nuclear technology, components, and weapons designs to Iran, Libya, and North Korea showed how porous is the border between private and state rogue actors. Protestations of innocence by the Pakistan government are simply not credible and have been accepted for politeness' sake, but let's get real.

Third, North Korea's open defiance, spread over many years, shows that decades after a problem arises, we still cannot agree on an appropriate response inside the NPT framework. It's impossible to defang tyrants of nuclear weapons the day after they acquire and use them. The U.N. and the regime seem incapable of doing so the day before. If prevention is strategically necessary and morally justified but legally not permitted, then it's the existing framework of laws and rules not preventive military actions that is defective.

The fourth anomaly is lumping biological, chemical, and nuclear weapons in one conceptual and policy basket, namely WMD. They differ in their technical features, in the ease with which they can be acquired and developed and in the capacity to cause mass destruction. Treating them as one weapons category can distort analysis and produce flawed responses.

There's also the danger of mission creep. Justifying nuclear weapons as a useful tool in countering biological and chemical weapons may be one step too far. If they are accepted as having a role to counter biochemical warfare, then how can we deny a nuclear-weapons capability to Iran, which actually suffered chemical weapons attacks from Saddam Hussein?

Fifth, not a single country that had nuclear weapons when the NPT was signed in 1968 has given them up. This behavior fuels the politics of grievance and resentment.

The final anomaly concerns the central doctrine underpinning the contemporary Westphalian system, which holds that states, sovereign states, are equal in effectiveness, status, and legitimacy. In reality, states are not of equal worth and significance neither militarily, economically,

politically, nor morally. It seems unlikely that in the eyes of most people nuclear weapons in the hands of Britain and North Korea are equally dangerous. Similarly, how reasonable or logical is it to lump India, Iran, Israel, North Korea and Pakistan together without discriminating between their respective records?

The logical policy implication is either to condemn nuclear weapons for everyone, or to distinguish between bad and rogue from responsible behavior and opposing regimes, not the weapons. But that threatens the core assumption of the NPT that nuclear weapons are immoral for anyone. This was the central bone of contention between the proponents and opponents of the India-US civil nuclear cooperation deal: that it acknowledges India's responsible nuclear stewardship or that it threatens the integrity of the NPT.

If you go back to Obama's speech yesterday, when he says that rule breakers must be punished, what do we do about the India-U.S. nuclear deal? It does seem to me unquestionable that it does break the rules of the NPT regime however necessary or justified it may be. So he's already making the distinction even in that speech.

India's, Pakistan's, and North Korea's tests confirmed the folly of believing – in defiance of common sense, logic, and history – that a self-selecting group of five powers could indefinitely retain their monopoly on the world's most destructive weaponry. It is truly remarkable how those who worship at the altar of nuclear weapons threaten to excommunicate for heresy others wishing to join their sect.

Let me restate some conclusions from the Canberra Commission, and I'm pleased to see Richard Butler is in the audience, because I think that remains the most elegant and eloquent of the commission reports.

The logics of nuclear disarmament and nonproliferation are inseparable. The most powerful stimulus to nuclear proliferation by others is the continuing possession of nuclear weapons by some. And the threat to use nuclear weapons, not just to deter the use by others but to prevent others from acquiring them in the first place as part of a counter-proliferation strategy, legitimizes their position and use.

Hence the axiom of nonproliferation: as long as any one country has them, others, including terrorist groups, will try their best, or worst, to get them. It's not possible to convince others of the futility of nuclear weapons when the facts of continued possession, and doctrines, and threats of use prove their utility to some.

The problem is not nuclear proliferation but nuclear weapons. They could not proliferate if they did not exist. Because they exist, they will proliferate. If you want nonproliferation, we must prepare for disarmament. Too many have paid lip service to the slogan of a nuclear weapon free world but not pursued a serious program of action to make it a reality. Zero initiatives have been left to zero follow-ups. The elegant theorems, cogent logic, and fluent reasoning of many authoritative international commissions have made no discernible dent on the old, new, and aspiring nuclear powers.

Critical introspections and self-reflection is required, I think, also on the part of civil society actors and arms control NGOs. Does the focus on the NPT play into the hands of the

nonproliferation hawks, divert attention and effort from nuclear disarmament, and, in effect, therefore undermine the pursuit of nuclear abolition?

