

Current Development



UN Security Council vs. Weapons of Mass Destruction

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Abstract

International institutions given the task to maintain collective security and to seek disarmament need to build on cooperation between major powers. The authors of the UN Charter vested great powers in the Security Council but a consensus between the five permanent great powers was required for use of the powers. This inevitably paralyzed the Council during the Cold War. After the end of the Cold War, the permanent members have remained unable jointly to pursue disarmament, but they have succeeded in several remarkable cases to reach consensus, notably on measures to prevent the further spread of weapons of mass destruction. The quick action to eliminate chemical weapons in Syria was a win-win case led by US-Russian diplomacy, while the comprehensive deal settling the controversy over Iran's nuclear program was a victory for patient diplomacy involving all permanent members and the EU. These actions show the potentials of the Council.

* The author welcomed the opportunity to give a lecture in memory of HILDING EEK, who was his professor, scientific tutor and friend. This article is an edited transcript of the Hilding Eek Lecture, delivered at Stockholm University on 16 November 2015.

Keywords

Security Council – great power consensus – disarmament – Syria and C-weapons – Iran's nuclear programme

1 Historical Background to the Collective Security System of the United Nations

Human efforts to create pacts, tracts, rules, institutions and arrangements to prevent war go far back in history. Some are famous, like the *Plan for a Perpetual Peace*¹ by Charles-Irénée Castel, Abbé de Saint-Pierre or the essay on *Perpetual Peace*² by Immanuel Kant in the 18th century, but it is only in the last two hundred years that schemes of some effectiveness have been developed. The Concert of Europe originating in the early 19th century was an effort to maintain a public European order based on the legitimacy of the dynasties in power. Like the UN today, it relied chiefly on the great powers and its aim was to uphold a balance of power between them. It had no formal organisation, or even a secretariat, but met at periodic conferences and intervened actively to counter revolutionary nationalism and to protect existing regimes.

The League of Nations, championed by the US President Woodrow Wilson and set up as a part of the Versailles Treaty, was the ambitious first effort to establish a permanent world organisation for the maintenance of peace: an institution with a representative assembly, a council dominated by the great powers and a Secretariat of independent civil servants.

As we know, the League had many shortcomings, not least of which was the fact that the US never became a member. While it devoted much attention and work to the question of disarmament, the results were meagre. The idea of collective security – that members would collectively turn against any aggressor – was there, but without a firm procedure to determine who was the aggressor, nor mechanisms for mobilising and organising military responses. The League collapsed, but it provided governments with valuable experience in the designing of the intergovernmental institutions for the world after the Second World War.

1 C.-I.C. de Saint-Pierre, *Projet pour rendre la paix perpétuelle en Europe* (Utrecht: Antoine Schouten, 1713).

2 I. Kant, *Zum ewigen Frieden. Ein philosophischer Entwurf* (1795).

2 The United Nations' Security System

As iconoclasts love to cut to size any construction or institution that is presented as more muscular and monumental than it is, the UN and its family of institutions are subject to frequent pillorying. Yes, we know that the UN has not eliminated the scourge of war, and that other factors, such as the balance of power, including the nuclear terror balance, strategic alliances and the strength of national defences may often have been more important than the UN in upholding peace. However, it is worth noting that any failure of the UN to act has mostly been due to the failure of member states to agree, rather than to any inherent shortcoming in the construction of its institutions or rules about decision-making.

We may note, lastly, that despite its shortcomings, the UN system has now been in operation for some 70 years. The League of Nations lasted only the 20 years between the two World Wars. In designing the security system of the UN, the authors of the Charter drew many lessons from the deficiencies in the League and came out with a system that was both radical and realistic.

First, they obliged all members to refrain from the use, or threat of use, of force against each other (Article 2(4)), and made exceptions only for self-defence against armed attacks (Article 52) and for actions undertaken or authorised by the Security Council (Article 42). Second, they charged the Security Council (the Council) with the task of determining, on behalf of all members, the existence of threats to peace, breaches of peace and of acts of aggression (Art. 39) together with the task of determining who is to be considered responsible. Third, they authorised the Council to recommend or decide on what is to be done about any such threats to the peace – from soft measures, such as mediation or conciliation, to economic sanctions or other coercive measures, up to, and including, the use of armed force. Fourth, they obliged all the members to accept and carry out decisions of the Council (Article 25).

