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# **Building a Weapons of Mass Destruction Free Zone in the Middle East**

## **Global Non-Proliferation Regimes and Regional Experiences**

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## FOREWORD

The Middle East, for over half a century, has been confronted with an irresolvable dilemma. One of the major security concerns is the threat posed by the existence of weapons of mass destruction in this volatile region. The proposals to create a zone free of nuclear weapons and other Weapons of Mass Destruction (WMD) in the Middle East were important attempts at tackling these concerns on a regional basis. These proposals are not new. Egypt and Iran first proposed a Nuclear-Weapon-Free Zone (NWFZ) in 1974 to the First Committee of the UN General Assembly (UNGA). In April 1990 Egypt took the idea a step further, proposing the creation of a Weapons of Mass Destruction Free Zone (WMDFZ) in the Middle East to include nuclear, chemical and biological weapons.

Although it has been thirty years since the Egyptian and Iranian proposal, the proliferation of nuclear, chemical and biological weapons is still a very real concern in the region. Efforts to create a WMDFZ, such as the Security Council Resolution 687 (1991) to eliminate Iraq's WMD programmes as a first step "towards the goal of establishing in the Middle East a zone free from WMD" and the 1995 NPT Review and Extension Conference decision to pursue a nuclear free zone in the region have not been sustained. The result? The Middle East seems no closer to realising the aims of a WMDFZ than it was thirty years ago nor is the region any safer.

Although all twenty-two Arab states have joined the Non-proliferation Treaty (NPT), yet a number of Arab states have not signed other global treaties such as the Chemical Weapons Convention (CWC) or the Biological and Toxin Weapons Convention (BTWC), or the Comprehensive Test Ban Treaty (CTBT). On the other hand, Israel is the only state in the region that has yet to join the NPT. Israel has not yet ratified the CWC nor joined the BTWC and has yet to ratify the CTBT. Israel has not overtly demonstrated a nuclear capability, preferring a policy of ambiguity and opacity, which has caused a lot of speculation over the extent of its nuclear capabilities and weapons development programmes.

Recent developments in the region give mixed signals. Revelations of the leakage of nuclear technology to countries in the region from the

Pakistan/A Q Khan network have not served to allay the proliferation concerns. However, Libya's decision to declare and relinquish its clandestine WMD programmes is a step forward. The steps taken to halt Iranian and Libyan nuclear programmes, though a significant step in the right direction, should not be reason for the international community and states in the region to rest on their laurels. There is still a great deal of work to be done in bringing proposals for a Middle East WMDFZ to fruition in order that peace and security prevail.

It is evident that Arab and Israeli security requirements and threat perceptions remain at opposing ends. This deep mistrust has only lent itself to the self-perpetuating cycle of WMD proliferation, hence creating more insecurity. In high-conflict environments, it is necessary to lay the foundation for regional security and the gradual transition from zero-sum attitudes to cooperative win-win frameworks, which would serve shared interests in stability and survival. In this process, the development and implementation of a wide range of confidence-building measures play important roles.

In response to the need for regional arms control and disarmament and on the eve of the US-led attack on Iraq in 2003, the League of Arab States (LAS) and the United Nations Institute for Disarmament Research (UNIDIR) held a conference in Cairo on *"Building a WMD Free Zone in the Middle East: Global Non-Proliferation Regimes and Regional Experiences"*.

This volume is an edited collection of the papers presented at the conference. It is our hope that the papers will advance the prospects for peace and security in the Middle East by bringing the issue to the attention of a wider audience. We should particularly like to thank the authors of these papers for their contribution. Special thanks also go to Anita Blétry, Christophe Carle, Julie French, Vanessa Martin and Kerry Maze from UNIDIR and Fadi Achaia, Mohammed Sobih and Mai Abo-Hashima from the LAS for their efforts in bringing this publication to fruition.

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In May 1993, the Member States of the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL) elected Enrique Román-Morey Secretary-General for a three-year term (1994-1997). In an unprecedented move for the Agency, he was re-elected for an additional term (1998-2001). The Treaty of Tlatelolco enacted the first Nuclear-Weapon-Free Zone in a largely populated area of the world.

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## ACRONYMS

ABACC	Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials
ABM	Anti-Ballistic Missile
ACRS	Arms Control and Regional Security
ASEAN	Association of South-East Asian Nations
BTWC	Biological and Toxin Weapons Convention
BWC	Biological Weapons Convention
CANWFZ	Central Asian Nuclear-Weapon-Free Zone
CBM(s)	Confidence-Building Measure(s)
CD	Conference on Disarmament
CFE	Conventional Forces in Europe (Treaty)
CMC	Cooperative Monitoring Center of the Sandia National Laboratories in Albuquerque, New Mexico
CIS	Commonwealth of Independent States
CIMVS	Cooperative Integrated Monitoring and Verification System
COPREDAL	Preparatory Commission for the Denuclearization of Latin America
CTBT	Comprehensive Test Ban Treaty
CSBM(s)	Confidence- and Security-Building Measure(s)
CSCE	Conference on Security and Co-operation in Europe
CWC	Chemical Weapons Convention
DPRK	Democratic People's Republic of Korea
EEZ	Exclusive Economic Zones
EU	European Union
EURATOM	European Atomic Energy Community
GCC	Gulf Cooperation Council
IAEA	International Atomic Energy Agency
ICOC	International Code of Conduct
ICRC	International Committee of the Red Cross
INF	Intermediate-Range Nuclear Forces (Treaty)
LAS	League of Arab States
MBFR	Mutual and Balanced Force Reductions
MEACC	Middle East Agency for Accounting and Control of Nuclear Materials

MTCR	Missile Technology Control Regime
NPACD	Non-Proliferation, Arms Control and Disarmament
NPT	Non-Proliferation Treaty
NWFZ(s)	Nuclear-Weapon-Free Zone(s)
NWS	Nuclear-Weapon States
NNWS	Non-Nuclear-Weapon States
OAU	Organization of African Unity
OPCW	Organisation for the Prohibition of Chemical Weapons
OSCE	Organization for Security and Co-operation in Europe
PNI(s)	Presidential Nuclear Initiative(s)
PTBT	Partial Test Ban Treaty
RMA	Revolution in Military Affairs
SORT	Strategic Offensive Arms Reduction Treaty
UNMOVIC	United Nations Monitoring, Verification and Inspection Commission
UNSC	United Nations Security Council
UNSCOM	United Nations Special Commission
UNSCR	United Nations Security Council Resolution
UNSSOD	United Nations Special Session on Disarmament
VEREX	Ad Hoc Group of Governmental Experts to Identify and Examine Potential Verification Measures from a Scientific and Technical Standpoint
WMD	Weapons of Mass Destruction
WMDFZ(s)	Weapons of Mass Destruction Free Zone(s)

**Report of LAS-UNIDIR Symposium on  
Establishing a WMD Free Zone in the Middle East:  
Global Regimes and Regional Experiences**

**Cairo, 24-25 February 2003**

- First: The League of Arab States (LAS), in cooperation with the United Nations Institute for Disarmament Research (UNIDIR) convened a Symposium on *Establishing a Weapons of Mass Destruction Free Zone in the Middle East: Global Regimes and Regional Experiences* during the period 24-25 February 2003 in Cairo. Experts representing thirteen Arab states participating in the symposium, in addition to representatives of the IAEA, UN/DDA, African Union, LAS, UNIDIR and a number of specialized experts.
- Second: The participants discussed ten papers that dealt with three main themes:
1. State of the World on WMD regimes;
  2. Regional experiences in establishing NWFZs, and an assessment of their strengths and deficiencies;
  3. The requirements for and obstacles to establishing a WMDFZ in the Middle East, and its implications for regional security.
- Third: The participants strongly urged all states, international organizations and civil society organizations to redouble their efforts to revitalize progress towards peace in the Middle East and the establishment of a WMDFZ in the region, including the need for new creative approaches.
- Fourth: The participants commended LAS and UNIDIR for holding the symposium and encouraged further efforts by the organizations to investigate the technical and political aspects of establishing a WMDFZ in the Middle East.



## **CHAPTER 1**

### **STATE OF THE WORLD ON WEAPONS OF MASS DESTRUCTION CONTROL REGIMES: OVERVIEW, ASSESMENT AND USE OF A WEAPONS OF MASS DESTRUCTION FREE ZONE IN THE MIDDLE EAST**

Patricia Lewis

#### **INTRODUCTION**

The following will address the importance of arms control and disarmament, its purpose, its role in today's world and where it might be going. It will then look at the various types of weapons of mass destruction control regimes—nuclear, chemical, biological and missiles. The paper will also discuss how the weapons of mass destruction free zone (WMDFZ) fits into the global regimes, how they impact on regional security and what this might mean for the Middle East.

#### **ARMS CONTROL AND DISARMAMENT TODAY**

What is the role of arms control and disarmament in the fast changing security environment of today? The question has been asked, particularly in the United States but also elsewhere: what is the use of arms control if countries can cheat, if there is not universal adherence and if the effects of arms control constrain from making decisions that might best suit their security needs?

These are important questions. They need to be asked. We should never take for granted that what we wanted in the past and what worked in the past will be the right approach for today. We need to continually search our souls for the real reasons we are doing things and if we find them wanting, then perhaps we need to change the way we do them. On the

other hand we should not assume that because things were thought of in the past they will have no relevance for the future; disarmament might turn out to be an idea whose time has finally come.

There is a clear sea-change in the world of security and disarmament. International law, treaties and agreements, the United Nations Security Council have all been undermined from within and from without. Treaties are not adhered to by states parties, states are withdrawing from treaties, states are signing treaties and never ratifying them and some states that have not signed treaties behave as though the agreements do not exist at all.

The main purpose of arms control and disarmament seems to have been forgotten. Primarily, disarmament measures are conflict prevention measures. We are interested in arms control and disarmament because we are interested in preventing conflict, increasing security and protecting people.