I liked Obama's speech. I didn't like him saying that it may not be achieved even in his lifetime. I like a timetabled suggestion and program of action for us to get there because if he says that, then you're back to the vague, someday, eventually, maybe, et cetera, et cetera formally. I don't accept that. In this sense, I think the question is: has the good -- nonproliferation by the NPT -- become the enemy of the best nuclear abolition?

In conclusion, it seems to me that the Kissinger et al. articles gave street credibility to the goal of nuclear disarmament within the American political process and political legitimacy to it worldwide. There is a gathering sense around the world that nuclear threats are intensifying and multiplying. There is a matching growing conviction that existing policies have failed to remove the threats.

In the meantime, scientific and technological achievements since the NPT was signed, in '68, have greatly expanded our technical toolkit for monitoring and verifying weapons reduction and even elimination. It's time to supplement and then supplant the sword and shield nuclear diplomacy of the United States with the pen diplomacy of a multilaterally negotiated, nondiscriminatory, and universal nuclear weapons convention.

The emergence of new leaders in the range of nuclear policy relevant countries brings into power a post-Cold War generation less burdened by the rigid, analytical, and policy framework of the second half of the 20th century. The mindset, worldview, and policies of the Obama administration in particular will be critical to driving or blocking efforts at nuclear arms control and disarmament.

Time is running out for the contradictions, hypocrisy and accumulated anomalies of global nuclear apartheid. Either we will have nuclear abolition, or we will have to live with nuclear proliferation followed by nuclear use.

If the nonproliferation end of the NPT bargain collapses, the regime will become obsolete. If the disarmament goal of the NPT is realized, the regime is completed but also becomes redundant. Either way, the NPT regime, as we have known it I think has passed its use by date.

Thank you very much.

(Applause.)

HAYES: Thank you, Ramesh. Three very professional, incredibly on-time performances. Thank you.

I'm going to shift gears now from where we have been traveling which was first in the framework of the Security Council imposition of obligations on states to control non-state proliferation activity, and then to strengthening aspects of the state-based nonproliferation treaty and safeguards system, thirdly to the call for a totally new global multilateral treaty framework to control nuclear weapons.

I'm going to shift back to the national level and try and address a couple of relatively short-term urgent issues using the frameworks of domestic law.

And the starting point for this was a question that I started asking myself and colleagues who work on the North Korea issue. Those of you who know myself and Nautilus Institute know that we're deeply involved in the North Korea problem. We have projects in North Korea as we speak with our North Korean counterparts. I plan to visit there again in June, and I think what's going on at the moment with missiles has basically much to do about symbolic politics not very much substance on either side and this will clear away rather quickly.

The question that we asked was that if the North Koreans were to come to us and say, what do we need to do to ensure that the international community is confident that its nuclear weapons capable scientists and technicians are not engaged somewhere on the planet in proliferation related activity, we don't have a very good answer to this question.

We have very good work that's going on about how to put into productive activity the 5,000-odd scientists and technicians in their atomic city based on the models from the former Soviet Union and Russia, that's fairly obvious.

But there are probably on the order of 100, 50 to 100 DPRK scientists and technicians in the South African program with the 220-odd deeply involved scientists and technicians in the nuclear weapons program. Around 10 to 15 were really what you would call nuclear weapons capable individuals. It's the subset of the total group of scientists and technicians that I'm thinking about.

And North Korea in a sense is an immediate case where we don't have an answer to a very urgent issue if they should actually cooperate with us, which I believe is conceivable, and if we should have a rapid dismantlement, which I think is necessary in order to achieve denuclearization, a six-month time dismantlement is what will be needed in the case of North Korea.

We know that they don't have a legal system that we could rely on. I mean, anyone who's worked in North Korea knows there is no law, there's only politics. We know that they couldn't really go to South Korea, a signatory to the Non-Proliferation Treaty, unless they were to defect and become South Koreans in which case we'd have an NPT non-nuclear weapon state with nuclear weapons capable individuals as citizens – an interesting anomaly to think about.