Theoretically, the Charter creates a comprehensive and effective system for collective security. The authors were aware of the practical necessity to build on the reality of the economic, political and military weight of the great powers, which at the time were the victors of WWII. These five³ were eager to maintain their power and influence and ready to shoulder the main responsibility for world peace and world order. They ensured that the duties they assumed were matched by special prerogatives in the Council – permanent seats and veto powers.

3 The USA, the USSR, the United Kingdom, China and France.

As the UN was born the same year that the nuclear bombs destroyed Hiroshima and Nagasaki, the new organization was aware from the outset that a new weapon of mass destruction had been launched, that was, by orders of magnitude, more destructive than any known chemical or bacteriological weapon. It was fitting that the UN's concern about the new weapon was voiced in the very first Resolution adopted by the plenary body of the organization, the General Assembly.⁴ My focus, however, will be on the Security Council.

3 The Security Council and Disarmament

Article 26 of the UN Charter mandates the Council to make 'plans for the regulation of armaments and to submit them to members to take action'. Why has the Council done so little to fulfil this mandate? There are several reasons – some understandable, some less acceptable.

First, the principal way to achieve limitations in states' armaments goes through their consent – notably to conventions. They may be more inclined to give such consent if they have taken part in the working out and adoption of the conventions in question. The Security Council – a limited group of 15 states, including the five permanent members (the P₅) – is a clearly unsuitable forum for negotiating global agreements on disarmament matters. It is understandable that it has left the global disarmament agenda to the General Assembly, which in turn has relied on the wide circle of states in the Geneva Conference on Disarmament to handle negotiations. The important non-proliferation treaty and the chemical weapons convention were both negotiated in this rather large body, and so were the bans on the testing of nuclear weapons.

Regrettably, the Conference has fallen into a coma in Geneva for the last two decades. Moreover, despite having the matter of 'general and complete disarmament' as an item on its agenda ever since I was a young legal adviser to Mrs. Myrdal, in the 1960s, the Geneva Conference has never seriously devoted itself to disarmament in the sense of decommissioning weapons. The important treaties in this field are those between the United States and Russia, and these have, of course, been negotiated bilaterally. They have not had any need for the Council. The important Treaty on Conventional Forces in Europe (CFE) that achieved major East-West conventional arms reduction was negotiated and concluded between NATO and the Warsaw Pact countries.

4 UN General Assembly *Resolution 1(1) on the Establishment of a Commission to Deal with the Problems Raised by the Discovery of Atomic Energy*, 24 January 1943, A/RES/1(1).

The multilateral Conventions which have been agreed are those which restrict the use of certain weapons, such as landmines, fragmentation weapons and anti-personnel laser weapons. These conventions are not, as such, conventions on disarmament.

It may be asked, why the Council has not, as the Charter requires, tried to make plans for the regulation of armaments to be submitted to the members of the UN. Nor has it made significant use of the Military Staff Committee, which is at its disposal and consists of the Chiefs-of-Staff of the P5. This body appears to have shown some signs of life in recent years, but it has certainly not presented any ideas on disarmament.

The main reason why the Security Council is not devoting itself even to plans for disarmament, I am inclined to think, is that the major powers have had little interest in such disarmament or have deemed it futile to even try reduce them. However, whatever disagreements the P5 have between themselves – and they are many – they do have a joint ambition to prevent states beyond their own circle acquiring weapons of mass destruction, notably nuclear weapons. They are ready to pursue this ambition by acting in the Council and elsewhere.

The Non-Proliferation Treaty (NPT)⁵ has been and remains the chief instrument for states to commit themselves to not acquiring nuclear weapons, and for the P5 to establish themselves as – at least temporarily – exempt from such commitments. The NPT must be regarded as highly successful, even though four states that decided to stay outside the treaty – Israel, India and Pakistan and South Africa – did develop nuclear weapons.

After the end of the Cold War – around 1990 – we can see an intensification of the P5 efforts addressing weapons of mass destruction, and especially nuclear weapons. There were some early and easy successes which did not rely on the intervention of the Security Council. Russia and the US helped ensure that Belorussia, Kazakhstan and Ukraine, states which had had nuclear weapons on their territories when they were part of the USSR, sent those weapons to Russia and joined the NPT. South Africa dismantled its nuclear weapons unilaterally, opened for International Atomic Energy Agency (IAEA) inspection and joined the NPT.

