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**COMBATING PROLIFERATION-RELATED CRIMES**

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**Panel:**

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**Justine Walker**

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Affairs

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## Panel Discussion

**Vicente Garrido Rebolledo**

Thank you for attending the session. We are going to discuss combating proliferation-related crimes with three speakers. You have a brief profile of each speaker. In order to have as much debate as possible, I was strongly recommended by Mark to limit the initial presentations and also the interventions of participants. We will conclude with some remarks from the opening speakers.

I do not want to take too much time for myself, but will just say a couple of things. Firstly, I agree totally with having this panel in the Creativity Exploration room, because this is a question that deals with creativity and exploration, especially because the conceptual borders between crimes of proliferation and smuggling are not clear. I expect some clarification on this from the speakers, as well as the role of criminal law in the persecution of nuclear proliferation crimes. A question for further debate after the presentations could be the role of governments and intelligence services, and a lack of harmonisation and asserted control in the legislation. Thank you very much.

**Justine Walker**

Thank you and good afternoon. I have been tasked with speaking about blocking proliferation financing, so I thought it might be helpful to set out what we actually mean by this. When people talk about proliferation financing, they tend to merge related but different elements. I wanted to explain this slightly. On the one hand, we have financial tools to identify actual proliferation activity. For example, we use financial intelligence to identify a network, the movement of a controlled good or the involvement of known entities. Here, the focus is on following the money to make associations. You build up a picture. That is about using financial tools to block, identify and disrupt proliferation activity.

On the other hand, you can use financial tools in aid of diplomatic pressure against countries of concern. Iran would be the most notable. Both use financial tools but actually both are quite different. One is about targeting entities; the other is about supporting diplomatic pressure. For example, in November last year, the UK imposed a requirement to cut off all ties with the Iranian financial system. That would be in support of diplomatic pressure. It was not a targeted activity against a particular network. The two different elements are both very important. I will try to cover both.

What do we actually have in our financial toolkit? Measures are being brought in through the UN Security Council Resolutions and European regulations. Financial vigilance requires that, when you are processing a transaction with, for example, an Iranian entity, you give that more due diligence. It links in with the reasonable grounds aspect. If you think there is a potential proliferation link, you do something about it. There is asset-freezing; quite simply, you freeze the assets of the individuals. There are also prohibitions to prevent you from entering into certain types of business relationships.

We can use all of the above tools in relation to both countries and non-state actors. The reason why there has been such a huge growth in financial tools recently is that, actually, compared with other types of action, they are fairly easy to impose. Yes, for those negotiating them they might feel complicated but, versus military action, they are a lot easier. You will have a lot more agreement from people to put in place financial vigilance measures, for example, because they are fairly loose.

There might be a lot more discussion on asset freezes. The purpose is very simple: without hard currency and access to financial services, it is far more difficult to engage in proliferation-related activities. Also, the ability of a large financial centre to track an entity's assets around the globe is vast. The UK and US have clearly used these measures. The disruption you can cause can be very significant. Targeting insurance is a good example of a disruptive element. We can look at the case of the Islamic Republic of Iran Shipping Lines (IRISL) and Iran Air, which was first brought forward under US requirements to prevent people from engaging in business with them. Insurance is a critical aspect for moving goods, and a ship cannot get in or out of a port without adequate insurance. You have areas like marine, hull and cargo insurance. You also have what we call protection and indemnity (P&I) clubs. If you disrupt that, the logistics are incredible. That is why, within a couple of weeks of IRISL being designated, you saw 18 affiliates developing over a couple of weeks. Now there are many, many more.

The real thing now in the world of financial sanctions and blocking proliferation financing is how to deal with sanctions evasion. Initially, we targeted named entities. Now, we are seeing a much more complex picture from the financial perspective. Let me just highlight a few of these.

We have seen more payments being processed through smaller and medium-sized banks. The transactions are still passing through the large banks, but they are often not originating there. We have seen a lot more use of third countries and institutions. These are often in emerging economies, those with less US exposure and also those considered to have weaker compliance oversight within the financial sector. We have seen a much greater use of deceptive practices, such as front companies and more correspondent relationships. Iranian designated banks are now using non-designated banks to pay suppliers. There is a use of payment mechanisms that do not leave an audit trail. Traditionally, we saw a lot of letters of credits, but they do actually give you a reasonable audit trail. We have seen much more movement to open accounts and corporate-to-corporate-type settlements. There has been quite a big shift, which poses some challenges for us.

I wanted to identify four types of challenges that we see from our organisation, working across the globe. We see a lack of awareness of how to apply financial controls across the globe. We see issues around the legal framework, but there is actually no legal definition of proliferation financing and no agreed framework for how states should implement their obligations. This can prove problematic in information sharing and prosecution in relation to non-state actors. It is even more complicated with state actors, so we will not go there.

Speed of implementation is also diverse globally, in relation to UN and EU measures. Obviously the

UN measures are global and the EU ones are not, but the speed of implementation of both is very diverse, so an asset freeze could be agreed at UN level but, in some jurisdictions, it might take five or six weeks for that to be implemented in reality. By that point, all the money has gone. It is worthless.