Where would they go? Would they stay put? Do they wear GPS, global positioning satellite bracelet so that we know where they are? This is a real urgent issue.

But it's actually not just a North Korean issue. It's just as much an American issue in the long term as this country goes down the path that President Obama was outlining, whether it's in our lifetimes or in one or two generations. It doesn't matter.

There are thousands of individuals who are nuclear weapons capable, some of them probably in this room, that we actually want to know where they are. Of those South Africans, my understanding is that one is under house arrest, one is working in New York, one is working at the IAEA in Vienna and there are a couple who are unaccounted for at the moment of those 11 or 15 nuclear weapons capable individuals. I don't think that's really good enough in the long term when

you think about the thousands of Russians, Chinese, North Koreans, Israelis, Pakistanis, Australians, et cetera, who are nuclear weapons capable individuals.

There is, of course, an international system to track those individuals if they start to veer into the criminal side of activity which is controlled by the provisions of U.N. Security Council 1540 obligations – the 300 odd elements that are covered by the 1540 obligations. But there's no systematic tracking or even listing of these people at this point which I find quite worrisome. And the fact that A. Q. Khan is now basically free of house arrest and able to move around is indicative of where things really sit.

So what to do? Well, as was pointed out by our first speaker, by Monika, the 1540 obligations have a really quite low level of performance at the state level. On the obligations that related specifically to nuclear weapons of mass destruction, the average compliance is roughly 23 percent with no distinction made as to how effective the compliance is, is again, just pro forma, just in the actual national reporting. The best performance is about 77 percent. This is a couple of years ago, the United States. Putting it the other way around, no state has less – of the reporting states – no state has less than an overall 20 percent noncompliance and many states languish in 70 to 80 percent noncompliance. So it's pretty ineffective, it's pretty weak. Performance is low, to put it mildly.

So the suggestion that I'd like to make for us to consider is that we draw on examples that come from laws related to crimes against humanity and other legal fields whereby states use their national legal system to exert jurisdiction over those activities which veer towards egregious violations that could prefigure or lead to crimes against humanity, in this case, the development, the transfer, the deployment for threat purposes or the actual use of nuclear weapons by non-state actors.

And I think it's really important that people look at a couple of books. One is by Ron Suskind – I don't know how to pronounce his name – “The Way of the World,” published last year, which is a careful examination of the almost complete failure of the Bush administration to come to terms with and actually deal with the issue of non-state or of terrorist nuclear threat, just really getting a handle on how unilateral strategies without a legal framework probably made things worse rather than better in many respects.

What we are thinking of is that as a matter first of national and then of international law, implementation of the 1540 obligation should include a responsibility by states to apply national control laws on non-state actors who are involved with the development, deployment, and detonation of nuclear weapons of mass destruction on an extraterritorial basis.

That is that they apply these laws both to their own nationals who may be engaged in prescribed activities overseas – this is the so-called principle of personality – and on universal basis, that is also to non-nationals, noncitizens, the so-called principle of universality who may be engaged in these prescribed activities overseas.

Putting it the other way around, the core proposition is that the Resolution 1540 national so called practices of interest which is their polite way or diplomatic way of saying best practice, really poor practice, may be strengthened in ways that will reduce the risk of nuclear next used by non-state actors.

This approach can and probably should be taken by states with or without Security Council blessing and would likely be best adopted unilaterally at first, possibly regionally, second, and only after the principle is well tested and related procedures are prefigured and partly implemented, particularly some clear sense of agreement about what kind of prosecutorial standards are required, what kind of evidence must be provided, what kind of transparency and openness in court proceedings for the actual prosecutions would be required. This is very important given the illegitimacy of the way that the Bush administration proceeded in a similar set of issue in prosecuting the war on terror. Only then would the Security Council consider amending or supplementing the 1540 resolution to mandate this approach.

So what I'm essentially arguing is that as a matter of domestic law and unilateral strategy, in complete contradistinction to Monika's suggestion that we strengthen the 1540 framework as a matter of treaty law, that we actually address the uneven and weak performance of many states by national action.

Now, I can envision immediately all the reasons that we should not go in this direction. You can see all the possible abuses, disappearances, extradition problems, et cetera, et cetera. And I'm not saying that this should be done quickly, but it certainly should be done with respect to one's own citizens. I see no reason for states not to apply these laws to one's own citizens.