But in other cases, in respect of Iran, Iraq, Libya and North Korea, the power of the Security Council has been brought to bear to counter the proliferation of weapons of mass destruction (WMD), as I shall describe below.

5 Treaty on the Non-Proliferation of Nuclear Weapons (signed in 1968, entered into force in 1970).

4 Security Council Generic Approaches to Counter WMD

Before I turn to these specific cases, I would like to describe some actions through which the Council has sought, generically, to deter states from acquiring nuclear weapons. At a summit level meeting of the Council in 1992 the President of the Council made a statement recognising the duty of the Council to prevent nuclear proliferation.⁶

This position was reaffirmed by a resolution of the 2009 summit chaired by President Obama.⁷ The preamble to the resolution states that proliferation of WMD and the means of their delivery constitute a threat to international peace and security. It was a way of telling potential proliferators that the Council would feel free to use enforcement measures under Chapter VII. Paragraph 1 of the Resolution's operative part spells out more specifically – and in more cautious terms – that a situation of non-compliance with non-proliferation obligations “shall be brought to the attention” of the SC, which “will determine if that situation constitutes a threat to international peace and security”. Paragraph 1 also “emphasizes the SC primary responsibility in addressing such threats”. The language was evidently designed to avoid touching on Israel, India and Pakistan that have not assumed any non-proliferation obligations.

In the much cited Resolution 1540⁸ the Council affirms its resolve to “take effective actions against any threats to international peace and security caused by the proliferation [of WMDs]”. However, the major and most interesting thrust of this resolution is Para. 2 of the operative part, whereby the Council decides that “all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop....or use nuclear, chemical or biological weapons....”

As this paragraph is expressly stated to have been adopted under Chapter VII of the Charter, this decision becomes binding for all members. It is this decision that has raised speculation as to how far the Council may be ready to go in the direction of indirectly legislating for the world community.

World legislation through Security Council Resolutions could have many advantages: you would not need to go through the tedious procedures of expressions of consent through signatures and ratification by nearly 200 individual states. There would be no clause about the duration of the obligations

6 UN Security Council, *Note from the President of the Security Council*, 31 January 1992 DOC S/23500.

7 UN Security Council, *Resolution 1887*, 24 September 2009, S/RES/1887 (2009).

8 UN Security Council, *Resolution 1540*, 28 April 2004, S/RES/1540 (2004).

or about withdrawal. A decision of this kind could not be challenged in the International Court of Justice as the Council is not subjected to the Court's jurisdiction. Nevertheless, I think the Council will exercise some caution before moving in this direction. If it ventured too far there would be a risk that states would ignore it.

As an example of a pseudo-legislative action let me mention a speculation that the Council could decide under Chapter VII that any further testing of nuclear devices would be a threat to peace and security and that states must refrain from such tests. The Comprehensive Test Ban Treaty (CTBT) is binding for a very large number of states, but has not entered into force as it is missing a few required ratifications – including those of China and the US. It would be interesting to see how the US Senate would react to a SC resolution “outlawing” further nuclear tests. Not too enthusiastically, I suspect.

As already mentioned, in some specific difficult cases – North Korea (DPRK), Iraq, Libya and Iran – the Council has played a significant role, and it is to these cases I shall now turn.

4.1 *The Case of the DPRK*

I begin with the least successful case – that of the Democratic People's Republic of Korea (DPRK, or North Korea). I visited the country in 1992, at the time in which there were greatest hopes for a successful resolution. Together with South Korea the country had made a very promising 'Joint Declaration on the denuclearization of the Korean peninsula' and signed a safeguards agreement with the IAEA in conformity with its obligation under the Non-Proliferation Treaty. Soon afterwards, however, suspicions arose that not all nuclear material was declared as required under the safeguards. Since then, tensions, crises, talks to address the crises, and Security Council-decided sanctions have marked the process for over 20 years. Some attempts to reach solutions have been through bilateral talks between the US and DPRK, many others multilaterally in the so-called Six Party talks between the US, China, Japan, Russia, South and North Korea. None of these efforts have prevented the DPRK from developing a capacity for producing plutonium and enriching uranium, or from testing nuclear weapons and developing (and testing) missiles of increasing ranges.

