Plenary Address

The Relevance of Regimes

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The title of my remarks today -- "the relevance of regimes" -- is in fact a conclusion, for regimes do shape the behaviour of states. By buttressing the rule of international law, they bring order to an otherwise anarchic Hobbesian world. To elaborate, however, we must answer some basic questions, including -- what are their goals, who sets these goals, who is a member, why do states join, why do they comply, what happens if they do not comply, and how does the regime change over time? And finally, are we better off with regimes than without them? This is no small challenge.

Basically, a regime is a framework of rules or expectations that states create to regulate their interactions in an issue area. Regimes exist because of the unacceptable costs of unrestrained competition for selfish benefits without them. Countries join regimes because they recognize that their marginal loss of freedom or sovereignty by joining is far less than their marginal gains of membership. In short, states join regimes because multilateralism pays

dividends that unilateralism cannot match.

Disarmament Regimes and Non-Proliferation Regimes

This reasoning applies especially to multilateral regimes that deal with weapons-related issues, though the binding nature of the rules of these regimes varies widely as do their memberships. There are legally-binding regimes and there are regimes based exclusively on political commitments. Regimes also differ in their basic goal, as in disarmament versus non-proliferation. Some are more detailed than others in elaborating requirements for transparency and verification.

The most legally-binding and universal are the treaty-based regimes aiming at the elimination of weapons of mass destruction (WMD). Given the desired irreversibility of disarmament, it is not at all surprising that the regimes created to serve this goal would be set forth in formal treaties and that they would also be open to the membership of the entire world community. One could reasonably assume that states would not give up their most deadly weapons lightly -- and that they would prefer to rely upon commitments registered in the most obligatory form possible, rather than just policy statements, handshakes, winks, nods, toasts, and other gestures of contingent consent.

By contrast, the least-binding controls and most constrained memberships are those that deal strictly with the non-proliferation of such weapons, such as the export control regimes maintained by Nuclear Suppliers Group, the Australia Group, and the Missile Technology Control Regime. Regimes dedicated only to non-proliferation tend not to be universal and their rules are determined not by the many, but by the few. These rules are agreed in a clubby environment, typically in private meetings. A common denominator of these regimes is the existence of suppliers cartels -- what some call "coalitions of the willing" on behalf of global norms, while others, usually from the developing South, believe such regimes are motivated by less noble goals. Many specialists view these regimes as weak since they lack any means of verification and enforcement, a weakness further compounded by their lack of universal membership.

Disarmament regimes are different, however, because the goal they seek to achieve is truly universal in scope and undeniably equitable. In this sense, there are no double standards in these regimes -- all the parties to the BWC and CWC have agreed to forswear these respective weapons systems. Nuclear-weapon-free zone regimes also confer equal benefits and have symmetrical obligations. The NPT falls into a different category, given the imbalance in the treaty requirements for the two categories of its members -- the nuclear-weapon-states and the non-nuclear-weapon states -- though all of its parties share a common commitment to disarmament.

Despite their differences, both non-proliferation and disarmament regimes remain "works in progress" and must adapt to new challenges. They surely make the world more secure than it would be without them -- the "worst-case scenarios" without such regimes are surely far worse

than the worst-case scenarios with them. The regimes have especially important roles to play in promoting compliance and confidence-building.

Though burdened by conditions attached by some states in becoming parties, the CWC's system of verification includes an organization that can perform on-site inspections and other functions necessary to ensure compliance. Yet the BWC still lacks any such verification mechanism, and the NPT -- which never had an executive secretariat -- only provides for verifying compliance with nuclear safeguards commitments. For its part, the CTBT also has an extensive global monitoring system, though because the treaty has still not entered into force, the world is left to rely on fragile, voluntary moratoria that a country can end simply by issuing a press release.

Hence we find ourselves at a peculiar juncture with respect to these disarmament regimes. Weakened by erratic and often inadequate funding -- and deprived of unqualified verification mandates or in some cases relevant institutions to implement them -- the utility of these regimes has been questioned by commentators in some of the states that are responsible for these limitations. Some skeptics refuse to credit the treaty-based regimes for the pattern of compliance by the overwhelming majority of their states parties. Other critics and non-parties object that the treaties either are discriminatory or place them at security disadvantages regionally.

Though the NPT has specifically been labeled as discriminatory, it remains the only treaty locking the five nuclear-weapon states into a binding legal obligation with respect to nuclear disarmament. With Cuba's recent accession, the treaty now has 188 states parties, just three short of universal membership. While impressive, the CWC (with its 147 parties) and the BWC (with its 144) still have some catching up to do before becoming fully universal. Nevertheless, these treaties together do far more on behalf of global norms than any of the non-proliferation regimes -- regimes whose greatest contributions are in complementing efforts to achieve global disarmament goals.