I know that under the Australian – one of my two countries of nationality – under the Australian customs obligations under 1540, these laws already apply to Australians overseas, and I see no reason that other countries shouldn't do this. But it seems to me that the first countries that should make this move should be, as a matter of legitimacy, those countries that are most compliant, at the 70 to 80 percent performance level, not the very low performing countries in the 1540 framework. If you're not even performing, you really have no right to go out and arrest people, except your own nationals, if you wish to – unless you're performing already to your international obligations.

The reason to do this is because it would send a strong message to both national state leaders who may be facilitating or hosting a chain of supply involving non-state actors on their territory, on the one hand. And it may actually send a message to the non-state actors themselves. It may just make them move their operations from one place to another to a non-state jurisdiction, such as Somalia, in order to move stuff. But it would, I think, have both a deterrence and holding accountable effect in the way that particularly national leaders view themselves to be at risk, particularly in the world of globalized economy and politics. It's already very clear that the messages that have been sent on genocide have had a deterrence effect, the U.N. has had and the International Criminal Court has had a deterrent effect. And I think the first time a national leader is arrested for this kind of egregious violation occurring on their beat by a non-state actor, it will send a very, very powerful message.

The final point I want to make, because there are so many aspects to this that would need to be researched, is the role of non-state actors on the surveillance, monitoring, and implementation side of U.N. Security Council 1540 obligations, specifically in the framework that I've been proposing.

I recommend highly to you Dickey's book published recently on New York City's role in counterterrorism, direct city-to-city networking of police officers who spoke each other's languages, often shared each other's cultures, Karachi to New York, wherever.

I know personally in LA of an Evangelical church where the Korean pastor has an understanding with LAPD about how the North Korean refugees who have been trafficked across the border with Mexico are being monitored. There are roughly 200 in LA and a bunch of them are believed to be sleepers. They're not just refugees and we need to know where they are. And there is an understanding between the church and LAPD as to what level of harassment will occur against those who – legitimate refugees and those who may not be. It's that kind of surveillance function.

I also just point out to you that many of the warnings in the inner city of (steel ?) in London about potential bomb packages come from homeless people who look in bins around central London. So organizing homeless people can be a very effective monitoring and surveillance system.

There are many ways that civil society aside from legalistic approaches can play a role in implementing these kinds of practical approaches to controlling non-state proliferation. And I suggest we look at all of them and think about how to nurture them so that communities take their safety into their own hands and not just rely on the states which they of course will need to do as well.

Okay. I will now thank you for your attention and open the floor to questions to any of the speakers. We have, I think half an hour, correct? So we have a good time for some Q&A.

And the gentleman half way up the back.

Q: Thank you, Mr. Chairman. My name is Carl Stoiber, formerly at the State Department. I'm now chairman of the Nuclear Security Working Group of the International Nuclear Law Association. And I have a point for I think each of the speakers except Mr. Thakur.

First of all, for Dr. Heupel, I think one consideration I have mentioned before is that I think we have a different sort of proliferation problem these days and that's a proliferation of nonproliferation initiatives. We've got the U.N. 1540 Committee, we've got the IAEA security program, we've got the U.N. Office on Drugs and Crime program, we've got the U.N. Antiterrorism Program, we've got the PSI, we've got the Global Initiative to Combat Nuclear Terrorism, we have ENCI initiatives, and we have a whole flock of national initiatives.

And it seems to me that one of the problems we're facing here is that there's not adequate coordination and rationalization between these various efforts and that we're wasting resources, we're perhaps sending inconsistent message about what needs to be done.

And so, I wonder what she thinks about the need to have the 1540 Committee and other of these initiatives do a better job of coordination and bringing their actions together.

For Pierre Goldschmidt, I want to compliment him on his really quite brilliant analysis of these various issues and has gotten really into the technical details of this. But my real question is he's concerned about the precedential impact of not taking strong action in the cases of these various violations and other abuses.

But I wonder what is the final precedent depending on what happens if the IAEA board or the U.N. General Conference adopt resolutions and then Iran or Syria do not comply, what is the precedent? Is the precedent then that you can get away with this if vigorous action isn't taken?