At many junctures during this long period, beginning in 1993 the North Korean actions have been considered in and prompted a series of resolutions by the UN Security Council.⁹ Over the years, the Council has adopted

9 UN Security Council *Resolution 825*, 11 May 1993 S/RES/825(1993); UN Security Council *Resolution 1695*, 15 July 2006 S/RES/1696(2006); UN Security Council *Resolution 825*, 11 May 1993

increasingly severe economic sanctions that are supervised by a special subsidiary sanctions committee and expanded sanctions have also been adopted by the European Union and the US.

Neither these the pressures, nor unanimously promised programs of help and development have induced the DPRK to agree to dismantle their WMD programs. This has not either led the Security Council or individual governments to threaten military action, which is understandable in view of the fact that the South Korean capital, Seoul is within artillery range from the North.

Maybe the government in the DPRK has felt that so far its nuclear weapons capacity gives it greater safety than any paper commitments that it might be offered by individual states and/or the Security Council against attacks and intervention from the outside. It may also have in mind the Libya experience. Even though Libya had cooperated to eliminate its (mainly chemical) WMDs following UN sanctions, this did not protect the regime of President Kaddafi for very long.

4.2 *The Case of Iraq 1990*

In the early days after the end of the Cold War, Iraq's attack and subsequent occupation of Kuwait led to agreed Security Council action, including the military response in 1991 and the ban on the purchase of Iraqi oil. The UN collective security system worked! President George Bush (Sr.), who should be given much credit for the Council decisions and the successful action that faithfully implemented it – spoke with pride about “a new international order”.¹⁰

The main aim of the military action that started in 1991 was to stop Iraq's aggression and occupation of Kuwait – not to eradicate weapons of mass destruction. At the time the Iraqi preparations for the production of biological weapons were not known and the IAEA, which, at that time, could rely only on a rather limited safeguards system, had not found any indications of nuclear weapons development. Only the existence of chemical weapons and missiles was known, as these weapons had been used extensively during the long and horrible war with Iran during the 1980s.

S/RES/825(1993); UN Security Council *Resolution 1718*, 14 October 2006 S/RES/1718(2006); UN Security Council *Resolution 1874*, 12 June 2009 S/RES/1874(2009); UN Security Council *Resolution 2087*, 22 January 2013 S/RES/2087(2013); UN Security Council *Resolution 2094*, 7 March 2013 S/RES/2097(2013). Very severe sanctions were imposed under Security Council *Resolution 2270* (2016), adopted on 2 March 2016.

10 Address to the United Nations General Assembly by President George H.W. Bush, 1 October 1990, available at: <http://www.state.gov/p/io/potusunga/207268.htm>.

Nevertheless, Council Resolution 687¹¹ demanded that all WMD and longer range missiles in Iraq be declared and eradicated. This became a highly significant matter that engaged me personally, first as Director General of the IAEA in Vienna, for more than 10 years until 1997, and, later, as Chairman of the UN Monitoring Verification and Inspection Commission (UNMOVIC) in New York from 2000 to 2003.

In 1991, the United Nations Special Commission (UNSCOM), a subsidiary body created by the Security Council in New York, together with the Director General of the IAEA were mandated by the Council, through Resolution 687,¹² to trace and destroy all nuclear, biological, chemical weapons and missiles of certain range in Iraq and thereafter to monitor the absence of such weapons.

With consistent and effective support from the Council and several of its individual members, UNSCOM and the IAEA successfully performed their tasks. In fact, by 1992 not many prohibited items were left. However, a great many of the weapons and nuclear items had been destroyed by the regime without the inspectors being invited to be present and leaving no credible evidence of the eradication. Moreover, the inspections were often impeded and the inspectors harassed, in a manner which suggested – erroneously – that there remained WMDs hidden in the country. The actual destruction of the weapons was thus for the world like a case of succeeding in disarmament without knowing it...