There is an absence of integration between government and the private sector. What I would say, having worked both in government on counter-proliferation financing and also out of government, is that the proliferation community is not very well linked with the financial community. There are still a lot of lessons to be learned from counter-terrorist financing in this arena.

In moving forward, what would be helpful? We need to get much better at applying financial controls in a targeted way, as part of a non-proliferation framework. There have been some studies on proliferation financing, but much more needs to be done. The previous studies undertaken were done in an era of less stringent financial controls, when there was less sanctions evasion. We need to be more up to date. The first thing is to achieve a better picture of proliferation financing. What types of financial payment mechanisms are used? What are the recent trends in circumvention practices? What are the unintended consequences? We have seen movement to underground banking payments, out of the formal banking system.

The second aspect is around practical implementation. I have to deal with practical implementation on a daily basis, and I can tell you I spend many nights trying to figure out what is meant by a certain regulation. Let me just make a couple of points on this. At the EU level, there is a lot we could learn from the US about the lack of data on sanctions notices. The US has actually become much better over recent years on giving clear identifiers to sanctioned entities. We are as not as good at them within the EU, and we have to get better. The problem is, if you just say 'Mr X', if you put that through your payment processing, in some instances you could have 20,000 hits. We have looked at this; one bank had 20,000 hits for a certain entity. They all need somebody to figure out whether that is that entity. One in 20,000 is the person. Everybody else is a very unhappy customer, because their legitimate transactions have been stopped.

The next is precision around scope. Quite often, sanctions will come out that will talk about government-controlled entities, but you can spend a lot of time looking at what a government-controlled entity is when you are stopping the payment.

I have a few further observations. At the EU level, we have to speed up the issuing of guidance and general licences when we are looking at the implementation of financial sanctions. I would happily talk to any EU officials about that area. I also think we could become a bit more creative about how we make the links. For example, on the 1540 side, some of the regional projects could incorporate more of the financing element. They do not really do that at the moment, which is a missed opportunity.

The EU Instrument for Stability could do more by way of model legislation, both for implementation

of asset-freezing measures but also cross-border information sharing. I say this at every venue I am at until I am blue in the face, but I think greater transparency of the export control system, by way of peer reviews, is perfectly possible and would really assist risk assessment in relation to trade finance in certain jurisdictions. The Proliferation Security Initiative (PSI) could do a bit by looking at how you could bring in disruption activities and use financial tools around them.

In conclusion, I want to say it is impossible within this short time to explain financial controls, because they are so diverse that you are covering everything. What I would say is that the proliferation community is many years behind the counter-terrorism community. Anybody who has worked in both comes into the proliferation field and says, 'My goodness.' You spend your life explaining basic things. That has to change if we want to use financing as a real counter-proliferation tool. I would happily discuss that in more detail during the panel session. Thank you.

### **Jacek Durkalec**

Good afternoon, ladies and gentlemen. It is a great pleasure for me to be here and speak during this session. I think it is a perfect time to start assessing the PSI, so that international activity can focus on interdicting the illicit transport of WMD-related material. The PSI will celebrate its 10<sup>th</sup> anniversary next year, so there is a need to start a discussion on the PSI's main accomplishments, efficiencies and future. In my presentation, after briefly outlining what I think the PSI's main successes are, I will try to outline what I think may be improved and what may be a way forward for the PSI.

Let me offer a brief outline of the PSI's main successes. The network of states that endorse the PSI's principles has grown to 98 states. Furthermore, PSI participants have contributed to strengthening international law and its frameworks. For example, they played an instrumental role in adapting the 2005 Suppression of Unlawful Acts (SUA) Protocol. Activities undertaken under the PSI framework, especially the 45 multinational exercises, have enhanced participants' willingness to conduct real-life interdiction operations. Lastly, although the exact number is uncertain, PSI interdictions are taking place and, significantly, despite some concerns, there have not been any reports of PSI interdictions in breach of international law.

However, allow me to share some of the PSI's shortcomings. Firstly, there is a scarcity of public information about the initiative. For example, this morning I was asked whether the PSI still exists, so there is a lot to be done in this area. Secondly, there are gaps in participation. Despite the relatively large number of PSI participants, gaps in participation remain a concern. Non-participants in the PSI include several states that play an important role in international trade or control important international shipping or transit routes. One critical gap is of course in Asia, as China, Malaysia and Indonesia are not participants in the PSI. It is important to note that the lack of the EU's formal involvement in the PSI could be perceived as decreasing its effectiveness. However, this issue is very controversial. Maybe it will be part of the discussion during this session.

Thirdly, PSI activities could be improved by strengthening the civil law enforcement aspect of PSI

exercises. Since the inception of the PSI, the exercise programme has evolved. Scenarios have been more sophisticated and of course involve the participation of appropriate civilian authorities. Nevertheless, despite this evolution, the majority of PSI exercises have very often retained a significant and high-profile military dimension. For example, in previous years, common practice was that PSI exercises were included in regular multinational military exercises. There is also a worrying trend that the number of PSI exercises, in general, have been decreasing. For example, in 2011, only one exercise took place. The last exercise organised by a European country took place in 2008, and the last exercise organised by a European member of the Operation Experts Group (OEG), the PSI steering committee, took place in 2006.