Disarmament is thus a humanitarian issue. A human rights issue. At the very core of our work on disarmament is the desire to protect people and to prevent conflict. However, over the years, particularly through the Cold War, disarmament has been transformed into a cold, technical and political vehicle for states to act out their own agenda in multilateral and other forums.

During the Cold War, arms control was primarily a tool for managing the nuclear arms race and deep ideological divisions between the US and the USSR, between East and West. No matter where we were located, we were somehow all caught up in this dance macabre. Arms control in those days sought to underpin the framework of nuclear deterrence and nuclear deterrence relied on terror. It was terror of the effects of nuclear weapons that was thought to prevent war between the two belligerents. There is still a strong debate as to whether nuclear deterrence worked in the Cold War or whether the world was just incredibly lucky to have survived thus far without a nuclear conflict.

It was this world of "mutual assured destruction", "megadeaths", "ladders of escalation", "strategic versus sub-strategic", in which words and concepts masked the horrific human suffering that would have taken place if war had been pursued, that has divorced the knowledge of the effects of such weapons from the quest of how to handle them. The possible effects

were so horrific that we put them out of our minds and talked in cold, technical terms. It was a way to cope with such madness.

However, the Cold War is over. Even the post-Cold War is over—that period came to an end on 11 September 2001.

Even so tens of thousands of nuclear weapons still are deployed, many of them on an alert status, in the arsenals of the nuclear weapon states (NWS) and in the three non-NPT members and, possibly, elsewhere. Furthermore nuclear weapons are still weapons of terror.

Arms control is not an option—it is a necessity. Arms control alone cannot prevent conflict; disarmament is not a panacea. However a world without controls on such weapons is a dangerous world and a region with no controls is a dangerous region. Arms control and disarmament measures are cost-effective. They are a cheap and efficient way of building trust, of buying security, of managing conflict and preventing war. However, the instruments must have real meaning. We have to believe in them. This means that confidence is built through transparency, a secure knowledge that the treaties are working, that there is compliance from all parties and a commitment to resolving difficulties as they arise. The effective verification of arms control and disarmament treaties is fundamental to their meaning.

## **NUCLEAR WEAPONS**

There is a gamut of arms control treaties from the 1963 Partial Test Ban Treaty (PTBT) through to the 2002 Strategic Offensive Arms Reduction Treaty (SORT).

The mainstay of international efforts to control nuclear weapons is the 1968 nuclear Non-Proliferation Treaty (NPT). This is a Treaty of bargains. The first bargain is the agreement of nuclear weapon states not to transfer nuclear weapons know-how and materials but to transfer—along with other technically-advanced—civil nuclear technology in exchange for non-nuclear weapon states (NNWS) undertaking not to develop nuclear weapons. This bargain also required the NNWS to subject their facilities to inspections by the IAEA. In exchange for all of this the NWS agree to negotiate disarmament measures in good faith. This final deal—known as

Article VI—has been underscored of late at NPT review conferences and in 1995 the Treaty was extended indefinitely.

There are now only three states that have never joined the NPT: India, Israel and Pakistan. There is some legal dispute over the current status of the Democratic People's Republic of Korea (DPRK) who announced that they were leaving the NPT with immediate effect on 10 January 2003. Although they state that they have withdrawn from the NPT, others say that they have to serve out a full ninety-day period. Most NPT party members say that as the DPRK did not formally inform them, the notice to withdraw has no validity and they are still legally in the Treaty.

The NPT is under great threat from within and from without. On the inside, the discovery of a clandestine nuclear weapons programme in Iraq, following the 1991 Gulf war, severely shook the Treaty's credibility. As a result of that shock the International Atomic Energy Agency (IAEA) developed a whole new approach to the safeguards that form the basis of the Treaty verification regime and drafted the Additional Protocol, which can be voluntarily adhered to by states. A further shock to the system was the impasse in 1993 over IAEA inspections in North Korea, the subsequent removal of fuel rods and the further resolution and back to non-resolution of the situation. The current situation regarding the DPRK even further assaults the NPT. Referral to the United Nations Security Council demonstrates how this is an international concern, not a bilateral one or just a regional one. On the plus side, Brazil, Argentina and lately Cuba joining the NPT and then South Africa's renouncing of its nuclear weapons programme, all served to bolster the Treaty.

Also from within, there is the continuing failure of the NWS to adhere significantly to their commitments under Article VI. The failure to ratify the Comprehensive Test Ban Treaty (CTBT) and the renewed interest in developing new nuclear weapons reinforces the highly dangerous view that nuclear weapons are useful—even vital—for security and that no state should be without one (or two, or three...).

From the outside, the nuclear weapons tests carried out by India and Pakistan put paid to any pretence or even hope that either of those two states could be considered as NNWS and the continued silence from Israel on its nuclear weapons status and programme serves to undermine faith in the efficacy of the NPT in the Middle East and globally. However, the



repercussions of any information from Israel on this front could well negatively impact on attempts to control nuclear, chemical and biological weapons in the Middle East.

The bilateral agreements between the USA and Russia/USSR have been classic arms control in the sense that they have primarily acted to manage the arms race and arms competition between the two states. The exception to this observation is the 1987 Intermediate-Range Nuclear Forces (INF) Treaty, which did result in a true disarmament measure by eliminating an entire class of weapons. The 2002 Strategic Offensive Reduction Treaty (SORT) again reflects the current relationship between the two states. Weapons are stood down and stored rather than destroyed, there is as yet no verification of the stand-down measures and the weapons serve as a hedge should the relationship ever again sour. Indeed SORT is a de-alerting measure—perhaps a confidence-building measure—rather than a true arms control agreement.

The unilateral 1991 Presidential Nuclear Initiatives (PNIs) are also vulnerable to backtracking. Attempting to eliminate large numbers of small, easily transportable, tactical or battlefield nuclear weapons, the PNIs had no measurable stages and no verification. As a result, today there is little confidence in the measures and there is a great deal of uncertainty over the fate of some of these weapons, including rumours that some may have been stolen or sold and are now in the hands of non-state organizations.

In addition to being able to acquire nuclear weapons themselves, non-state actors could also get hold of nuclear waste materials and spread them through explosion or burning. The so-called dirty bomb scenario would spread panic and long-term disease throughout a population although such an attack would pale into insignificance compared with the use of a nuclear weapon.

## **CHEMICAL WEAPONS**

Since the signing of the Chemical Weapons Convention (CWC) in 1992 and its entry into force in 1998, and apart from the undignified removal of the Director-General of the OPCW in 2002, the world's attention had waned away from concern over chemical weapons until recently. Fears over the use of chemical weapons both by non-state

organizations and by states, should there be conflict in the Gulf again, has prompted a renewed look at the attempts to control the spectre of chemical weapons. There are many—including in the Middle East—that have not ratified either the 1925 Geneva Protocol banning the use of chemical weapons or the CWC or both. The CWC was finally negotiated after their use in the late 1980s, after the end of the Cold War and after the end of the 1991 Gulf War. What will it take for the implementation of the CWC to be taken seriously? Will repeated use of these dreadful weapons be required to again make people understand and governments act? The 1925 Geneva Protocol was agreed as a direct result of the terrible damage done by chemical weapons during World War I. The CWC prohibits the production, acquisition and deployment and thus prohibits use.

2003 sees the first Review Conference of the CWC. How will that conference cope with the use of chemical weapons should such a travesty have occurred again? What would be the fate of arms control and disarmament efforts if one of its best multilateral treaties fails to prevent the use of such poisons?

The use of chemical weapons by non-state organizations has occurred already on the Tokyo subway and the chance of something similar occurring again appears to be high.

## **BIOLOGICAL WEAPONS**

The Biological and Toxin Weapons Convention (BTWC) was signed in 1972 and entered into force in 1975. In its twenty-eight years of operation, the BTWC has had no verification measures and hence no teeth. There have been outright violations and, as a result, the cause of bio-disarmament has suffered at the hands of those who have joined the Convention and callously cheated on their promises.

The Geneva Protocol also applies to bio-weapons and so their use is prohibited through international humanitarian law. In September 2002 the International Committee of the Red Cross (ICRC) and Red Crescent put out an appeal to uphold the prohibition against use and against the production and development of bio-weapons. The last time the International Committee of the Red Cross made such a call was in 1918 and the fact that

the Committee made it at all is a strong indication of the seriousness of the current situation.

The use of bio-weapons by non-state organizations as a form of terror weapon is quite possible. The use of anthrax through the post and the discovery of Ricin production in London are two examples of the interest in such weapons by non-state actors.

## **MISSILES**

Despite their importance in the sphere of weapons of mass destruction, the control of missiles has received very little attention up until now. The USA and USSR during the Cold War limited their nuclear arsenal through treaties that, in the practical details, only dealt with the delivery systems such as missiles and bombers. On the multilateral front, however, there exists the export control arrangement between a group of states called the Missile Technology Control Regime (MTCR). This has been a controversial regime because many states feel that legitimate interests, for example in space launches, have been denied to them as a result of the MTCR.

An attempt to broaden out the ideas behind the MTCR has resulted in the International Code of Conduct (ICOC), which opened for signature late in 2002. There are still many controversial aspects to ICOC but so far there have been a significant number of signatures, although many key states have yet to sign.

In 2002 the United Nations report from a group of governmental experts laid out the issue of missiles and missile proliferation in a multilateral manner. There was no agreement on recommendations among the experts but the study is a beginning and will enable future attempts within the UN framework to address the destabilising effects of missile proliferation.

Other proposals such as the Russian idea of a global control system for missiles demand more attention and a number of seminars and conferences studying approaches to missiles, missile defences and space weaponry have been taking place around the world over the last few years in order to try to extend the thinking on the issue.

## **WEAPON-FREE ZONES**

The concept of Nuclear-Weapon-Free Zones (NWFZs) is enshrined in the NPT. The first was the Treaty of Tlatelolco and the most recent is the Treaty of Pelindaba.