Meanwhile, in the second half of the 1990s, the system of economic sanctions imposed by the Security Council was gradually eroded by cheating and corruption. These sanctions, though now less effective, continued nonetheless to bring misery to the Iraqi population, despite attempts by the UN to soften their impact. To compound the difficulties, all inspectors were withdrawn in 1998, following a long period of deteriorating relations between Iraq and UNSCOM.¹³

Aware of the crumbling system of sanctions and aware of revelations that UN inspection processes had served as the long arms and ears of national intelligence agencies, the Security Council took a new approach. In December 1999 it adopted Res. 1284,¹⁴ creating the new inspection commission that I was appointed to head (UNMOVIC), which was to be staffed by civil servants subject to Article 100 of the UN Charter. The task of UNMOVIC was to identify and clear up key remaining disarmament issues and then switch to long term

11 UN Security Council *Resolution 687*, 8 April 1991 S/RES/687(1991).

12 *Ibid.*

13 G. Harrer, *Dismantling the Iraqi Nuclear Program* (London: Routledge, 2013), p. 238 ff.

14 UN Security Council *Resolution 1284*, 17 December 1999 S/RES/1284 (1999).

monitoring, allowing the Security Council first to suspend and eventually to terminate sanctions.

Iraq was not inclined to see any UN inspectors back in the country, and it was not until after much UN massaging and more robust US military pressures that after the summer of 2002 Iraq accepted to receive inspectors again. After a 4 ½ years absence the new inspection missions of UMOVIC and the IAEA performed intense new unimpeded inspections for three and half months – i.e., until the “alliance of willing states” invaded Iraq in March 2003.

I shall not dwell here on the much discussed political aspects of the events. I would like rather to raise some salient points:

- The economic sanctions, imposed by the Security Council, were effective means of pressure to bring about the eradication of WMD in Iraq. However, they were a blunt and brutal instrument and were maintained for far too long – partly because of misleading Iraqi actions, partly for political reasons in the US.
- Most international lawyers – including myself - are of the view that the invasion in March 2003 without an authorisation of the Security Council was a violation of Art. 2(4) of the UN Charter.
- The infiltration and use of UN inspection by national intelligence agencies was a violation of Art.100(2) of the Charter, which requires members to respect the international character of UN staff.
- With the help of several states, especially the US, the techniques of inspection developed enormously during the long missions in Iraq.
- In spite of this development, the task of proving a negative – proving that there are no prohibited items - is practically impossible. Even where there are very professional and thorough inspection reports governments will have to act– as in the case of many national decisions – on the basis of less than 100 % certainty.

4.3 *The Case of Chemical Weapons Use in Syria in 2013*

On 21 August 2013 a large scale chemical weapons attack occurred at Ghouta outside Damascus. It caused great loss of life and terror at the site. While Iraqi use of sarin against Iranian forces in the war in the 1980s had not provoked much international reaction, the attack near Damascus caused indignation around the world. A UN investigation group was formed, and led by the Swedish chemical weapons expert Åke Sellström, it was dispatched to Syria. It confirmed that chemical weapons had been used, but it was not asked and did not indicate who was responsible for the action.

In many quarters it was believed that the Government of Syria was responsible for the attack, and in the US much pressure was brought on President Obama to take armed action against the Syrian regime. President Obama had earlier resisted pressure to intervene in Syria against the Assad regime, but had stated that a use by the regime of weapons of mass destruction would alter his calculus.¹⁵ This statement was now invoked and the President's credibility was said to require action. He appeared to be ready to act, even though he must have been concerned about the possible consequences of another US armed intervention in the Middle East, and been aware that a proposal in the Security Council to authorise military action would have been blocked by negative votes, including a Russian veto.

Then, on 6 September, at the fringes of a G20 summit meeting at St Petersburg, a surprising plan developed. The gist of it was that the Syrian government should be urged to adhere promptly to the Chemical Weapons Convention, of which – unlike the US and Russia – it was not a party. It should thereupon, and without delay, do away with all its chemical weapons under the guidance and supervision of the UN and of the Chemical Weapons organisation. It might seem like a miracle that the plan – called “Framework for the Elimination of Syrian Chemical Weapons” – worked and was a win-win case for all except those whose primary interest was the bombing of Syrian targets:

- The Syrian government escaped being weakened and punished by US bombings of uncertain scope,
- The Obama administration avoided the unknown further consequences of launching itself with armed force into the Syrian war.
- Russia gained the advantage that the whole affair would no longer be in the hands of a lone US “world police”. Rather, it would be handled within the world organisations that had been given the task of handling such cases and in which Russia had both a seat and a say —the UN and the Chemical Weapons organisation.