The relevance of both types of regimes is determined far less by specific attributes of the regimes, than by the policies and practices of the states that compose them. Their relevance will grow to the extent that states come to understand how regimes enhance their security, especially relative to their alternatives of armed self-help and unilateralism.

This is not to say that the regimes are without their problems. Regimes have not grown very evenly across the wide variety of current or emerging weapons systems. Examples of weaponry that are not now subject to regime constraints include -- missiles, small arms, light weapons and other conventional arms, outer space weapons *per se*, unmanned aerial vehicles (UAVs), and new types of WMD. All the regimes are weak in the area of enforcement -- since none confronts potential violators with mandatory, multilaterally-imposed consequences -- unless material breaches are reported to the Security Council and acted upon.

We also continue to hear states accusing each other of violating their disarmament or non-

proliferation obligations, yet we rarely see any hard evidence to support such accusations. Nor do we see such cases being brought before the UN Security Council for enforcement action -- except of course in the case of Iraq.

Then there is the problem of the lack of congruency between treaty obligations and domestic laws and policies -- a problem that is especially apparent with respect to export controls and nuclear-weapons doctrines. It is also seen in the absence of specialized disarmament offices in governments, and the lack of investment in research and development to support disarmament goals -- in contrast to the ample funds available for maintaining nuclear stockpiles and undertaking research on new weapons.

Other state actions are limiting the contributions of these treaty-based regimes. Many key treaties are not yet in force, like the CTBT, or have been abandoned, like START II and the ABM Treaty. Some of the new treaties and non-binding regimes lack both disarmament commitments and even the goal of establishing an international means of verification -- this includes the Moscow Treaty (SORT) and the soon-to-be-launched International Code of Conduct (ICOC) against ballistic missile proliferation. Many states still have an allergy to transparency. They continue to resist, for example, providing details about how many weapons they have destroyed or possess, and how much weapons-usable material they have produced or are stockpiling. Lastly, treaties have states as their parties -- this leaves a gap in the rule of law with respect to the duties of individuals and groups -- an alarming problem in light of global terrorist threats, and the difficulties of weak or failed states in implementing treaty obligations. Perhaps the International Criminal Court may one day fill this gap, but that is another problem for another day.

If the treaty-based regimes are to achieve their full potential, they will require stronger support from all nation states, from the most powerful -- who have the financial, political, and technological means -- to the smallest and most vulnerable of states, whose desperate conditions can, if ignored, become a seedbed for future global catastrophes.

The Different Stages of Regimes

It is of course impossible to predict the future of these regimes, and any discussion of this subject must recognize that regimes are not static arrangements, but dynamic, living systems. They even have their own life-cycles -- with evolutionary stages that range from genesis, growth, decline, and collapse -- in addition, of course, to the stage of steady state maintenance. Though there is no formal missile disarmament regime, for example, there are early signs that the world community is at least aware of the absence of norms for missiles -- a point made in a statement by the Secretary-General Kofi Annan in April 1999 -- and is taking some preliminary steps to address this problem. Evidence of such steps is seen in the UN General Assembly's adoption in 2000 of a resolution calling on the Secretary-General to undertake a study, with the assistance of a panel of governmental experts, on the subject of missiles in all its aspects.[1] This year, the General Assembly received this report[2] and its First Committee adopted another resolution

requesting a follow-up study, beginning in 2004.[3] Though these fledgling initiatives hardly constitute a satisfactory response to the goal set forth in the preamble of the NPT of eliminating delivery systems for nuclear weapons, they may over time lead to the genesis of a new, missile disarmament regime. Pursuant to the international Programme of Action adopted last year at the UN to curb illicit trafficking in small arms and light weapons -- and the expert group investigating the feasibility of a universal system of marking and tracing -- we may someday witness the emergence of a new regime governing such weaponry as well.[4]

The "growth" stage of a regime is best documented by the sheer number of states that are members of regimes, the rate at which new states are joining, the track record of compliance by the states parties, and the extent to which the members are integrating their international commitments into domestic laws. All three WMD regimes also require further support from the administrative machinery of their member states in the field of disarmament, and their potential for further growth will also be a function of the level of understanding among the general public of the functions and benefits of these regimes.