And the reason I say that is because the only sanction available under the IAEA statute for a violation of this character within the agency is expulsion from membership of the agency which is, I think, not a step that is extremely useful or even very powerful. So the only option then becomes with reference to the Security Council which can then act under its Chapter Seven authority, and we have seen the various political reasons why this doesn't always work very well.

So I take your point but I'm just wondering, what happens when somebody thumbs their nose at both the IAEA board and the Security Council?

And then, for Mr. Hayes, I really think his proposal is quite thoughtful and meaningful and I would suggest that it's already been done. And it's already being done in a couple of contexts. It's being done by the U.N. Office of Drugs and Crime who has developed a model statute for implementation of probably 16 U.N. antiterrorism conventions including the new Nuclear Terrorism Convention, also the Convention on the Physical Protection of Nuclear Material. It contains most of the elements that you've talked about in terms of offensives, defenses, the obligation to prosecute or extradite. And so, my suggestion is that much of this is already underway and that our efforts can be channeled in that direction. So thank you very much.

HEUPEL: I totally agree with you. I mean, you're absolutely right. There's a lack of coordination between all these different initiatives which certainly undermines implementation of all the individual initiatives and there are lots of states who complain about that and also the 1540 Committee itself complains about this state. It has, for example, been argued that the reporting fatigue which means that states are reluctant to report because they have to report to so many different committees has undermined the effective work of the committee. So there is certainly a need of strengthening coordination mechanisms.

But I also think that steps have already been taken in this regard, so there has been some progress in this regard. For example, if you look at the different terrorism related committees at the United Nations, the 1267 Committee and the CTC, and the 1540 Committee they have already joint forces, for example, they conduct outreach seminars together or they engage in other outreach activities together. So I think there are steps taken in the right direction but certainly more has to be done in this regard.

GOLDSCHMIDT: Yes, Carl, but of course, I had only limited time to explain the details and you should look into the proposal in the annex to my Carnegie paper where I have drafted U.N. Security Council resolutions.

But it is very important, first of all, to detect and report noncompliance as soon as it happens. Now you say, okay; you find a country in noncompliance, so what can the IAEA do?

Well, the role of the IAEA is precisely to report noncompliance and the consequences under the statute is that noncompliance will be reported to the Security Council. And the IAEA can do it in very different ways. They can say, we report noncompliance but the state has taken the necessary

steps to correct its noncompliance, it has been proactive in cooperating with the IAEA and therefore we report noncompliance for information purpose only as has been the case with Libya. Or the IAEA can, on the contrary, say, we have found a state to be in noncompliance, we urged the state to take corrective actions, and if the state does not take these additional actions, then the IAEA should be able to request more authority from the U.N. Security Council.

And with a generic resolution, there would be consequences, automatic consequences. If a state does not comply after some time with the request, for instance, to cooperate proactively with the agency, the first step would be that the noncompliant state would have to suspend, if any, all sensitive nuclear fuel cycle activities. And if, three months later they still don't comply with that resolution, then, automatically, the Security Council would suspend, would decide to suspend all military cooperation with that state. After that, it's up to the Security Council to decide whether it wants to take further actions or not.

But the thing is, that this proposal would accelerate the process because time is very important. When a country has been found in noncompliance, it's essential to expose noncompliance immediately. And if the resolution that I'm suggesting had existed in 2002, I don't think we would be where we are today with Iran because the IAEA would not have waited three years to qualify the breaches, the major breaches and failures which were reported to the board, as constituting noncompliance and reporting to the Security Council. We lost the occasion in 2003 to really block Iran in their development of its enrichment program.

HAYES: Carl, I'd love to get your card after this event. But a couple of points. First of all, these U.N. programs, basically state-based programs, if, for example, an NGO knows about nonproliferation activity, the only way it can legally enter its data for consideration by such systems is through their government. And obviously, this is neither agile nor, in many instances, possible. We need to have a whole different approach added supplementary to the U.N. system as important as that is, and it's very important and needs to be strengthened.