My fourth point is that the PSI seems to lack a regular mechanism to share information, knowledge and experience between the OEG members and other PSI endorsees. Exercises, workshops and regional OEG meetings that could enable this exchange have had a very irregular and relatively rare character. There have not been any long-term programmes aimed at increasing the interdiction capabilities of these states. Meanwhile, sustained capacity-building activities seem to be of crucial importance, as proliferators like Iran and North Korea keep on upgrading their methods of circumventing UN Security Council resolutions.

Let me now speak about what I think may be a way forward for the PSI. In recent years, many ideas have been proposed for how the PSI could be strengthened. These efforts seem, to a large extent, to follow US President Barack Obama's goal of changing the PSI into an enduring international institution. One of the proposed paths for enhancing the PSI is to adopt a more structured mechanism for the coordination of PSI activities and planning. Included among the proposed solutions have been the establishment, over time, of a rotating chairmanship of the OEG meetings and the establishment of a focal point. Yet still there is uncertainty over whether OEG members will agree to a more structured mechanism for coordinating activities.

Another instrument that could revitalise the PSI is the critical interdiction capabilities and procedure effort, in short Critical Capabilities and Practices (CCP). The basic idea behind CCP is to address deficiencies in PSI outreach and capacity-building efforts. As part of this effort, OEG members, on a voluntary basis, will help other states to develop or further strengthen their capacities to interdict illicit trafficking. In my view, the implementation of CCP could address the problem of a lack of long-term, result-orientated capacity-building programmes. The tools that would be developed as a part of CCP could also be used to assist states in developing their interdiction capabilities – states which, for different reasons, will not endorse PSI principles.

My final point is that addressing the deficiencies in the PSI would enable its participants to more effectively address a growing number of proliferation challenges. PSI participants should undertake efforts to further extend PSI participation, establish regular capacity-building efforts and transform the PSI into a tighter network of civil law enforcement officers. If such efforts were not to be taken,

there would be a risk that PSI participants may lose ground to potential proliferators, who will keep on improving and upgrading their methods. Thank you.

### **Aaron Dunne**

Good afternoon. The original question differed somewhat to what is on the presentation you have and what I am going to speak about. I reformulated the question and entitled it, 'Penalties: effective, proportionate and dissuasive operational considerations'. This was as a result of the original question not being very clear; it spoke about sanctions, when actually the intention was penalties. In my discussion with organisers, they also wanted me to focus on the operational considerations.

The quotation 'effective, proportionate and dissuasive' is taken from Council Regulation 428. Regulation 428/2009 is setting up a community regime for the control of exports, transfer, brokering and transit of dual-use goods. I should know that by heart, because I was doing it for many years in the UK. There are two references in the legislation, in both cases relating to penalties – just penalties, I should point out.

I should make very clear to begin with that I am speaking just about the penalties and just about the effective, proportionate and dissuasive elements of penalties, and not about the Regulation as a whole, which I think is very good. It is, in many ways, the global standard. Please do not treat the conclusions and what I have to say as reflective of the whole regulation. They certainly are not. I should say also that, for a detailed analysis of the Regulation, I would point you towards a very excellent piece of work by Professor [Quentin] Michel, who I thought might be here but is not in the audience. This looks in detail at every single article of the Regulation and has some annexes to it as well, which are very useful. There is no non-proliferation paper related to this, but there will be.

Dr [Sibylle] Bauer will be writing a paper that will look at some of these issues and some of the wider issues associated with this Regulation. The reason there is no paper is a bureaucratic mix-up. Let me try to deconstruct what is meant in the Regulation. I have created some definitional questions. Really I am asking in relation to the term 'effective' whether they accomplish the intended objectives. Other than being proportionate and dissuasive, what are the objectives? It is not clear at all. In terms of 'proportionate', there are three elements: whether they are reflective of the severity of the offence, if they are comparable to national penalties for similar offences and whether they are comparable to penalties applied by other member states. As to the 'dissuasive' element, this is more of a psychological issue. Do they successfully advise or persuade against a particular action? Those are my definitional questions.

Before I go on to 'dissuasive', which I think is the least clear element, can I refer you to a paper? It will be published on the SIPRI website and I will happily email it to anyone. This is a model of offender behaviour in terms of strategic trade controls. Offences range from ignorance or accidents all the way to fraud – the determined proliferators. As you move along offender behaviour, you

should expect the penalty to increase. There is a range of other factors when it comes to the severity of the offence. I may look at those if I have time, but ultimately you start from offender behaviour. I have given the number of breaches or offences in relation to offender behaviour. In a country that generally has good compliance, that red line is essentially what you find, in terms of the number of breaches. This should not come as any surprise, as you will always have a degree of ignorant people who are doing things that they simply do not know are wrong. Then you have those who are mistaking mistakes and administrative errors. There are also very small numbers of determined proliferators – really very small numbers. As an example for a particular type of licence, you can talk about 70 offences of ignorance per year. For the careless and reckless, it is 170-200 maybe. For the fraudulent, you are talking single figures. In countries that have low levels of compliance or significant levels of ignorance, because there is no system for trying to get people to comply, you will have far more at the ignorant end of the spectrum.