Many things could undoubtedly have gone wrong in the carrying out of this plan, but through skilful cooperation between US, Russian, UN and OPCW officials it worked. One of the remarkable aspects of this plan was that international chemical weapons experts could be mobilised to supervise the removal

15 J. Goldberg, ‘The Obama Doctrine: The U.S. president talks through his hardest decisions about America’s role in the world’, *The Atlantic*, April 2016, online at: <http://www.theatlantic.com/magazine/archive/2016/04/the-obama-doctrine/471525/>.

of chemical weapons from, and destruction of, installations in the midst of a civil war.

So, what precisely was the value added by the UN Security Council? The plan was not hatched in its chamber. Was it not, after all mainly a US-Russian – Syrian deal? Certainly, at the root, there were, as I showed, common interlocking interests. However, apart from the fact that the UN and OPCW machineries provided much independent expertise and management, they and their organs – the Security Council and the Executive Council of the OPCW – stood for the legitimisation of the whole enterprise – with Resolution 2118¹⁶ as its most important document.

4.4 *The Case of Iran*

I turn lastly to the recent and ongoing case of the nuclear deal with Iran, sealed in Resolution 2231¹⁷ adopted by the Security Council on 20 July 2015. The background of the issue is the development in Iran of a very comprehensive nuclear energy program, and many states' lack of confidence that this program only served peaceful purposes. The roots of the program stretched back to the time before 1979 revolution, when the Shah was in power and was courted by many Western states that wanted to sell both nuclear power reactors and fuel cycle installations such as reprocessing plants producing plutonium. With the toppling of the Shah and the rise to power of Ayatollah Khomeini, the relations with the West became hostile, especially with the US, whose embassy was occupied for over a year.

Western cooperation with Iran in the nuclear sector ended. The big project for two power reactors at Busher near the Gulf was abandoned by the foreign constructor, Siemens in Germany, in view of the war with Iraq that was raging.

The nuclear program had been drastically curtailed when Ayatollah Khomeini was in power, but it was later revived, and gradually attained such a scope and orientation that many governments lost confidence that it was conducted for only peaceful purposes. Neither the Board of Governors of the IAEA nor the Security Council of the UN has at any time concluded that Iran has breached its obligation as a party to the NPT not to "manufacture" a nuclear weapon. Yet, failure by Iran to provide timely declarations to the IAEA about various activities, including the enrichment of uranium, was a disregard of safeguards obligations, and led to demands for more information and demands for the suspension of enrichment.

France, Germany and the UK negotiated for years with Iran *inter alia* about suspension, to no avail – apart from a limited period of suspension of

16 UN Security Council *Resolution 2118*, 27 September 2013 S/RES/2118 (2013).

17 UN Security Council *Resolution 2231*, 20 July 2015 S/RES/2231 (2015).

enrichment during the presidency of Mr. Khatami. Later, the negotiating group came to also comprise China, Russia and the US – the so called P₅+1 or EC 3+3. As Iran maintained its refusal to suspend enrichment as a gesture of good faith, the Security Council made the demand mandatory. When this demand, too, was ignored, the Council decided on economic and other sanctions against Iran. In addition to UN instituted sanctions, the US and the EU have imposed other, unilateral, sanctions, most notably a ban on the import of Iranian oil.

Despite all these sanctions, negotiations between Iran and the P₅+1 continued, and as President Ahmadinejad's defiant style and positions were succeeded by the more conciliatory attitude of President Rouhani, these talks began to bear fruit. The negotiations eventually led to a 'Joint Comprehensive Plan of Action' (JCPOA) on 14 July 2015. For a variety of reasons – one of them undoubtedly being constitutional requirements in some of the negotiating states – the 'plan' is not presented as an 'agreement' but as a statement of what Iran will do and what the P₅+1 will do.

In one of its final provisions the plan declares that "the EU 3+3 will submit a draft resolution to the Security Council endorsing this JCPOA affirming that conclusion of this JCPOA marks a fundamental shift in its consideration of this issue and expressing its desire to build a new relationship with Iran".