NWFZs have had nothing but positive impacts on regional security. They are essentially treaties for regional stability and confidence building. The actual negotiation of such a treaty is a confidence-building measure. The process assists regional states to define themselves within the region. The security concerns of each of the states of the region are aired with those that understand the regional security issues. It can be surprising to neighbours how other states see their regional security and this in itself is educational.

Given that global treaties such as the NPT, CWC and BTWC are of interest to states for their security, it is not surprising that regional concerns should dominate many of the decisions that have been made to join global treaties. However, regional concerns also dominate decisions not to join global treaties. If the neighbour that concerns you most has not joined, what do you gain by joining? This is where regional discussions on regional agreements to eliminate WMD can be hugely important.

In fact, just the discussion alone can make a great difference. One prime example of this is the beginning of the Conventional Forces in Europe (CFE) Treaty. Before the negotiations could begin, a mandate had to be discussed and formulated. These mandate talks became a major force for change and allowed the CFE negotiations to begin later.

The CFE mandate talks were established in 1987. The group of 23 (NATO and Warsaw Pact) first met for breakfast on 23 February to elaborate a mandate (from then on known as the “mandate talks”—while some called them the “gypsy group” others called them the “breakfast negotiations”). The (dead-in-the-water) Mutual and Balanced Force Reductions (MBFR) talks continued to meet during the mandate talks. Chairing rotated among the 23 states. Meetings were business-like, friendly and frequent. They began by meeting in states’ embassies. Proponents of the process involved high-level actors early on so as to gain political interest and support. Statements were made at the secretary-of-state and the prime-ministerial/presidential levels. A sense of urgency was introduced from the beginning

so that the mandate talks could be concluded and the force reduction negotiations begin. The mandate for the CFE negotiations was adopted on 15 January 1989.

The main lesson to be learned from this process is that discussions of substance can begin before there is agreement to negotiate. Such discussions do not necessarily mean that there will be a negotiation or even a treaty in the end. However, the discussions and the attempts to formulate the mandate are vital. They are important in their own right and can make all the difference. They can be informal or a mix of informal and formal depending on the situation.

Why not again consider being inspired by the Helsinki Process for the Middle East? This is not a new suggestion but perhaps it is one worth revisiting. It could be a "Barcelona Plus" initiative and it could include looking at how a WMDFZ could have true meaning in the Middle East. The 1975 Helsinki Accords were arrived at through a process of diplomatic meetings that began in 1973. The Accords were originally signed by 35 states, a number now expanded to 55. The Accords resulted in a number of agreements on general principles divided into three "baskets":

***Basket I*** contained a declaration of principles guiding relations between participating states, including on human rights and fundamental freedoms. It also includes a section on confidence-building measures and other aspects of security and disarmament aimed at increasing military transparency.

***Basket II*** covered economic, scientific, technological and environmental cooperation, migrant labour, vocational training and the promotion of tourism.

***Basket III*** was devoted to cooperation in humanitarian and other fields: freer movement of people; human contacts, including family reunification and visits; freedom of information, including working conditions for journalists; and cultural and educational exchanges.

Eventually the 1986 Stockholm Accord agreed on military confidence-building measures, which led directly to the 1990 CFE Treaty and the Paris and Vienna Documents. The Conference on Security and Co-operation in

Europe was then transformed into the Organization for Security and Co-operation in Europe (OSCE).

Perhaps the key lessons to learn is that the process was at least as important as the outcomes. This is something that the Association of South-East Asian Nations (ASEAN) Regional Forum also promotes. The process of dialogue, which is open-ended and demands no commitment to outcome, can in some situations be enough. It is then through that process that further commitments can be made.

Perhaps now the international community will be able to explore options for revitalizing the process of arms control in the Middle East. This is not an easy time in which to be having these discussions but it is a critical time to be having them. We must do so with a mind to moving on from here. For we are nowhere else.

## **CHAPTER 2**

### **TOWARDS A SUCCESSFUL 2005 NPT REVIEW CONFERENCE: ISSUES OF UNIVERSALITY, COMPLIANCE AND THE IMPLEMENTATION OF THE MIDDLE EAST RESOLUTION**

Hannelore Hoppe\*

#### **INTRODUCTION**

The preparatory process for the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons—the seventh review conference—commenced in April 2002 in New York, as agreed at the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons and pursuant to General Assembly resolution 56/24 O of 29 November 2001.

Among the first decisions taken by the Preparatory Committee was the agreement to convene the 2005 Review Conference from 2 to 27 May 2005 in New York.

At least two more sessions of the Preparatory Committee will be held to ensure that the Conference is being well prepared both in terms of the substantive issues related to the implementation of the provisions of the Treaty as well as the required organizational and procedural arrangements.

#### **BACKGROUND**

In the 1960s it was predicted that there could be 25-30 nuclear weapon states by the end of the 1970s. In response to those predictions, the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) was negotiated which draws a clear line against nuclear proliferation and

establishes an international legal norm acting as a bulwark against nuclear proliferation.

Since its entry into force in March 1970, membership to the Treaty has steadily grown to presently 188 states parties. The NPT is the most widely adhered to multilateral non-proliferation and disarmament agreement. The states, which have opted to remain outside the Treaty regime, are India, Israel and Pakistan.

The NPT is not a perfect treaty. It reflects a delicate balance as the result of the compromises that were made along the way during the negotiations. Yet, it has been accepted as the cornerstone of the global nuclear non-proliferation regime.

- The Treaty consists of a series of mutually reinforcing and legally-binding obligations and commitments between the nuclear weapon states and non-nuclear weapon states pertaining both to nuclear non-proliferation (under Articles I and II) and to nuclear disarmament (Article VI). The latter is the only binding commitment in a multilateral treaty on the part of the nuclear weapon states with respect to the goal of nuclear disarmament. All parties to the Treaty also pledge to work towards general and complete disarmament under strict and effective international control.
- These fundamental obligations are accompanied by a system of international safeguards (Article III), which covers not only the “full scope” of the nuclear activities and materials of the non-nuclear weapon states but applies to increasing amounts of materials in nuclear weapon states as well.
- It contains a legal obligation to assist in the peaceful uses of atomic energy without jeopardizing non-proliferation tools—this is especially important to developing countries where the peaceful use of nuclear energy can serve the cause of reducing poverty, hunger and disease (Article IV).

## **THE REVIEW PROCESS FOR THE TREATY**

The Treaty provides for review conferences at five-year intervals with a view to assuring that the purposes of the preamble and the provisions of the Treaty are being realized (Article VIII, paragraph 2). Review conferences



were convened in 1975, 1980, 1985, 1990, 1995 and 2000. Only three, those held in 1975, 1985 and 2000 concluded with the adoption by consensus of a Final Declaration assessing the implementation of the provisions of the Treaty. The Conference convened in 1995 had the dual responsibility of reviewing the implementation of the Treaty's provisions as well as deciding on the Treaty's extension.

The review process is of significant importance not just for the future of the NPT, but in many ways also for the future of international peace and security and thus ultimately for humanity itself.

Before addressing the current state of affairs, particularly with regard to issues of universality and compliance of the Treaty as well as the implementation of the resolution on the Middle East, the results of the 1995 Review and Extension Conference and the 2000 Review Conference should be briefly recalled.

At the **1995 NPT Review and Extension Conference**, the states parties to the Treaty adopted a package of decisions by which the Treaty was extended indefinitely, a new strengthened review process of the implementation of the Treaty's provisions was set in motion and benchmarks to measure the performance of all Treaty parties, nuclear weapon states and non-nuclear weapon states, were established. Also part of that package was a resolution on the Middle East, which, *inter alia*, reaffirmed the importance of universal adherence to the Treaty and called upon all states in the Middle East to accede to the Treaty and to take practical steps towards the establishment of a zone free of weapons of mass destruction in the region.

The indefinite extension of the Treaty was a major step, which in part reflected the widespread recognition that a strong and vital NPT was in the interest of all countries. States parties ensured that the Treaty was not only maintained as the core of the global non-proliferation regime, but its indefinite extension both reinforced and rendered permanent the international legal norm against the proliferation of nuclear weapons.

The **2000 Review Conference** convened in April/May 2000 amidst political surroundings that were far from auspicious for a successful outcome. The balance sheet with regard to the implementation of the undertakings agreed to in 1995 was rather bleak. There had been no

meaningful nuclear disarmament during the period following the Treaty's indefinite extension in 1995, nuclear-test explosions were conducted in 1998 in South Asia, the Comprehensive Test Ban Treaty (CTBT) had not yet entered into force and the stalemate in the Conference on Disarmament (CD) to commence negotiations on a fissile material treaty continued.

In his statement at the opening of the Conference, the Secretary-General of the United Nations emphasized:

“Nuclear conflict remains a very real, and very terrifying possibility at the beginning of the twenty-first century. This is the stark reality confronting you today—a reality that imposes an obligation on all of us to use every instrument at our disposal to pursue the treaty's non-proliferation and disarmament aims with equal and unwavering determination. We need look no further than to the discovery of clandestine nuclear-weapons development programmes to realize the magnitude of this challenge. The proliferation of weapons of mass destruction, including nuclear weapons, remains a major threat to peace, and a major challenge to every Member State. The fact is that compliance with the NPT's non-proliferation obligations remains incomplete and has not always been satisfactory. Today, I call upon all parties to redouble their efforts to combat this common threat, and to sign and bring into force the IAEA's Protocol designed to enhance assurances about compliance. The nuclear tests by India and Pakistan in 1998 were a serious setback against the global norms against nuclear testing and nuclear proliferation, and should make clear to all the need to fight proliferation.”<sup>1</sup>

Despite different views on the implementation of the Treaty's provisions and the commitments undertaken in 1995, states parties were able to agree by consensus on a Final Document. It was the first time in 15 years and the third in the history of the NPT review process that a Final Document was adopted which reflected the states parties' deliberations over the Treaty's past and commitments for the future. The agreements on the balanced review of the implementation of the Treaty's provisions since the Treaty's indefinite extension in 1995 and on realistic and practical steps to further advance the process of nuclear disarmament and non-proliferation and to strengthen cooperation in the peaceful application of nuclear energy, were remarkable achievements. Remarkable also because the states parties were able to agree on matters of profound impact on their national security and the very foundations of international peace and security.