Coming back to ‘dissuasive’, the determined proliferators are motivated by financial reward. In every case that I have dealt with over a number of years, that was the motivator. Ideology never came into it. I should point that out. You should, therefore, view this as an economic crime. There is a lot of literature on economic crimes and motivations, and how you can dissuade these inclinations is worth exploring.

The others generally want to comply. Sometimes they do not because it is too difficult or they do not have time. These are the people for whom, in terms of your strategy for getting them to comply, you want to make it as easy and cheap as possible. You want to minimise the cost. These people are dissuaded by a penalty. It is not the proliferators at the far right, for whom penalty is never a factor. Those who want to or would comply can be persuaded to be more compliant, essentially. Penalties do promote compliance, but only in certain areas.

What are the key considerations for the proliferators at the other end of the spectrum? Apart from financial gain, there are two. Ease of offending is contingent upon the effectiveness of the controls and has nothing to do with the penalty. Another is the likelihood of being caught. These are the two factors that go into the cost/benefit analysis that determined proliferators will undertake. I can assure you that, when we have had these people in court, they never have any idea of what the penalty might be. When they are informed of the possible maximum penalties, they probably wish they had, but I do not think it would have made any difference.

I need to look at some of the other issues and considerations. When we are exploring these questions, we need to look at the legislative use. It is not just 428 that is applied; in most cases, customs and licence legislation will be used. You can even use money-laundering, tax evasion and terrorism. You will use whatever you can to make the most likely conviction. The key is the spectrum of penalties. A penalty is not just relating to a criminal offence and is a sentence of a crime or imprisonment. It will start with detaining the goods – the cost of detaining goods can be huge for the exporter – all the way through to prosecution. I have given a long list of those. In most cases, all but the last is usually

an administrative policy-related penalty, so it does not go anywhere near a court. It may go near a tribunal, if they question or challenge it.

Let me carry on to the conclusions. Are the penalties effective? Do they accomplish the intended objectives? They possibly do in some areas, where the objectives are defined. Where they are not, we do not know. Are the penalties proportionate? In terms of the severity of the offence, they are not always. It depends very much on the intention and knowledge of the offender. Try proving that in court. When you end up with a penalty, it often does not reflect the seriousness of the offence. Are they comparable to national penalties? They are not always, but generally they are. Are they comparable to the penalties applied by other member states? They are definitely not. The work that Professor Michel did showed that the maximum penalties in the EU ranged from one to 15 years. Nobody can say that is proportionate. Of course, his work focused on 428 and did not consider some of the other laws and regulations that can be applied to these cases. Are the penalties dissuasive? They are for those who want to comply and not for those who are determined to proliferate.

I also have a list of issues and recommendations, which I will leave for you to read. These are related to the conclusions and thinking further ahead. Member states should publish details of offences and associated penalties for all offences directly or indirectly related to 428. This is not done, and I find it absurd that it is not. There should be harmonisation of maximum terms and application. Variance is far too great, which is possibly an issue for the Dual-Use Coordination Group. The Dual-Use Coordination Group should include licensing and enforcement representatives from each member state, which it does not currently. Nobody has explained to me why. The ultimate objective of 428, and therefore the measure of its effectiveness, are achieving certain levels of national compliance and the hit rates associated with non-compliance, yet member states do not publish this information, nor does the Dual-Use Coordination Group request such information. In fact, I am only aware of one or two member states that go even part way to doing so. Thank you.

### **Vicente Garrido Rebolledo**

Thank you very much to everyone.

### **Questions and Answers**

#### **Mark Hibbs, Senior Associate, Nuclear Policy Program, Carnegie Endowment for International Peace**

Justine, you appear, if I understood you correctly, to make a distinction between sanctions that are intended to support diplomacy and targeted actions against a proliferator. Aaron broadly raised the issue in his presentation of dual-use good control. The question I have for you both is: to what extent are we living in an environment where there is, in the dual-use area, a lack of focus on what the intention of the sanction or penalty is?

Those of you who may know some of my published work may recently have seen a piece I did on the

control of some dual-use chemicals that went to Iran. In this particular case, we are talking about a chemical substance that has a nuclear use, which is clearly a signature for intent in the intelligence world. There is no question about that, but the nuclear use is 3% of the world's global use of this commodity. The reason I raise this is that it is not clear to me, from the history of enforcement of sanctions against Iran in this area over about 20 years, whether the sanction is intended to capture activities by one proliferator or to penalise the economy of Iran. These are substances that have uses in the petroleum sector, petrochemicals and so on.