Thus, the pattern that was quickly developed and used in the less complex case of Syria and its chemical weapons was repeated: negotiations between a limited number of states was to be followed by a transfer of the results to the Security Council, which has the constitutional power to give the plan – including the power to terminate its own sanctions – legal force.

Resolution 2231¹⁸ was adopted on 20 July 2015 and contains several remarkable features. Interestingly, it welcomes, in a preambular paragraph "Iran's reaffirmation in the JCPOA that it will under no circumstance ever seek, develop or acquire any nuclear weapons". The plan endorsed by the Security Council thus goes beyond the non-proliferation commitment undertaken by Iran in the NPT. It is true that since the NPT review conference in 1995 that treaty has no expiry clause, but Art. X of the treaty still stipulates a right of withdrawal if a party "decides that extraordinary events, relating to the subject matter of this Treaty, have jeopardised the supreme interests of its country". This clause is now superseded by Iran's pledge in the JCPOA.

It strikes a reader of the 104 pages long Security Council Resolution that Iran has committed to a great number of detailed restrictions on its future nuclear activities – for instance, on the number of centrifuges, the level of enrichment, stocks of enriched uranium etc. together with stringent verification

18 UN Security Council Resolution 2231, 20 July 2015 S/RES/2231 (2015).

mechanisms. The commitments on the other side are limited to an acceptance of some Iranian enrichment of uranium, a lifting of sanctions and an end to frozen relations. Not very onerous.

However, the commitments undertaken by Iran also do not appear very onerous, when one looks at Iran's practical needs in the field of peaceful development and use of nuclear energy – including nuclear generated electricity. Rather, through the restrictions, the confidence that Iran had lost, should be regained to the benefit of Iran itself, but also to the region and the whole world.

Some clauses relating to sanctions are intriguing. The lifting of UN sanctions is, understandably for Iran, an essential part of the JCPOA and Resolution 2231. But the possibility for the Council to re-impose sanctions is also an essential part of the Resolution in case of a failure by Iran to abide by the plan. The way in which this is regulated may reflect the political need of the US government to be able, singlehandedly, to “snap back” sanctions. It is somewhat puzzling. I shall try to explain.

Naively one might think that a re-imposition of sanctions that have been terminated would come through a new decision by the Security Council. Such a decision could obviously be prevented by lack of majority support or by a veto. To obviate this risk Resolution 2231 enables any member of the Iran deal – after having gone through elaborate procedures – to transmit an issue of alleged non-performance by Iran to the Security Council. Within 30 days the Council must then decide, not on a draft resolution re-imposing sanctions, but instead – on a resolution “to continue in effect the terminations” of earlier sanctions. If no member of the Council submits such a draft, the President of the Council is obliged to do it. It is then enough that one permanent member votes against the draft for the resolution to fail and the result is that terminations will not continue.

We have no difficulty imagining a situation in which a draft resolution seeking to re-impose sanctions is submitted by 14 members of the Council, but is blocked by the veto of one P5 member. However, here we are faced with a situation in which sanctions terminated by the Council can be re-imposed by one P5 state, even though perhaps all the remaining 14 states in the Council are against it! A French ambassador called this “inversed veto procedure ... a strong and an innovative mechanism, which represents an unprecedented flexibility from the five permanent members of the Security Council”.¹⁹ Thankfully, such

19 Gérard Araud, ‘Snapback: An Innovative Feature of the Iran Nuclear Deal’, *The New Atlanticist*, 16 September 2015, online at: <http://www.atlanticcouncil.org/blogs/new-atlanticist/snapback-an-innovative-feature-of-the-iran-nuclear-deal>.

action will not have retroactive effect to render illegal contracts entered into in the period when sanctions were still terminated.

The text of the relevant paragraphs is as hard to read and understand as the small print we find on the back of our insurance policies. Nevertheless, if my understanding is right, one should register some admiration for the legal, linguistic and logical audacity that allows the SC “to continue terminated sanctions”. But for this innovative construction and its acceptance by all the P5 members of the Council and by Iran, the recent and highly welcome, deal might not have been achieved. Having said that, I hope the procedure will never need to be applied. Whether it is desirable as a precedent needs to be discussed.