Secondly, I've been in touch with various lawyers in this country, including at the State Department, and there doesn't seem to be a simple answer to the question, does the United States government have the authority to arrest a North Korean trading fissile material in Malaysia if they fly to New York today? There doesn't seem to be a simple answer to that because it's not on our turf and we don't have the necessary extradition treaty in place anyway.

So it seems to me that in a number of countries, there does need to be a legal clarification, often an international treaty framework would need to be enshrined in national law. It will vary from country to country. And I'm suggesting that there be some alignment at least in the major states that might begin this process of asserting their jurisdiction overseas, particularly with respect to the definition of what it would be an egregious violation as against merely a violation under 1540. Some dual-use equipment, you could be an innocent purveyor, others, it seems pretty clear that you're intending to deliver a nuclear attack or buy a nuclear weapon, it's not innocent. And there must be some definition. As you know, in the resolution, in the U.N. considerations, there is no definition of WMD.

So we need to actually draw some lines, they may be fuzzy, but we need to draw some lines as to what counts and what does not count in the approach that I'm suggesting. And we've been

through similar exercises in defining what is genocide, what is not. So there are some precedents we can look at legally.

Next question, please, up the back, way up the back in the red.

Q: In case anyone wonders why I wear red, you know now. I'm reading from my pink notebook.

HAYES: Could you speak into the microphone please, and your name please.

Q: Yes, sorry. Patricia Lewis, the Center for Nonproliferation Studies in Monterey. Thank you very much to all the speakers. And I was very interested, Peter, in your idea of GPS bracelets, and I encourage you to come to the next session on verification in this room. I was also thinking of microchips like we do our dogs.

HAYES: Are you trying to ostracize these people or track them?

Q: Well, what's interesting to me is that the International Olympic Committee now requires that top athletes register their locations daily so that were they to be subjected to a random drugs test, they can be found. A lot of top athletes are actually complaining about this but they are prepared to do this. So it's quite interesting that there are things that we can learn from people's willingness, if you like, to submit to intrusive monitoring.

And with that, I think one of the things we might bring up at our next session is civil society monitoring that you also touched upon. I'm particularly interested in the Landmine Monitor, for example, the BW monitor that's proposed by VERTIC and others. These are all things I think we should be looking at.

I wanted to ask a question for Ramesh. Ramesh, I've been looking a lot at the use of international humanitarian law to look at nuclear disarmament. And international humanitarian law, which has dealt with landmines, with cluster munitions, with blinding laser weapons, et cetera, requires that the weapons be indiscriminate, disproportionate, that they be inhumane, and of course, that their military use is – doesn't overwhelm all of those other factors. I don't think nuclear weapons kind of fit the bill.

You're looking at the Nuclear Weapons convention in a sort of a new approach or alternative or parallel track. What about looking at the Geneva Protocol and adding maybe preventing the use of nuclear weapons to that?

THAKUR: I think it's a question that was taken up by the World's Court advisory opinion, if you remember. It was both international law and international humanitarian law. So it's one that we've gone over. And of course, the opinion which is so widely misunderstood was that even in the most extreme circumstances it would still not be legal to use nuclear weapons as opposed to saying that it's not illegal. But they did go through that exactly on those things. So I think we have that authority, a set of documents.

Q: (Off mike.)

THAKUR: It's in the advisory opinion of the world court element.

Q: But it's only – (off mike) – legal.

THAKUR: Yes. But it's a good starting point benchmark from which you can draw it up if you want to follow it up. What I meant was it is the most authoritative statement of the relevance and applicability of international humanitarian law to the use and further use of nuclear weapons. If you want to develop that, start from that and then have it drawn into a new protocol if you like.

Q: Hi. Is this working? Yes. My name is Richard Butler. I'm from New York University.

We heard an extraordinary statement this morning made in Prague, of course, by the president which went a very great distance towards what we've all been looking for, for a long time.

I then thought we heard as well an extraordinary discussion amongst the group of mainly Americans, I think. Yes, the first group was all Americans this morning in the amphitheater, which suggested to me that they'll have to run very fast to catch up with the president. They were terrific, but some of what I thought they've said was negative. And if they're going to support their president adequately, they'll have to do better than that.