In the research I recently did on this particular commodity, anhydrous hydrogen fluoride, I was not satisfied that the people who were applying the controls themselves were on the same page, in every case, about what it was they were trying to do. Were they trying to stop Iran's enrichment programme from obtaining a precursor chemical for making UF<sub>4</sub>, or were they trying to penalise the petroleum and petrochemical industry of Iran? It was not clear to me which it was. The question I have for you is whether that is significant, and whether an absence of consensus on this in fact makes the control regime vulnerable to outside attack and criticism. Does it make it less effective?

**Dr Liviu Muresan, Executive President, EURISC Foundation**

Ms Walker, you have some experience with boots on the ground, including in Nigeria, so let us go straight ahead. I wonder how we can use or rely on a financial banking system that is broken at this moment, due to the crisis. It has huge weaknesses as an institution, as a system and also as people. Please tell us how we can work with the criminality inside the financial banking system.

Secondly, our colleague Aaron Dunne is here, who also has some experience from Iran. I wonder how we can have efficient sanctions or operations within such a complicated game between the interests of states and institutions. I am speaking about the transfer of money from Iran to India, exports, Turkish banks and so on – this spaghetti ball of institutions and interests. Do you think this could be efficient in the sanctions from the EU, as we declared, or are we trying to be first but in the wrong place, at the wrong time, with sanctions against Iran?

**Dr Elena Sokova, Executive Director, Vienna Center for Disarmament and Non-Proliferation**

I wanted to second the comment made by Mr Dunne about the need to have prosecution results published. That has been one of the issues that arose, not only in the expert control-related field or commodity transfers, but also related to the illicit trafficking of materials as well. Publication is one of the areas where we share a common problem almost everywhere.

My question would actually be to Ms Walker. You noted that the non-proliferation community is far behind the anti-terrorism community in dealing with some of these proliferation-related crimes. I was wondering if you could elaborate further on what specific lessons we need to learn and where we can start that learning.

**Riccardo Alcaro, Researcher, Istituto Affari Internazionali**

My question is related to the question the first gentleman asked. However, it is much simpler than that. I was just wondering whether any of you would be able to make a credible assessment of whether the measures you focus on have had any sort of impact on the development of Iran's nuclear programme, in terms of Iran's ability to advance its nuclear knowledge, capacities and capabilities, or in terms of impacting on their nuclear policy and their decisions to go forward on a particular path or not.

**Prof. Michael Brzoska, Director, Institute for Peace Research and Security Policy, University of Hamburg**

I have two questions for Justine Walker. Referring to the first, instead of the tools you mentioned related to due diligence, in your experience and the view of the members of the organisation, how efficient are specialist transaction reports and these kinds of instruments in this field? Related to that to some extent, I was a little surprised you said there was such a difference between counter-terrorism and non-proliferation-related instruments. My understanding is that assessments by the Financial Action Task Force (FATF) and other organisations, which look at how particular countries implement recommendations, look at the whole field. What kind of effect do you think these assessments have and are they worth the effort?

The second question is to Jacek Durkalec on the PSI. I was not clear from your presentation to what extent the interceptions you mentioned were multilateral activities. To what extent, as a multilateral initiative, is the PSI doing more than is done through bilateral cooperation, intelligence and other organisations? Are these exercises reflected in any of the actual interceptions that have taken place?

**Dr Christopher Watson, Chairman, British Pugwash Group**

I have been thoroughly confused by the discussion so far. Looking at the title – combating proliferation-related crimes – I assumed that this was all going to be about effective measures to stop proliferation, whereas all we have been hearing about is what to do when the measures that are in place have failed. It is a case of closing the stable door after the horse has bolted. I am sure that within this audience there are lots of people who know a great deal about the steps that are effective. In particular, there is the International Atomic Energy Agency (IAEA), which publishes a lot of information about illicit trafficking in nuclear materials. The good news is that almost in no case has the trafficking been on a scale that would have made it possible to make even one nuclear weapon. Nevertheless, the number of such trafficking events has been increasing dramatically over the years. That suggests that whatever measures are in place are not very effective. We are still reassured by the IAEA that their database only includes those events that are reported by member states. They are pretty sure that the really exciting events are not as reported, for one reason or another. I reiterate that what we really want is information about how we achieve effective prevention of this crime, not its punishment.

However, if it has happened and you are then going to punish it, surely the punishment has to relate to the crime. If in this case the crime leads to the creation of the capability for centrifugal separation

of uranium, surely that is a much larger crime than merely the economic benefits to whoever sold the goods.

**Salomé Zourabichvili, Coordinator, UN Panel of Experts Established Pursuant to Security Council Resolution 1929**

I was very interested in what was mentioned. More than a question, this is a plea for this information that is lying with banking associations and elsewhere on the offences committed. The EU is doing a lot and has a lot, which is what prevents proliferation. We do not know as long as it has not happened. There is information about networks and the violations that are occurring and being punished, but it does not go anywhere. Even the small panel that exists for the UN, which does not have much means but still exists, does not exist within the EU. There would be a big profit from exchanging the information that we have in all these different sectors, especially in the financing field. We also know that next week the FATF is going to adopt its new standards, including on proliferation. How will that help? Do you think it will allow us to have a new step in this fight against proliferation and its financing?