The Final Document reaffirmed the principles and objectives for nuclear non-proliferation and disarmament agreed at the 1995 Review and Extension Conference as well as the importance of the resolution on the Middle East. Most significant among the commitments made by the states parties was the “unequivocal undertaking” by the nuclear weapon states “to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament”. States parties also agreed on thirteen “practical steps” towards global nuclear disarmament. These steps are specific benchmarks for assessing progress in nuclear disarmament. They owe much of their existence to the New Agenda Coalition—a collective effort by Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa and Sweden to add some urgency, direction and accountability to the process of nuclear disarmament. Proponents of nuclear disarmament were also gratified that the Final Document included a clear statement that the “total elimination of nuclear weapons is the only absolute guarantee against the use or threat of use of nuclear weapons”.

What is the Current State of Affairs with Regard to the Implementation of the Commitments Made in 1995 and 2000, particularly as regards the Issues of Universality, Compliance and the Implementation of the Resolution on the Middle East?

To quote from a statement made by the then Under-Secretary-General for Disarmament Affairs, Mr Jayantha Dhanapala, at the international workshop on the “NPT and the future of nuclear weapons” held on 14 July 2002 in Annecy, France:

“In particular, I cannot overstate the importance of the decisions at the 1995 NPT Review and Extension Conference on strengthening the treaty’s review process and on prescribing certain “principles and objectives” to guide the implementation of the treaty. Together with the Middle East Resolution, these decisions comprise the integrated “package” that enabled the states parties to agree to an indefinite extension of the treaty. I am as convinced now as I was as President of the 1995 Conference that the future of this treaty will rest upon the fate of the package that led to its indefinite extension. Think of these key elements of the 1995 consensus, plus the 13 steps agreed five years later, as the four pillars sustaining the future of the treaty and the world’s efforts to eliminate all nuclear weapons. Any state that discards or weakens these pillars only erodes the foundations for non-proliferation and disarmament for the entire world community.”<sup>2</sup>

For NPT Parties, issues of compliance and universality have emerged as the main challenges facing the regime in the last decade. They will continue to be the main focus during the process of preparing for the 2005 Review Conference and most certainly at the Conference itself.

### **Issues of Universality and Compliance**

The 1995 Review and Extension Conference put the issue of universality among the main principles and objectives for nuclear non-proliferation and disarmament by stating that “universal adherence to the Treaty on the Non-Proliferation of Nuclear Weapons is an urgent priority. All states not yet party to the Treaty are called upon to accede to the Treaty at the earliest date, particularly those states that operate unsafeguarded nuclear facilities. Every effort should be made by all states parties to achieve this objective.”<sup>3</sup>

At the time of the 1995 Review and Extension Conference, 178 states were parties to the Treaty. By April 2000, membership in the Treaty had further increased to 187. With the accession by Cuba to the NPT in November 2002, its membership now stands at 188.

And yet, the NPT faces considerable obstacles in becoming fully universal in membership. This is particularly troubling in South Asia and the Middle East, where significant nuclear weapons capabilities are combined with stockpiles of long-range missiles in countries that remain outside this Treaty. The fact that certain countries may have derived—or may yet reap—substantial material or prestige benefits from the possession of nuclear weapons, despite their non-membership in this Treaty, may create a “demonstration effect” enticing other countries to follow suit.<sup>4</sup>

The three states that remain outside the Treaty namely, India, Israel and Pakistan, have repeatedly been urged to accede to the NPT as non-nuclear weapon states promptly and without conditions and to bring into force the required comprehensive IAEA safeguards agreements.

Addressing the issue of universality at the 2000 NPT Review Conference, the states parties agreed to undertake determined efforts towards the achievement of the goal of universality of the Treaty. They agreed further that these efforts should include the enhancement of

regional security, particularly in areas of tensions, such as the Middle East and South Asia.

The underground testing of nuclear devices by India and Pakistan in May 1998 constituted a serious challenge to the international community's efforts to eliminate the threat posed by weapons of mass destruction and to maintain and strengthen the prevailing global norms of disarmament and non-proliferation. There was considerable concern about the effects these developments would have on the long-term viability of the non-proliferation regime and international peace and stability.

Following the nuclear explosions carried out by India and Pakistan in May 1998, both states have declared themselves as *de facto* nuclear weapon states, a claim that has been challenged by NPT states parties. At the 2000 NPT Conference, states parties stated that "notwithstanding their nuclear tests, India and Pakistan do not have the status of nuclear weapon States." They urged India and Pakistan to accede to the NPT as non-nuclear weapon states and to place all their nuclear facilities under comprehensive IAEA safeguards.

Notwithstanding these positions, NPT states parties are facing a considerable challenge. On the one hand they continue to assert that both India and Pakistan cannot become parties to the NPT as nuclear weapons states, on the other hand they cannot be seen as ignoring the realities of the nuclear situation in South Asia. Initial policies by some states aimed at trading a roll-back of or at least constraints on the nuclear programme of both states for an easing of sanctions, proved difficult to sustain. There has also been concern that any escalation of tension between the two states could involve the use of nuclear weapons. India for its part has declared that it would pursue a credible minimum deterrence for retaliation only, while reiterating its commitment to global nuclear disarmament and to the policy of no-first use and no use of nuclear weapons, against non-nuclear weapon states or those which are not in alliance with nuclear weapon states.

Israel's non-membership in the Treaty and the fact that its nuclear facilities are not subject to IAEA safeguards remain a matter of concern. These concerns have been expressed at NPT review conferences, their preparatory processes as well as in resolutions adopted annually by the United Nations General Assembly as well as by the General Conference of the IAEA. The issues also figured prominently at summit meetings of Arab

states and meetings of the League of Arab States. In their peace initiative adopted at the Tenth Arab Summit meeting held in May 2002 in Beirut, for example, Arab leaders emphasized that lasting peace and stability in the region can only be achieved if Israel accedes to the NPT and places all its nuclear installations under the comprehensive IAEA safeguards system.<sup>5</sup>

The recent announcement by the Democratic People's Republic of Korea (DPRK) to withdraw from the NPT represents a further challenge to the goals of the NPT. It is the first withdrawal from the Treaty by one of its members in the 33 years since the Treaty's entry into force. In expressing his regret at that decision, the Secretary-General of the United Nations urged the DPRK to reconsider its decision to withdraw from the NPT and stressed the importance of adhering to treaties and their legal obligations in achieving international peace and security in accordance with international law.<sup>6</sup>

The longer-term validity of the NPT depends on how well all parties work together to achieve the goals set out and on how all parties fully comply with their obligations under the Treaty. It also depends on how the Treaty parties respond to instances of possible non-compliance.

At the 2000 NPT Review Conference, the states parties reaffirmed that the full and effective implementation of the Treaty and the regime of non-proliferation in all its aspects has a vital role in promoting international peace and security. They further reaffirmed that every effort should be made to implement the Treaty in all its aspects and to prevent the proliferation of nuclear weapons and other nuclear explosive devices, without hampering the peaceful uses of nuclear energy by states parties to the Treaty.

The Conference also remained convinced that universal adherence to the Treaty and full compliance of all parties with its provisions are the best way to prevent the spread of nuclear weapons and other nuclear explosive devices. Furthermore, the Conference underlined the necessity of universal adherence to the Treaty and of strict compliance by all existing parties to their obligations under the Treaty.

While cases of non-compliance with non-proliferation obligations under the Treaty are few, the international community remains concerned about the continuing non-compliance with the Treaty, including its

safeguards obligations. After 1991, two NPT states parties were subject of allegations of non-compliance with obligations under the Treaty. Iraq had, over the years, engaged in activities inconsistent with its Treaty obligations, including its safeguard agreement. The DPRK remained in non-compliance with its safeguards agreement. At the 2000 NPT Review Conference states parties expressed their concern with cases of non-compliance of the Treaty by states parties and called on those non-compliant states to move promptly to full compliance with their obligations.

The NPT regime is also challenged in the field of nuclear non-proliferation and has to confront developments that go well beyond the instances of non-compliance.

With respect to the larger problem of eliminating all nuclear weapons *per se*, the primary responsibility for concrete progress in this field remains in the hands of the states parties of the NPT, in particular the nuclear weapon states. There is considerable room for progress in the field of nuclear disarmament at the national, regional, and international levels. Revitalizing the process of global nuclear disarmament is the best way to serve the goal of non-proliferation—while simultaneously reducing the risk of nuclear terrorism.

It goes without saying that compliance is vital with respect to both disarmament and non-proliferation commitments. Let me recall in that connection that the General Assembly this year recognized this point by adopting—without a vote—a resolution that, *inter alia*, urged “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.”<sup>7</sup>

### **Implementation of the 1995 Resolution on the Middle East**

At the 2000 NPT Review Conference, states parties devoted considerable time to the discussion of regional issues, including the Middle East and the implementation of the 1995 resolution of the Middle East. The agreements reached in this regard were reflected in the Final Document of the Conference. The Conference reaffirmed the importance of the resolution on the Middle East adopted by the 1995 Review and Extension Conference and recognized that the resolution remains valid until the goals and objectives are achieved. The Conference also reaffirmed its

endorsement of the aims and objectives of the Middle East Peace Process and recognized that efforts in this regard, as well as other efforts, contribute to, *inter alia*, a Middle East zone free of nuclear weapons as well as other weapons of mass destruction.