And why I'm introducing my question by making those remarks is this. I'm really concerned about the extent to which this group and others in this conference already are talking about non-state actors. It's a drop in the bucket in comparison with what we're really dealing with. Ninety-five percent of the world's nuclear weapons are in the hands of the United States and Russia.

And I agree very much with Ramesh Thakur's approach. The problem with the Nuclear Non-Proliferation Treaty and indeed all of our activities has been elementally the failure of the nuclear weapon states to keep their promise, to meet their obligation.

Now, what I heard the president is that that might start to change. And that's a problem of a magnitude that vastly exceeds anything that we might speculate about the acquisition by non-state actors of small amounts of nuclear material or even a fabricated weapon.

And where's the problem? The problem is enforcement, as Ramesh has pointed out, of that part of the treaty. Pierre Goldschmidt has given us an interesting proposal which is that where there is noncompliance, there could be an automatically available Security Council resolution. In the group that I'll be speaking in tomorrow I'll be going a bit further than that talking about proposals that I've written and made elsewhere for (a council ?) on weapon of mass destruction to deal with this very special problem of nuclear weapons.

But Mr. Goldschmidt and Ramesh Thakur, I'd like an answer, how do we oblige the nuclear weapon states to keep their obligation when they continue to be in possession of the veto in the Security Council?

Mr. Goldschmidt, your idea is a fabulous idea. I wish I had thought of it myself. But why do you think that one of the five, as long as they remain the formerly acknowledged nuclear weapon states – as has been pointed out here today is itself a kind of absurdity – why would we expect that

they wouldn't veto that resolution which has been drawn up a priori and is agreed on the books and to be introduced in certain circumstances?

Why do you expect they wouldn't veto that especially if it affected their interests? Look at what China is about to do on what North Korea has done in the last 48 hours, which, again, is something I think is rather minor in comparison with the fact that 95 percent of the world's nuclear weapons are in the hands of two states. And there's the other one I mentioned this morning in my little outburst, Israel is actually number three in terms of the number of weapons they have.

What can we do to bring about compliance by them? Forget about the non-state actors for the time being because Mr. Thakur, you are right. As long as nuclear weapons exist, they will proliferate. They will spread. So our first target should be those who hold 95 percent of them.

How can we bring about compliance with their obligation? What should we say to President Obama if his officials wouldn't tell him, we should tell him, what should we say to him should be the agenda of the conference to be held next year of all nuclear weapon states about how we can get them to start to accept their obligations, and how we can get them to agree to enforcement means for all where violations are occurring?

HAYES: Pierre?

GOLDSCHMIDT: Yes. Well, really thank you very much for the question, and it is a very difficult issue. I'm trying to be practical. And I know the veto wielding members of the U.N. Security Council are not going to give up their veto right anytime soon.

Therefore, what I've tried to do is to have a generic resolution which is not state specific, and I would hope that the five nuclear weapon states, the veto wielding member states, could agree on a generic resolution under Chapter Seven which in theory would oblige them to support automatic consequences when it comes to a specific case. However, not being naïve, under my proposal they would still, when it comes to the specific case, have a veto right even if exercising their veto right would be contrary to the generic Chapter Seven resolution.

And that's the catch-22 issue. What can be done to diminish the risk that in a specific case the permanent members of the Security Council will use their veto right? You see, sometime the question of interest is just political. So if a veto wielding members wants to hide and say, I'm sorry, you are my friend but I'm obliged to support this sanction because I have agreed to it under the Chapter Seven generic resolution, you increase the likelihood that it will be adopted, and so you increase the deterrence effect if you adopt those generic resolutions. I know, it's not perfect but it's better than doing nothing.

THAKUR: For the part that was addressed to me, I like questions that have their own answers in them, Richard. I hope when your proposed council is set up, the experience, expertise and insight of the former chairman of UNSCOM will be made fully available to the new council.

HAYES: And just a very brief comment from the chair.

Q: (Off mike.)

THAKUR: No. I agree. If I were to elaborate what I was saying even in my prepared remarks in terms of the legitimacy of the Security Council, okay, I agree with Pierre. We have to live in the world we are. But if you're really setting up a Security Council today, would we be agreed collectively to the category of permanent membership, if so, there certainly would not be the five we have today and if so, we certainly would not agree to a veto.