**Ruvarna Naidoo, Office of the Chair, Security Council Committee Established Pursuant to Resolution 1540**

Thank you to all the panellists. Since someone mentioned preventative measures, I feel compelled to speak. I am here on behalf to the Chair of the 1540 Committee of the Security Council. Many of you will know that the Security Council adopted Resolution 1540 to prevent non-state actors from gaining access to materials that could be used in the development of chemical, biological and nuclear weapons or their means of delivery. We found, after several tries at extending the Resolution, that we perhaps needed a longer term extension and so, last year, we extended the mandate of the Committee for ten years, until 2021. In our report to the Council last year, we noted that, based on the data that we had compiled, most states had taken measures to prohibit in the chemical weapons area rather than in the nuclear or biological weapons area. We also found that many states may have to take further measures to prohibit non-state actors from transporting nuclear, chemical or biological weapons and their means of delivery.

What we do in the 1540 Committee is engage actively with states and relevant international, regional and sub-regional organisations to promote, in accordance with Resolution 1977, the sharing of experiences, lessons learned and effective practices in the areas covered by Resolution 1540, drawing in particular on information provided by states as well as examples of successful assistance. In that regard, perhaps we could be of assistance to the sanctions regime.

**Valeri Valchanov, Seconded National Expert, European External Action Service**

Regarding the last few questions or topics that have been discussed, I would like to mention the security of the plans for stockpiles of any kind of WMD. I know that it is impossible to cover all the issues in this matter but, in any case, I want to underline whether, as I heard from a previous member of the audience, there is such an initiative at the international level. I have not heard that mentioned

until now. Have those nuclear countries implemented, or are they implementing at a certain level, security measures for avoiding the stealing of materials, as we witnessed a week ago in Egypt from their power plant that is still under construction? I would say that the threat of a nuclear state using a nuclear weapon is not as possible as the likely use of a dirty bomb or something like that.

**Egle Murauskaite, Student, Sciences Po, Paris**

I had a more technical question about whether there is such information available. As Ms Walker noted, it is rather difficult to have a precise definition of what is a government-associated enterprise. If such information is available, is there a distinguishable trend or pattern showing whether there is more success in interdiction when the addressee of trafficking is a government-associated enterprise rather than private actors?

**Frédéric Journès, Deputy Director, Strategic, Security and Disarmament Affairs, Ministry of Foreign and European Affairs, France**

I have a question for Ms Walker. I was very interested in your final remark about the different levels of professionalism and efficiency in proliferation and terrorism financing. My question is, as a public servant, what are we missing that would make it as efficient? Is it an international legal framework or domestic legal regulations? Are we missing the teams? Could we solve this by extending the mandate of the counter-terrorist financial teams? What would be your advice?

**Vicente Garrido Rebolledo**

I would like to add one more comment before giving the floor to the speakers. I agree with one comment that was made relating to the title of this panel, 'combating proliferation-related crimes'. The key word is 'crime'. To me it is clear that we are trying to define efforts to prosecute black-market proliferation. Inside the EU, the question of the crime of smuggling is not clear. I know the Spanish case very well, where we do not have a crime of proliferation. We have cases of smuggling of sensitive products, materials and technologies. The question for all of you is first to clearly clarify the crime of smuggling. Once this is done, we can establish a juridical framework to prosecute these kinds of activities. I do not want to cite the crime of smuggling from the very beginning until there is agreement between EU member states.

**Justine Walker**

Thank you for all the questions. The first was around the impact and targeting of sanctions. That is a whole session in itself. Sanctions linked to diplomatic pressure become less targeted. That is something where you can look at the unintended consequences by the impact on legal trade. It is something with which we constantly struggle, when we see legitimate financial transactions and how you process them. Nobody really wants to handle Iranian financial transactions. That has a really big impact. What does that mean to political support in-country? Others are more equipped than I to speak about this, so I will not. All I will reserve to say is that something with which we struggle on the financial side is the scope of a particular sanction. Actually, they are left vague a lot of the time because governments want you to go beyond that. I will not say too much about that.

In relation to the financial system being broken, let me respond in relation to proliferation financing. Every single transaction that transits through the international system, whether a SWIFT or other type of payment, is screened. There are millions of transactions screened every day. Many of the automated systems do not engage human intervention. For example, if you have the right information for a payment, that comes up. The human input is in saying whether this is the person or not. A lot of financial institutions would say they are very concerned about decisions that staff make.

We have seen some name stripping in relation to Iran, and some big fines against financial institutions because they were removing Iranian links so the money could process through the system. That was mostly to evade US, not UN, sanctions. This is about unilateral sanctions becoming global, which is a discussion in itself.