Furthermore, the Conference requested all states parties, particularly the nuclear weapon states, the states of the Middle East and other interested states, to report through the United Nations Secretariat to the President of the 2005 Review Conference as well as to the Chairperson of the Preparatory Committee meetings on the steps that they have taken to promote the achievement of such a zone and the realization of the goals and objectives of the 1995 resolution on the Middle East. It requested that the Secretariat prepare a compilation of those reports in preparation for consideration of these matters at the Preparatory Committee meetings and the 2005 Review Conference.

There was little progress to report, however, at the first session of the Preparatory Committee for the 2005 Review Conference held in April 2002, on the implementation of the resolution adopted in 1995 concerning the creation of a zone free of weapons of mass destruction. In their deliberations as well as in reports submitted on steps to promote the achievement of a nuclear-weapon-free zone in the Middle East and the realization of the goals and objectives of the 1995 resolution on the Middle East<sup>8</sup>, states parties reaffirmed the importance of the resolution and recognized that the resolution remained valid until its goals and objectives were achieved. States parties reiterated their support for the establishment of a Middle East zone free of nuclear weapons as well as other weapons of mass destruction. They noted that all states of the region of the Middle East, with the exception of Israel, were states parties to the NPT and called upon Israel to accede to the Treaty as soon as possible and to place its nuclear facilities under comprehensive IAEA safeguards. Arab states parties affirmed the importance of establishing a mechanism within the NPT review process to promote the implementation of the 1995 resolution on the Middle East and to monitor the implementation of the recommendations made at the 2000 NPT Review Conference.

At the same time, views continue to differ on how best to achieve the goal of establishing a zone free of weapons of mass destruction in the region of the Middle East. States parties, particularly from the region of the Middle East, continued to stress that ridding the Middle East region of nuclear



weapons and all weapons of mass destruction is a necessary and essential condition for the establishment of any future regional security arrangements. Other states emphasized their efforts made to promote the Middle East Peace Process. Emphasis was also placed on the need for universal adherence to all existing multilateral legally binding instruments related to weapons of mass destruction. Furthermore, some states parties stressed that compliance by the Iraqi regime with its disarmament and other obligations under the various Security Council resolutions had a direct bearing on the prospects of attaining the goal of establishing a zone free of weapons of mass destruction in the Middle East.

In his report on the "Establishment of a nuclear-weapon-free zone in the region of the Middle East", to the fifty-seventh session of the United Nations General Assembly, the Secretary-General of the United Nations observed that despite various efforts within and outside the region to explore ways and means of promoting the establishment of a nuclear-weapon-free zone in the Middle East, no further progress had been achieved. He noted that, given the current situation in the region, it was essential that efforts continue with a view to creating the necessary conditions for a stable security environment in the region. He reaffirmed the continued readiness of the United Nations to provide any assistance deemed helpful in this regard.<sup>9</sup>

## **OUTLOOK FOR THE 2005 NPT REVIEW CONFERENCE**

The review process for the Treaty is important not just for the future of the NPT, but in many ways also for the future of international peace and security. Further determined efforts are needed in order to translate the results achieved at the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons into specific actions by all parties to that Treaty. The preparatory process for the 2005 NPT Review Conference, which began in April 2002, provides an important opportunity to consider principles, objectives and ways in order to promote the full implementation of the Treaty as well as its universality.

The first session of the Preparatory Committee for the 2005 NPT Review Conference provided a good measure of hope for progress in the future, in particular with regard to new approaches for advancing the Treaty's goals put forward by some states parties. At the same time,

however, there was considerable frustration with the lack of progress in the field of nuclear disarmament and concern that many of the 13 steps agreed upon in 2000 to achieve progress in nuclear disarmament have either been abandoned—like the preservation of the Anti-Ballistic Missile (ABM) Treaty and the entry into force of START II—or postponed indefinitely, like the CTBT. Other steps included the need to improve transparency, the issuance of regular reports, and the application of “principle of irreversibility” in disarmament agreements—and new progress is needed in each of these areas.

Let me conclude by quoting from the statement made by the United Nations Secretary-General at the recent meeting of the Secretary-General’s Advisory Board on Disarmament Matters in which he stated that “there has been a disturbing gradual erosion of the established international norms on weapons of mass destruction. At the same time, rising military expenditures suggest that an ever-growing challenge still exists. It is, therefore, vital for us all to help preserve and consolidate existing multilateral norms through adherence to treaties and fulfilment of legal obligations.”

## Notes

- \* The views expressed in this paper are those of the author and do not necessarily reflect the views or positions of the United Nations Secretariat.
- 1 Press release SG/SM/7367 of 24 April 2000.
- 2 Statement by Jayantha Dhanapala, Under-Secretary-General for Disarmament Affairs, at the “Workshop on the Outcome and Implementation of the 2002 NPT PrepCom”, 14 July 2002, Annecy, France (<http://disarmament.un.org/speech/14july2002.htm>).
- 3 Decision 2 on “Principles and Objectives for Nuclear Non-Proliferation and Disarmament” (document NPT/CONF.1995/328 (Part I)).
- 4 See statement of 21 April 2001 by Jayantha Dhanapala, Under-Secretary-General for Disarmament Affairs.
- 5 See document NPT/CONF.2005/PC.1/3/Add.5 on “Steps to promote the achievement of a nuclear-weapon-free zone in the Middle East and the realization of the goals and objectives of the 1995 Resolution

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on the Middle East", report submitted by Tunisia on behalf of the Group of Arab States.

6 Press release SG/SM/8578 of 10 January 2003.

7 Resolution 57/86 of 22 November 2002.

8 See documents NPT/CONF.2005/PC.I/3 and Add. 1-6.

9 A/57/214.



## **CHAPTER 3**

### **STRENGTHENING THE ROLE OF THE BTWC AND CWC**

Jez Littlewood\*

#### **INTRODUCTION**

The 1972 Biological and Toxin Weapons Convention (BTWC) and the 1993 Chemical Weapons Convention (CWC) build upon, and strengthen, a long-standing norm against the use of chemical and biological weapons. This norm is enshrined in the 1925 Geneva Protocol, which prohibits the use in war of chemical and bacteriological methods of warfare, and many have argued that it represents customary international law and is thus binding on all states, whether party to it or not. The norm against use has been bolstered and strengthened by the BTWC and the CWC, which require effective biological and chemical disarmament.

In the Middle East and the surrounding geographic region, however, membership of both the BTWC and the CWC is less well reflected than in any other region. The reasons and/or political rationale for this situation are well known and this discussion paper does not intend to dwell on existing views. Rather, this paper focuses on the broader issues related to chemical and biological weapons and how they impact on the region.

The objective is therefore to stimulate some additional thinking among key constituents on the issues related to chemical and biological weapons and the quest for a weapons of mass destruction free zone (WMDFZ) in the Middle East. This paper will firstly provide some factual information about the BTWC and the CWC and what membership entails. Second, it will look at some of the regional perspectives on chemical and biological weapons taking into account Israel's nuclear deterrent, before considering what is required for a WMDFZ in the Middle East from the perspective of chemical and biological weapons. In the following section the underlying trends related to chemical and biological weapons, any of which could result in

greater prominence for the BTWC and the CWC in the region, will be highlighted.

There is no detailed country-specific analysis in this discussion paper, nor does it advocate the accession of certain states before others to either or both of the chemical and biological regimes. Membership of any international treaty—be it related to security issues, trade, the environment, human rights or development—involves a complex assessment of the advantages and disadvantages of membership by the government of each state. It is therefore predominantly a political issue for each state and an issue, which must be confronted by the government of each state.

The final section of this paper will, however, attempt to bring the issues together in a set of concluding points for further exploration and discussion.

#### **THE CWC AND THE BTWC: SIMILARITIES AND DIFFERENCES IN THE TWO REGIMES**

Both treaties complement the 1925 Geneva Protocol and its prohibition on the use in war of chemical and bacteriological weapons. At the heart of the BTWC and the CWC is a determination to exclude completely the possibility of the use of biological and chemical weapons, as outlined in the respective preambular paragraphs of each convention. Unlike the Nuclear Non-Proliferation Treaty (NPT), under the BTWC and the CWC the obligations for all states parties are the same and the conventions are principally disarmament treaties with, *inter alia*, non-proliferation and peaceful cooperation obligations.

The BTWC complements the Geneva Protocol by prohibiting the development, production, stockpiling, acquisition or retention of biological and toxin weapons. Although it does not explicitly prohibit their use—because of fears expressed during the 1968-71 period of the negotiations that it might undermine the Geneva Protocol—there is no doubt among the 146 states parties to the BTWC that any use of biological or toxin weapons in armed conflict or for hostile purposes would be a breach of the convention. In contrast the CWC goes further than the BTWC by prohibiting the development, production, acquisition, stockpiling, retention and transfer of chemical weapons to anyone and the use of chemical weapons, as well as military preparations to use chemical weapons.

These differences do not mean one treaty is better than the other. The basic principle behind each one—a prohibition on chemical and biological weapons—is the same whereas the breadth and depth of each treaty reflects what it was possible to achieve during the period it was negotiated.

Under the CWC and the BTWC all states parties must disarm within the provided timescales. No state party is permitted to retain either chemical or biological weapons. Both treaties also contain a non-proliferation obligation; require states parties to take the necessary national measures to implement their obligations through, *inter alia*, penal legislation; provide for consultative and cooperation mechanisms to handle complaints; and have recourse to international investigation procedures in the event of non-compliance.

The CWC and the BTWC therefore share many similarities. The main difference between the two relates to the verification provisions and the institutional support mechanisms to oversee implementation of obligations. In both cases, verification and institutional support, the CWC is much broader and much more detailed.