And if your answers are the same as mine, you agree that the council cannot be seen as legitimate and it has this veto part over actions that determine literally our lives and deaths and our children's and grandchildren's lives and deaths, and we need to find ways around it.

To elaborate even more upon the point that you're making and that I was making, yes. If you remember, during the Raj, the British never had a very high number of people in India. But the reason they succeeded in staying for so long was they convinced the majority of Indians that their rule was in our interest.

And what they have done with the nuclear weapons thing is exactly the same thing. They have somewhat managed to subvert the original bargain and convince us that them having all these weapons is in our collective interest.

I agree absolutely with you. If the problem is nuclear weapons, who has them? It is the nuclear weapon states led by the United States and Russia and the number three is Israel, you said rightly. I was very interested in your comment in the first session that after an hour-and-a-half or whatever, no one had even mentioned Israel, the country that must not be named.

HAYES: And I would add that in the North Korean context, having studied this very carefully including the history going back to the 50,000 Koreans who died at Hiroshima, and then the continuous threat projection from the United States against North Korea for the subsequent four to five decades and the continuous threat projection of nuclear targeting against North Korea for the entire period of their attempted membership of the NPT/IAEA system, the Security Council is not in a good position at the moment to be dealing with this.

This is a bilateral issue and the IAEA safeguard system and even the Security Council resolutions are just a targeted opportunity for the North Koreans. Bring it on, is their view because that will get the attention of Obama because they know that neither the IAEA nor the Security Council is going to deal with the United States. So it really is head on head.

And I can also assert that if Obama doesn't directly deal with this in his administration, the interagency process and the political bureaucratic interest will take over and will be dealing with North Korea if it survives for at least another 10 or 15 years because we're not heading in a good direction at the moment. We have one minute left, one more question right there in the middle.

Q: Thank you very much. Amandeep Gill. I'm an Indian Foreign Service officer currently on a sabbatical at Stanford. My question, or comment, is addressed to Dr. Thakur, very thoughtful presentation. I think these are very difficult issues you raise. But we must reflect on them. I see the danger of the '90s like moment being repeated here where it is agreed that the regime needs to be strengthened, we take some measures and then something happens and disappoints us all. So it's important to get the problem right.

Now, you mentioned that the NPT has failed in many ways and it needs to be supplanted by a nuclear weapons convention. But if you look around the India-U.S. agreement as one example, the Global Initiative to Combat Nuclear Terrorism where India, Israel, and Pakistan have come in as partners is another example; 1540 is the third example that comes to mind.

There is a plural regime under construction. You have the diminishing returns from the earlier construct and reality because nuclear danger hasn't gone away – it is around us. So the reality is forcing the main players to innovate, to come up with these regimes. So we are in transition from a singular construct to a yet to emerge construct. And these plural regimes are necessary.

HAYES: Sir, can you come to your question, because we're about to run out of time.

Q: Sure. Do you envisage an intermediate step between the NPT and NWC, something that Patricia Lewis referred to that would get us to a zero nuclear weapons world faster?

THAKUR: In very brief terms, my answer builds on the analogy of Thomas Kuhn's structure of scientific revolutions where you have a dominant paradigm which explains everything for the moment and then anomalies keep coming up and you come up with a series of auxiliary hypotheses to accommodate this – those anomalies within the dominant paradigm until such time as the anomalies become too many and too weighty for the paradigm to be sustained anymore, and then you have a revolutionary new paradigm.

In that sense, what I was saying was that the anomalies are accumulating. We provide ad-hoc responses to them, what you term as pluralistic additions to the regime. I think they've come to the point where we need a more elegant, simple framework with universal applicability where we go back to a prohibition regime rather than a nonproliferation regime with matching compliance, and verification, and monitoring requirement including, if need be, A Security Council that is exempt from veto.

So I think we do need that shift. And going the intermediary way just adds yet another auxiliary hypothesis rather than replaces the paradigm.

HAYES: Ladies and gentlemen, we are out of time. I want to thank our panelists for their excellent presentations. (Applause.) Thank yourself for your great questions. And I'd like to thank Whitney and Diana and Kevin for their hard work. The Carnegie staff have just been fantastic. So thank you.

(Applause.)

(END)