What I would say is that awareness of sanctions in global institutions has increased tremendously over the past five years. That is one of the reasons we are seeing such huge displacement now. The routings of payments are going through types of countries, accounts and payment mechanisms that we would never have seen five years ago. This goes back to Christopher Watson's point about blocking proliferation financing, because there are lots of ways you can do that if you know the account. There are many things you can do that may not block it but are more disruptive. When you start to lose visibility it becomes more complicated, which is the stage we are at, at the moment. We are starting to lose visibility into different parts of the world, where we may not have as much oversight of the actual financial transaction.

Regarding the issue to do with the proliferation and terrorist financing communities, can I be clear that I am not questioning the professionalism of the counter-proliferation community? What I am saying is that their familiarity with using financial tools is not as high. Part of the reason is that we have been quite focused on sanctions linked to diplomatic pressure, blocking a whole country out of the financial system. If we are talking about looking at individual entities, I spend a lot of time speaking to various proliferation experts from certain countries and I think they are at the early stage of looking at how to incorporate a financial investigation into their counter-proliferation regime. Only a handful of countries do that well and sufficiently. Many more do it for terrorist financing. Some of the reasons for that, as the gentleman from the French Ministry raised, are to do with the international legal framework and that, for counter-terrorism financing, you predominantly look much more at non-state actors. When you start to bring in inter-state actors, it becomes more complex and political. There are different dynamics there.

On the question around how effective suspicious transaction reporting is, I have mixed views. The requirement came in a couple years ago within the EU. That was a bolt-on to quite a well-established regime, but it did not have the same legal framework. For example, it was: 'If you think an Iranian financial institution is involved in proliferation activity, submit a suspicious transaction report.' It did not have the same type of legal framework that would allow for feedback, action and

information-sharing. I spent a long time looking at this and think that not many people in the EU actually realise how weak the legal foundation of those measures was. If I were a financial institution, I would be very careful about how I submitted that financial transaction report. I would submit it on the grounds of counter-terrorist rather than proliferation financing; then, if it ever went to investigation, you could use that for cross-border cooperation.

In relation to the FATF extension, let us be clear that it is quite limited. We are not looking at 40+9 [Regulations] suddenly becoming anti-money-laundering, counter-terrorist financing and proliferation financing. We are looking at a new recommendation implementing fairly limited UN sanctions obligations. That will be good and is very welcome, but it is a million miles away from what some delegations would rather it was, and is a lot further than some other delegations would prefer. Let us not over-hype it. The FATF work has been great, because we are using money-laundering and counter-terrorist financing tools for proliferation purposes, but this is not an automatic extension of the FATF standards.

### **Jacek Durkalec**

I will answer two questions that were related to the PSI. The first was how the PSI, together with other counter-proliferation mechanisms, could impact Iranian behaviour. The role of the PSI is not just to dissuade other states from engaging in illicit trafficking. The PSI will not do this. The dissuasion effect of the PSI is rather limited. What is important is that the PSI makes such illicit trafficking more difficult. For example, Iran and North Korea have to find new ways to circumvent mechanisms or exploit gaps in the international response to proliferation. The problem is there is not a lot of data available about PSI interdiction efforts. There are only a couple of examples in which some material that was transferred to Iran or came from Iran was interdicted. That is a problem of the PSI in general.

The second question was about the value-added from the PSI in comparison with bilateral intelligence-sharing mechanisms and whether the PSI could provide some additional value. I think it can, because bilateral cooperation or intelligence-sharing is not enough to be effective in interdicting illicit trafficking. It is important to create as large and robust a network as possible, and bilateral cooperation is not enough.

The PSI is not only about intelligence sharing. That is very important, but the crucial thing is that the PSI helps states to take action if they acquire some intelligence information about some attempts to transfer WMD-related material. The PSI, because of its workshops, exercises and so on, can provide answers to states about what to do. The activities taken as part of this initiative help to resolve some operational and legal questions, but there is still a lot to do. That is why, in my presentation, I tried to underscore the need for the PSI to concentrate more on capacity-building efforts. Without them, participant states might no longer be interested in it in the longer term.

### **Aaron Dunne**

It is useful to have two speakers feeding back before me, because then I can identify what does not need repeating and add instead. There are two points I would like to follow up on, and they are on the PSI and the FATF. There are linkages between them. I wrote a section about this in the SIPRI yearbook, which you might want to buy, which champions the FATF model. There are problems with the FATF, but it is hugely effective. It is a fantastic model that could be applied to other areas. On to the PSI, interdiction was not something that started with the initiative. It had been done for many years. Most of the 21 OEG members were doing that before the PSI. In fact, not once did the activities that the UK undertook throughout the time that I was with HM Revenue and Customs, which is the PSI enforcement authority, make reference to the PSI. We were doing this for many years before and this was just normal, day-to-day activity. What would happen is, a month before every OEG, we would sit down and come up with a case study for the PSI. We would see that we had many, but never once in that year had we referred to these as PSI interdictions.

**Mark Hibbs**

Why did you not? Was it political?