It is worthwhile emphasising that both conventions prohibit all kinds of chemical and biological weapons, through their reliance on what is commonly referred to as the *general-purpose criterion* (a more detailed explanation of this is contained in the Annex). At this stage it is sufficient to note that misunderstanding of what is prohibited under these treaties is common, particularly with respect to the CWC. While the CWC contains a list of scheduled chemicals that are subject to verification mechanisms under the Treaty, the fact that a particular chemical is not on one of the schedules should never be interpreted to mean that such a chemical is omitted from the prohibitions. The CWC covers **all** chemical agents (including those which may be developed in the future) just as the BTWC covers **all** biological agents (including those which may be developed in the future) unless it is for purposes which are not prohibited under the respective convention. Both treaties are therefore comprehensive in their scope.

Two other aspects of each convention are also worth noting: (1) the provisions for assistance and protection in the event of the use of chemical and biological weapons and (2) the commitment to economic and technical cooperation.

Both treaties commit states parties to come to the assistance of other states parties in the event of an attack with biological weapons or chemical weapons (the BTWC covering the former, the CWC covering the latter while both conventions cover toxins). This legal commitment is clear and any attack with chemical or biological weapons is likely to result in three things. First, immediate assistance and protection from the international community for the attacked state; second, the launch of an international investigation either by the UN Security Council (under the BTWC) or the Organisation for the Prohibition of Chemical Weapons (OPCW) under the CWC; and, third, very serious consequences for the state which launched such an attack or harboured or assisted any non-state actor which launched such an attack. The first and second aspects are covered by the respective treaties, whereas the third aspect will flow from the repugnance against any such attack by the wider international community.

In terms of peaceful cooperation and economic development, Article X of the BTWC contains a commitment to the fullest possible exchange of biological agents and toxins (and related equipment) for peaceful purposes and a commitment to avoid hampering economic and technological development through implementation of the BTWC. This, again, is a legal requirement although it has been less well implemented than many developing states would have liked. One problem in this area is the tension between non-proliferation obligations (under BTWC Article III) and the cooperation commitment of Article X. Since the creation and adoption of export controls by the majority of developed states, fundamental differences of opinion have been regularly expressed in the BTWC Review Conferences. This tension has yet to be resolved. The CWC commitment to economic development under Article XI focuses on the need to avoid hampering economic and technological development. Export controls are also a problem here, specifically the maintenance of the Australia Group controls. Non-parties to the CWC are subject to additional controls on the transfer of scheduled chemicals under the Treaty.

### **Membership and Standing of the CWC and BTWC**

As of January 2003 the CWC had 148 states parties and the BTWC 146, compared to the Geneva Protocol's 133 and the NPT's 189.<sup>1</sup> In the Middle East and surrounding geographic area membership is as per Table 1. If either, and preferably both, treaties are to achieve their objective of



universality, it is clear that the Middle East and surrounding area is of central importance.

**Table 1:** Participation in WMD-related Regimes in the Middle East and Surrounding Geographic Area

State	NPT	CWC	BTWC	Geneva Protocol
Algeria	•	•	•	•
Bahrain	•	•	•	•
Comoros	•			
Djibouti	•			
Egypt	•			•
Iran (Islamic Republic of)	•	•	•	•
Iraq	•		•	•
Israel				•
Jordan	•	•	•	•
Kuwait	•	•	•	•
Lebanon	•		•	•
Libyan Arab Jamahiriya	•	•	•	•
Mauritania	•	•		
Morocco	•	•	•	•
Oman	•	•	•	
Qatar	•	•	•	•
Saudi Arabia	•	•	•	•
Somalia	•			
Sudan	•	•		•
Syrian Arab Republic	•			•
Tunisia	•	•	•	•
United Arab Emirates	•	•		
Yemen	•	•	•	•
Total	22	15	14	17

With respect to the BTWC the norm against biological weapons embodied within it, is not seriously under question at this point in time. The BTWC is not, however, without problems. Compared with the CWC it is a remarkably thin document. This is mainly due to the lack of verification provisions within it. The BTWC relies on its states parties implementing their obligations in good faith and living up to their treaty commitments. Harsh lessons since 1975, when the BTWC entered into force, have proved such faith to be misplaced. At least one state party breached its obligation to biological disarmament between 1975 and 1992 and there are grave doubts about the compliance of others.<sup>2</sup>

The BTWC has, however, been strengthened since 1975 through the incremental addition of commitments and additional undertakings agreed by consensus at the Review Conferences of the Convention. In particular, the addition of Confidence-Building Measures (CBMs) in 1986 and 1991 went some way to counter the marked reduction in confidence in the Treaty after 1980. Subsequent attempts to bolster the convention further, mainly through the negotiation of an Additional Protocol to the BTWC during 1995-2001, aimed to strengthen all aspects of the convention—including verification mechanisms, assistance and protection and peaceful cooperation. The negotiations failed and collapsed in July 2001. A much less ambitious programme for strengthening the Convention, through expert groups and annual meetings, was agreed at the Fifth Review Conference in 2002. Confidence in the BTWC is, therefore, once more waning. Nevertheless, the BTWC still enjoys significant support from its states parties and the wider international community and it remains an extremely important treaty.

Turning to the CWC, its five-year life to date has by and large been a success. Four states parties declared offensive chemical weapons stockpiles and all are in the process of destroying those weapons under international supervision. The inspections under the CWC's verification annex have not, to date, uncovered any illicit or prohibited activities among states parties. The fact that accession to the Treaty has been so rapid can be considered a testimony to both its importance and success in certain areas. However, it has also experienced a number of problems. Some were simply teething troubles from establishing a new international organization in a short period of time. Some financial difficulties have also arisen, including the late payment of financial commitments. The financial difficulties and problems over the running of the OPCW came to a head in 2002 when the Director-

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General of the Organisation was removed from office following the decision of a Special Session of the Conference of States Parties. There are also some substantive issues, including the passage of implementation legislation in the US, which included a number of “conditions”. Many outside the US believed these conditions would reduce the effectiveness of the OPCW and lead other states to follow the US and adopt their own conditions. This is in fact beginning to occur. However, the Treaty does command wide support and the difficult periods of its short life (to date) should not mask the significant achievements it has made in reducing the danger posed by chemical weapons and in bolstering the norm against their use.

### **WHAT IS REQUIRED FOR A WMDFZ IN THE MIDDLE EAST: CHEMICAL AND BIOLOGICAL PERSPECTIVES**

On the whole question of a WMDFZ in the Middle East there is no magic solution. The problems related to this are, as Ambassador Nabil Fahmy noted, multifaceted and complex.<sup>3-4</sup> **Thus, non-membership of the WMD regimes, including the chemical and biological regimes, cannot be satisfactorily explained by a single factor.** Recognising and developing a deeper understanding of this reality might go some way to providing potential solutions to the specific chemical and biological related issues.

To consider regional perspectives on strengthening the BTWC and the CWC within the context of a WMDFZ, it is important to first consider which states would need to accede to the treaties. Given the importance of the Israeli nuclear deterrent and the security equations of states in the region, as well as those surrounding it, a useful perspective is to consider the surrounding area as a whole. As such it might well need to cover all the states in the Arab League (including a future Palestinian state), Israel and Iran.<sup>5</sup> As illustrated by Table 1, we are therefore looking in excess of 20 states.

That means the following states would need to accede to the BTWC: Mauritania, Sudan and the United Arab Emirates. The following would need to accede to the CWC: Iraq and Lebanon. The following would need to accede to both the BTWC and the CWC: Comoros, Djibouti, Egypt, Israel, Somalia and Syria.

The concerns of states in this region and other states about the extent of chemical and biological arsenals within the Middle East and the surrounding area are another factor which cannot be ignored. Even a summary assessment of the literature reveals concerns about activities in many states in the region.<sup>6</sup> Given the claims of other states or the information in the public domain it may be advisable for those states from this area which accede to the CWC and/or the BTWC to provide more than their signature to the treaties. This is not to put additional difficulties in front of the necessary accessions. Rather, just as the 1991 United Nations Study related to nuclear weapons indicated, in the chemical and biological area there would need to be complete confidence in any declarations related to chemical and biological weapons.<sup>7</sup> In the contemporary period any declarations will be subject to serious scrutiny and intensive behind the scenes diplomatic activity, as the various claims about chemical and biological weapons proliferation and alleged stockpiles are unlikely to be forgotten and cannot be wished away. Any accessions to the treaties will have to address these suspicions in some form, whether by allaying concerns through verification and subsequent on-site inspection (under the CWC) or other mechanisms under the BTWC.

A further factor is the question of linkage, particularly to Israeli nuclear weapons. The Israeli nuclear arsenal has a significant impact on both treaties in this region, as evidenced by Egypt's linkage of ratification of the CWC to Israel's accession to the NPT. Israel's nuclear capabilities are of central importance to the establishment of a WMDFZ in the Middle East and the political realities of this are daunting. Since the accession of every other state in the region to the NPT, Israel has been isolated on the nuclear front and the Sixth Review Conference of the NPT made that clear by reaffirming "the importance of Israel's accession" to the Treaty. In singling out and identifying Israel by name for the first time, "[t]here is no ambiguity... in the call for Israel to accede to the Treaty to realise 'the goal of adherence to the Treaty in the Middle East'".<sup>8</sup> Even so, the political realities of the situation mean that "universal adherence to the Treaty in the Middle East is unlikely to be achieved without very significant extra-regional pressure and assistance. The US role in relation to Israel is key in this regard".<sup>9</sup>

Nevertheless, analysts have also cited and alleged chemical and biological stockpiles among Israel's neighbours as one reason for Israel to maintain its own deterrent.<sup>10</sup> Linkage therefore works both ways. **In this**

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**respect, some have suggested linking ratification of one regime to ratification of another might not be the most effective practical policy.<sup>11</sup>**

With Libya having acceded to the CWC on 6 January 2004, the key holdouts from the CWC are therefore Egypt, Iraq, Israel and Syria. For these states the question of linkage must be addressed if any progress is to be made.