Warning signs of the decline of regimes are equally important to monitor. The most reliable are indicators of behavior that is in direct conflict with the fundamental norms of the regime. Doctrines that call for the first-use of nuclear weapons or that herald such weapons as "essential" or "vital" to maintain security are difficult to reconcile with the goal of disarmament, as are investments in new nuclear weapons and facilities to produce or to perfect them. Such practices give rise to a "do as we say, not as we do" syndrome that undercuts the legitimacy of the overall regime. Other hallmarks of a regime in danger of decline occur when its member states adamantly refuse to yield to the demands of transparency, or when they announce policies that are premised on the explicit or implicit assumption that disarmament and non-proliferation efforts will fail -- policies that go far in helping us to understand why world military expenditures are now rapidly approaching the $1 trillion mark, with no ceiling in sight.

We are all fortunate that no multilateral disarmament regime has yet entered into the stage of collapse, though this possibility cannot at all be excluded. Collapsing regimes -- like the whole system of collective security between the two World Wars -- owe their fates to actions and inactions of their member states. If the goals of the regime are not manifested in state policy, are not defended when they are challenged, are applied only selectively, are ignored in budget allocations, are starved of institutional support, and are allowed to be displaced by other priorities and expedient objectives -- it is at this point that regimes are truly in danger of collapse.

Even the mighty NPT is not invulnerable to this risk. The two proven cases of non-compliance by non-nuclear-weapon states -- and the snail's pace of nuclear disarmament over the 34-year history of the NPT -- have not contributed to the health of this regime. Additional concerns have arisen over the apparent unwillingness of the nuclear-weapon states to implement their "unequivocal undertaking" to nuclear disarmament made at the 2000 NPT Review Conference -- as evidenced by the lack of progress on the 13 steps to nuclear disarmament agreed at that event. These and other such developments suggest strongly that

comfortable assumptions about the indefinite existence of this treaty are ill-advised. In this respect, the recent US-sponsored General Assembly resolution on "Compliance with arms limitation and disarmament and non-proliferation agreements"[5] marks a welcome step forward, for it "*Urges* all States parties to arms limitation and disarmament and non-proliferation agreements to implement and comply with the entirety of all provisions of such agreements." The more this resolution is observed, the brighter will be the prospects for the NPT regime.

Great care must of course also be taken with respect to protecting against the collapse of the other two key WMD-related treaties, the BWC and CWC. Technological advances in the field of non-lethal weapons may present some difficult challenges for the prohibitions in these treaties. Other problems arise from their lack of universality, continuing allegations of violations by states parties to these treaties, and the very slow pace of progress on chemical weapons disarmament.

Conclusion

Overall, despite the many challenges that lie ahead, treaty-based regimes remain enormously "relevant" in serving international peace and security. They offer many hard-law advantages over their ad hoc political counterparts among the various regulatory regimes. They are binding. They have or are approaching universal membership. They have the permanence of law. Some have institutions staffed with full-time professionals dedicated to building confidence in compliance. And they have the most precious treasure of all -- legitimacy, both because they enshrine universal norms and because legislatures had to approve their ratification.

With legitimacy, the regimes can continue to grow and to enhance the conditions of international peace and security. If they lost that legitimacy, they would lose all hope for effectiveness, and they would risk collapsing. We cannot rely on the regimes alone to prevent this from happening. We can only hope that the member states of these regimes will understand the benefits they stand to gain from the success and permanence of these regimes, and will provide them the support they deserve.

Needless to say, the strength of governmental commitments to these regimes will be heavily dependent upon the understanding and support from civil society, not just the arms control and disarmament community. SIPRI and IISS give us their estimates of global military expenditure, which many Governments on their own do not. From the NGO community, we have initiatives like the "Landmine Monitor," the "Small Arms Survey," the forthcoming "Biological Weapons Monitor" by the Biological Weapons Prevention Project, and several monitoring efforts focusing on nuclear weapons. Together, they illustrate how civil society can reinforce regimes and the norms they represent.

Just as the Charter of the United Nations was anchored among the "peoples of the United Nations," so too will the future of regimes be determined by the support they enjoy among the peoples of the world and their leaders. It is for this reason that I salute the Carnegie Endowment

for its continuing efforts to promote a dialogue on security issues that involves both national and international participants, from both the public and private sectors. United in a just cause, the people can indeed move the world.

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[1] Resolution 55/33 A, adopted on 20 November 2000 by a vote of 97-0-65.

[2] A/57/229, 23 July 2002.

[3] A/C.1/57/L.32, adopted 23 October 2002 by a vote of 90-2-57.

[4] A/CONF/192/15, available at http://disarmament.un.org/cab/poa.html.

[5] A/C.1/57/L.54, adopted by the First Committee on 23 October 2002, without a vote.