**Aaron Dunne**

No, it was just that the individuals undertaking this activity had been doing it before the PSI. It was normal activity to them, so why rename it? Maybe we should discuss this outside. You have to differentiate between export controls and what are essentially prohibitions and sanctions, and treat them very differently. There are often unilateral problems, as well. If an export control is universally agreed, there is no problem. The problems occur when it is a unilateral control or prohibition. Your case is not uncommon. I often had cases where, not now but then, certain goods could be exported from the UK to Iran, but not from the US. Some UK companies were sourcing these goods from the US, and then they were subsequently being bought by Iran. There was no UK offence. It is problematic, yes.

Justine has touched on sanctions, and their effectiveness and political nature. They are political tools. They are politically driven. In the UK, enforcement authorities are consulted when it comes to considering what measures should be in place, and often I would say, 'This is unenforceable,' or 'You should consider this.' Sometimes we were listened to; sometimes, we were not. Seldom did what we say end up in the actual resolution, because the driver for having that resolution is political. It is not whether it is effective at the frontier, in the bank or wherever. Your role, as an enforcement authority, is to do the best you can with the sanctions you are given. How effective they are and their implementation is very much down to you. There are policy decisions that have to be made. Although something may sometimes seem unenforceable, you can sometimes get around it by some kind of policy magic. That is probably the best way to describe it.

Yes, there certainly is an impact on programmes, which I would say is very big, but it is only a delay. One of the key impacts in terms of goods is the cost. A proliferator or somebody trying to procure components or goods for a WMD programme has to pay above market rates for the goods and then,

often, has to pay a lot more to have them transported via three or four different diversionary destinations. We know from exporters who are proliferators that they will charge twice what they paid for it. Yes, the cost is important, as are the timescales for sourcing these goods. It does not just create a problem in terms of how long it takes for you to get a certain commodity. That has an impact on the programme. If it takes twice as long to get the goods, the programme will take twice as long to come to fruition. It does have an impact. There are others but we do not have time for them.

### **Justine Walker**

I wanted to add something on suspicious transaction reporting. We have seen lots of suspicious transaction reports where the reason for reporting has been related to concerns about fraud, corruption or other types of criminality. Actually, there may be a link with a proliferation entity of concern. We have seen and still see a number of those reports. The difficulty is when you are actually asking anybody to look at the use of a dual-use good going through the financial system, even if they have the information on that good, and whether they are able to tell the intended end purpose. Submitting a suspicious transaction report is very limited.

I also wanted to say that one of the issues to do with the difference between counter-terrorism and proliferation is that what you see in many countries around counter-terrorism is that, every time there is a terrorist act, there is some type of associated financial investigation. That is not the same within the proliferation community and one of the reasons I think there is a difference. That exploitation of the financial footprint, which shows you networks, associations and cross-border activity, is not utilised in the same way.

I wanted to say something that comes back to the point about blocking proliferation financing. For some of our institutions, when one of them has blocked a financial transaction on the grounds of either a sanction violation or a proliferation, and the money is not processed – it is not frozen but just does not go through – you quite often see a similar amount of money being processed through a slightly different way. We have been trying to look at the fields we can use better to actually see how that sum is being re-presented for payment. Initially, we used to run the address or the telephone number. What you would say is that somebody would just change the name, a letter in the name or a capital to a lowercase letter, just so that it would get through the automated screening. The filters in the automated screening are now becoming more sophisticated and starting to pick that up. We are seeing other types of things, so now look at similar amounts going through in similar types of ways. It is quite sophisticated and I do not want to give it all away, but there are lots of things you can do. We are picking up concerted efforts to make payments go through the system.

### **Aaron Dunne**

Justine is correct, but I would like to be more nuanced on the investigation side. For proliferation offences, the first thing an investigator will do is to look at the financing. It is not that this is not done. Often, a case is constructed around the financing of that proliferation. It is not that this is not

happening.

The key difference between a terrorism and proliferation offence is, for terrorism, there could be an atrocity tomorrow. When it comes to securing investigative and other resources to undertake an investigation, and properly follow a network and all the associations, you can secure that and that is done. For a proliferation offence, you will not have any additional help than the one investigator pursuing that proliferation offence. That is the difference. It is not that it is not done; it is the degree to which it is done. That is solely down to the nature of the imminent threat, in terms of terrorism, and then the amount of resources you can subsequently secure to investigate.

### **Vicente Garrido Rebolledo**

I will finish with a brief summary of this session, pulling together the three interventions closing the questions and debate. We began with Justine saying there is a difficulty in financial services catching proliferation-related cases. We have a lack of data. The transactions are made out of the formal mechanisms of the banking system. How do we put this all together at the end? I would conclude by saying that any effort to prosecute proliferation-related crimes, smuggling and dual-use trade has mainly four fronts. The first is government, including financial services. We have not spoken much about the role of intelligence services in this sense, but I think this is something we should also consider.

The lack of harmonisation and strong export control laws has also been stated by Aaron. I had some notes on the legislative efforts, the penalties and the offences. The question is not the penalties but the definition of the offences. Finally there is the added value of the PSI and the activities that could be improved by strengthening law enforcement, together with critical interdiction capabilities and efforts. I have tried to bring all fronts together, but we do not have the answer. There is a broad field for continuing discussion of this issue. Thank you very much.