In contrast, no state has made an explicit link between NPT accession and accession to the BTWC, but there probably exists an implicit link related to deterrence for many states in the region. However, the lack of an obvious barrier to BTWC accession makes any refusal to join the BTWC even more puzzling because, unlike chemical weapons, biological weapons have not actually been proved in modern warfare and their use may be regarded as even more reprehensible than chemicals. Failure to accede to the BTWC therefore leads outside observers to be very suspicious about biological weapons-related activities in all holdout states.

Although Israel's refusal to accede to the NPT (and the CWC and BTWC) may provide an obstacle for some states to accede to either convention, that obstacle is not insurmountable given political will. This fact is evidenced by the majority of states in the region being members of the two regimes. The linkage appears to be political in its purpose, rather than strategic. Furthermore, Ambassador Fahmy noted correctly that regional conflict does not prevent arms control or disarmament measures from being agreed or implemented.<sup>12</sup> During the Cold War the superpowers agreed nuclear arms control measures between themselves and in the specific European context (e.g. Intermediate Nuclear Forces Treaty). While none of these arms control treaties by themselves resolved the core issues in dispute, they went a significant way to normalizing the relationship between the opposing states and in building trust and confidence between them. Moreover, the successful small steps of the early agreements acted as a catalyst for negotiations on more important points of dispute. Incremental progress is, after all, better than no progress or the maintenance of the status quo.

The key question is who takes the first step which moves the Middle East closer to a WMDFZ? In seeking to advocate the role of the BTWC and the CWC in helping to achieve this objective the question comes down to what can these regimes offer? Or, more important, what are the political and security advantages of joining the regimes compared to the advantages

of remaining outside them? To consider those issues we need to identify some of the broader trends in this area.

### **SOME UNDERLYING TRENDS RELATED TO CHEMICAL AND BIOLOGICAL WEAPONS**

It is worth highlighting and considering some of the broader global trends related to chemical and biological weapons because they are becoming more important and will have a greater influence on decisions related to accession to the regimes in the next few years. However, it is equally necessary to note that there are conflicting, and possibly contradictory, elements within these trends. To be specific, I suggest that the utility of chemical and biological weapons is diminishing because the costs of using such weapons is now high. At the same time scientific developments, particularly in the biological sciences, imply “improved” biological weapons could be made in the future thus, potentially, making them a more attractive weapons. Furthermore, the political importance of joining the CWC and the BTWC is increasing. Thus, when considering all of the underlying trends, there is no clear indication about how things might develop, although most of them do point against chemical and biological weapons.

#### **The Utility of Chemical and Biological Weapons**

From a military perspective chemical and biological weapons may well become obsolete weapons in a classic military confrontation. Chemical weapons are not effective against well-protected military (or civilian) personnel. **The lessons of history have been noted and only the most foolish of military commanders would have failed to heed the importance of protective measures.** That is why assistance and protection provisions are so important in the CWC on two levels. At the national level, states are seeking to improve their ability to protect themselves and at the international level the commitment to assist and protect against chemical attack by international community of OPCW parties. As such, chemical weapons may possibly be used with potentially significant effect once—in surprise—but will not yield significant advantages in a conflict thereafter. Biological weapons may have significant strategic effects but are of limited use on the battlefield itself, particularly when forces are in close proximity

to each other and the frontline shifting. Protection against biological weapons is improving rapidly and their use against military targets is likely to have limited effect and result in a massive response from the attacked state and the international community.

Both types of weapons are at their most effective against unprotected targets (civilians) and the costs in terms of probable military retaliation and other responses would suggest that any such use is unlikely to deliver a significant advantage to the perpetrator. The potential utility of both weapons is perhaps best exploited in limited covert operations, but even here there are serious limits to the overall utility of such a strategy in conventional and unconventional warfare, not least the limited advantage of using such weapons and the ensuing wrath of the target state and the international community.

### **The Implications of Using Chemical and Biological Weapons**

A very important factor in the trend against chemical and biological weapons is the moral, and increasingly practical, implications of using them. States have, for the most part, turned against chemical and biological weapons and the preambular statements of both the CWC and the BTWC—that the use of chemical or biological weapons would be repugnant to humankind—now have significant meaning. To be specific, in the twenty-first century they are more than words on a page. Any use of chemical and biological weapons would meet with universal public outrage and government condemnation. If such a situation did arise any government which failed to condemn and take action post-11 September 2001 would find itself subject to numerous awkward questions from its population, civil society and international partners, and be painted as a chemical and biological weapons apologist. The pressure would be such that action against any perpetrator would be inevitable.

### **International Assistance and Investigation Will Follow any Use of Chemical and Biological Weapons**

Linked to the above is the fact that a template for action already exists under Article VII of the BTWC and Article X of the CWC; the requirement for assistance and protection. Furthermore, the experience of the Gulf War in 1990-91, when assistance and protection was offered to states in the coalition, provides evidence that these commitments are taken very

seriously, even when no legal requirement exists (in the case of chemical weapons at that time). Following the use of chemical or biological weapons these articles would almost certainly be invoked by their states parties and, probably, bolstered by a United Nations Security Council Resolution. A state subjected to a chemical or biological attack would find the international community moving rapidly to support it. This support would be in terms of humanitarian assistance, in the provision of immediate protection, in the push for an international investigation into such use and, following that, punishment of the perpetrator of such an attack. A chemical or biological attack would therefore multiply the forces ranged against the perpetrator.

This presupposes that the attacked state would request and permit assistance and protection measures following, or immediately prior to any attack. A state which refused assistance in these circumstances is likely to raise serious questions about its own activities.

### **The Exploitation of Future Scientific Developments**

Chemical and biological weapons may, however, have a future. In the area of biological weapons, as Meselson pointed out, biotechnology could “profoundly alter the nature of weaponry and the context within which it is employed”.<sup>13</sup> The situation for chemical weapons is not so alarming, but a recent report noted, “there is much potential for new methods [of chemistry] to be misused to manufacture both scheduled and other toxic chemicals and their precursors and intermediates”.<sup>14</sup> The diminishing utility of the weapons should not be interpreted to mean controlling them—indeed prohibiting them—is no longer an important international objective and commitment.

### **Turning Against Chemical and Biological Weapons and “Safe Havens” for Them**

The future dangers these weapons pose is an additional factor which underlines the shift against chemical and biological weapons. It has also resulted in recognition of the growing threat these weapons pose, hence the desire to reduce that threat to much more manageable proportions. Although the impetus may be traced to the 11 September attack on the US and the recognition of possible chemical and biological attacks by non-state actors, it does in fact have a longer history. The 11 September may be



considered as a catalyst which has focused attention on those states outside the chemical and biological regimes. There is an increasing feeling that such states are not only a possible threat in themselves, but that they may also act—wittingly or unwittingly—as “safe havens” for the development and production of chemical and biological weapons. In part this is an extension of the “with us or against us” mentality of the war on terrorism. It is clear that the international community has moved against *any* use of chemical and biological weapons for any reason whatsoever. Those sentiments are expressed in United Nations General Assembly resolutions and in the statements to the United Nations First Committee, as well as national positions. Flowing from this is increasing attention on those states which are outside the chemical and biological regimes—for whatever reason—and the perception that something insidious must be at work to keep them there. While there may be economic, legal and administrative reasons for postponing joining the CWC and, to a much lesser extent, the BTWC, they are not convincing over time. Put simply, states which remain outside the chemical and biological regimes may well find that in the near future they will *all* be labelled as international pariahs.

### **Globalization, Trade and Economic Issues**

Flowing from the implication of all of the above factors is another, more concrete, trend; economic impact. Controls on the chemical and biological agents and equipment required for development and production of these weapons have been in place for some time. The CWC requires controls on the transfer of scheduled chemicals. Export licensing and export controls are in fact becoming the norm among states with chemical and biotechnology industries. The proliferation problem is not solved and in his testimony to Congress in 2000 the Director of the US Central Intelligence Agency noted that “we have identified well over 50 states that are of concern as suppliers, conduits, or potential proliferators”.<sup>15</sup> Post-11 September 2001, the loopholes and weaknesses in these controls are being closed, both nationally and internationally. Furthermore, the controls and licensing requirements are not superficial; evidence of the ability to implement the necessary controls is as important as agreeing to them. One consequence of this is that states without such controls—as well as those outside the regimes—will be subject to greater scrutiny of their chemical and life science industries, which will have economic impacts.

That this trend is gaining ground and having an effect can be seen from an examination of the impact of the controls on transfers under the CWC. In Israel, for example, while the restrictions on schedule II chemicals affected only a single chemical plant the restrictions on schedule III chemicals would affect about 5000 tonnes of imported chemicals and “the economic implications are substantial”.<sup>16</sup> A strong industrial lobby in Israel has joined the diplomatic lobby in facing down the defence ministry in pushing for CWC ratification.<sup>17</sup> The controls on the export and transfer of scheduled chemicals under the CWC is beginning to have a significant effect on decision-makers.

**Statements Are not Enough:  
Verifiable Implementation of Commitments Is Required**

The move to increased global regulation of trade in potentially dangerous substances and agents points to a similar trend in arms control and disarmament; deeper regulation and a requirement to make good on commitments. Javad Ali correctly noted that, “arms control mechanisms need the sustained and serious political support of the international community in order to promote the compliance agendas contained in the treaties”.<sup>18</sup> This hard lesson was not only applicable to the Geneva Protocol and the BTWC. **The recent experiences of the International Atomic Energy Agency demonstrated that its safeguards system needed to be reinforced.**<sup>19</sup> This was a factor states and policy makers should have recognised at the beginning of 1960s, but it took the hard lessons of the Cold War and first decade of the post-Cold War world to underline a basic reality: not all states live up to their commitments. Any state which accedes to the chemical and biological regimes will be welcomed, but that welcome will bring with it serious questioning about the status of its past (or present) weapons programmes. Partial implementation is no longer acceptable.

**The Legal Consequences of Use**

Having noted the implications of using chemical or biological weapons, in terms of condemnation, assistance and protection for the attacked etc., it is worth noting that the potential impact of using these weapons in the future will almost certainly have legal implications. There is now a push to make the use of chemical and biological weapons an

international crime, and that effort is gaining ground and support among other states.<sup>20</sup> Even if the successful conclusion of that effort is some way off, any head of state or military commander who orders such weapons to be used will find their ability to travel curtailed because of the risk of a legal case being brought against them by another state; if the Geneva Protocol represents customary international law, breaching that law in the contemporary period is likely to have legal implications. These may in time go deeper than the arrest or trial of one person and spread to the government of a state, its armed forces and those industry personnel who supported the development and production of the weapons. Prosecutions for breaching export licensing requirements and aiding and abetting proliferation of WMD are on the rise in Western states. Similar attempts at prosecutions can be expected following any use of chemical or biological weapons.

### **The Impact of these Trends**

By itself none of the trends noted above present a significant practical obstacle to a state—or individual—determined to manufacture and use chemical or biological weapons. However, while all are separate developments, several of them are converging on one important point; giving meaning to the international prohibitions against chemical and biological weapons. Those states outside the CWC and the BTWC are considered with suspicion; the military utility of the weapons is diminishing for anything other than a one off attack; and the consequences of using these weapons increasing. Staying outside the BTWC and the CWC has political, legal, economic and moral consequences. The fight in Israel for ratification of the CWC again illustrates this point with a leading proponent referring to two of these trends as a rationale for ratification: “[w]e must not become a pariah state, and also pay a heavy price in denying necessary materials and data for our industries.”<sup>21</sup>

The convergence of several of these underlying trends does present practical obstacles to all states who are non-parties to these conventions and these obstacles are going to become more significant over the next few years.

## **CONCLUSION: A REGIONAL FOCUS AND REGIONAL SOLUTIONS?**

In the 1990s significant progress was made in respect to disarmament for chemical and biological weapons at the global level. Such progress was not without problems or setbacks, but in the Middle East area it was particularly disappointing producing, as Steinberg noted, “meagre results”.<sup>22</sup> In attempting to take forward the objective of a WMDFFZ in the Middle East it is necessary to concentrate on both the basic elements of what is required (who has to accede etc.) and look to the overall trends related to chemical and biological weapons. Ignoring these realities will not take this process forward.

I have already noted that Mauritania, Sudan and the United Arab Emirates need to accede to the BTWC, Iraq and Lebanon to the CWC and Comoros, Djibouti, Egypt, Israel, Somalia and Syria to both the BTWC and the CWC. Accession to the BTWC and the CWC would offer significant advantages to all those states, but a national political decision is required to take this process forward. Both conventions can go some way to addressing the immediate security concerns of these states, but more important are the overall trends related to chemical and biological weapons and the regimes. First, there is a diminishing military utility of chemical and biological weapons, because the weapons are now limited to one-off surprise attacks against military forces and/or terror-led attacks on unprotected civilians. Second, significant negative consequences—military, political, economic and legal—will follow **any** attack with these weapons, thereby severely undermining their utility. Third, the international community is turning against these weapons. Fourth, export controls and the regulation of trade in relevant dual-use agents and equipment is increasing. Fifth, arms control and disarmament agreements now have a greater ability to uncover non-compliance. And, sixth, any state outside the CWC or BTWC is increasingly considered a pariah.

Membership of both the CWC and the BTWC can reduce, significantly, the negative impact of these trends on non-parties. Both treaties require effective disarmament. Both treaties offer assistance and protection in the event of an attack with chemical or biological weapons. Both treaties provide an element of legitimacy to their states parties in terms of their activities in the chemical and biological field. Both offer economic and technological cooperation benefits, not least in reducing the limitations

on transfers of agents and equipment. Acceding to both treaties indicates a willingness to abide by established international norms of behaviour.

In the context of the Middle East all of these trends are important. The question arises, therefore, of whether key states in the region are going to remain outside these regimes or accede to them. Remaining outside the regimes is actually the easiest decision because it requires no change of policy and no suggestion of a change in strategic or political thinking. Deciding to accede to the regimes will require difficult decisions within those states and it takes us back to the question of who will take the first step?

A number of options present themselves here. A state could go it alone, such as Morocco's accession to the BTWC in 2002 or Libya's announcement of its intention to accede to the CWC in 2001. Alternatively, those states who do not have core security concerns about chemical and biological weapons but do have legal or administrative difficulties actually implementing the treaties could quite legitimately approach the depositaries of the BTWC (UK, US and Russia) and the CWC (United Nations Secretary-General) to request assistance or advice. In the current political and security climate, assistance from the international community would most likely be forthcoming. Those states outside the core zone of conflict could agree to accede simultaneously and/or seek collective assistance in doing so.

In this specific context, Comoros, Djibouti, Mauritania, Sudan, the United Arab Emirates, and Somalia could seek assistance to join the respective regimes, possibly under an Arab League initiative, to take the process of arms control and disarmament in the region forward. Iraq remains a special case especially as the issue of WMD in the country addressed by UNSC Resolutions is still unresolved at the time of writing and is thus not discussed in this paper. That leaves five states as the key to regional action: Egypt, Israel, Lebanon, Libya, and Syria. Libya has acceded to the CWC and is already a state party to the NPT and the BTWC. The remainder are in the core zone of conflict in the region. The decision of those states to accede to the chemical and biological regimes might be influenced by some of the underlying trends noted above. However, those trends by themselves are unlikely to result in immediate changes in policy. As per the NPT, to achieve complete adherence to the CWC and the BTWC in this region of the world will require extra-regional pressure and assistance.

**ANNEX****THE GENERAL PURPOSE CRITERION IN THE BTWC AND CWC**

Article I of the **BTWC** states that:

Each State Party to this Convention undertakes never in any circumstance to develop, produce, stockpile or otherwise acquire or retain:

- (1) Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;
- (2) Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

The success of the BTWC—and complete prohibition therein—rests on what is known as the *general-purpose criterion* whereby the convention prohibits **all** biological agents and toxins intended to be used for hostile purposes or in armed conflict. The key to this can be found in the phrase “that have no justification for prophylactic, protective or other peaceful purposes”; thus, although work on any specific agent or toxin is not prohibited *per se* **any** work with **any** agent or toxin must be able to be justified for prophylactic, protective or other peaceful purposes. For example, a scientist may legitimately work with *Bacillus anthracis* (Anthrax) to develop a vaccine; the same, or any other, scientist could not work with the agent to develop an anthrax bomb or any other weapon.

The **CWC** shares similar obligations to the BTWC, but has much more robust verification and compliance mechanisms. Under Article I of the CWC:

1. Each State Party to this Convention undertakes never under any circumstances:
  - (a) To develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone;
  - (b) To use chemical weapons;
  - (c) To engage in any military preparations to use chemical weapons;

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- (d) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.
2. Each State Party undertakes to destroy chemical weapons it owns or possesses, or that are located in any place under its jurisdiction or control, in accordance with the provisions of this Convention.
  3. Each State Party undertakes to destroy all chemical weapons it abandoned on the territory of another State Party, in accordance with the provisions of this Convention.
  4. Each State Party undertakes to destroy any chemical weapons production facilities it owns or possesses, or that are located in any place under its jurisdiction or control, in accordance with the provisions of this Convention.
  5. Each State Party undertakes not to use riot control agents as a method of warfare.

Like the BTWC it rests on a *general-purpose criterion* defined in Article II:

1. "Chemical Weapons" means the following, together or separately:
  - (a) Toxic chemicals and their precursors, except where intended for purposes not prohibited under this Convention, as long as the types and quantities are consistent with such purposes;
  - (b) Munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (a), which would be released as a result of the employment of such munitions and devices;
  - (c) Any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (b).
2. "Toxic Chemical" means:

Any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.
9. "Purposes Not Prohibited Under this Convention" means:
  - (a) Industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes;

- (b) Protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons;
- (c) Military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare;
- (d) Law enforcement including domestic riot control purposes.

Note that the chemical schedules contained in the verification annex **are not** a list of the chemical weapons prohibited under the CWC. The Treaty makes very clear that the “toxic chemicals which have been identified for the application of verification measures are listed in Schedules contained in the Annex on Chemicals.” Hence the schedules relate to verification and not the total scope of the prohibitions under the CWC.

#### Notes

- \* I am grateful for the comments of Professor John Simpson, Director of the Mountbatten Centre for International Studies, on the draft version of this paper.
- 1 For the states parties to the CWC see the OPCW website. Membership as of 18 February 2004 can be found at: [http://www.opcw.org/html/db/members\\_frameset.html](http://www.opcw.org/html/db/members_frameset.html)  
For the BTWC an updated list of states parties was released at the Fifth Review Conference in 2002, document BWC/CONF.V/INF.4 (25 October 2002) available at <http://disarmament.un.org/wmd/bwc/fifth/documents.htm>  
Cuba acceded to the NPT in November 2002. Reported in *Arms Control Today*, December 2002, at [http://www.armscontrol.org/act/2002\\_12/briefs\\_dec02.asp#cuba](http://www.armscontrol.org/act/2002_12/briefs_dec02.asp#cuba)  
The *SIPRI Yearbook 2001* lists 133 states parties to the Geneva Protocol, while the UN website lists 132 at <http://disarmament.un.org/TreatyStatus.nsf>
- 2 Concerns about compliance with the BTWC have been highlighted by the US. See Statement of the Honorable John R. Bolton, Under-Secretary for Arms Control and International Security, United States Department of State, to the Fifth Review Conference of the Biological Weapons Convention, Geneva, Switzerland, 19 November 2001.



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- <sup>3</sup> Nabil Fahmy, "Special Comment" in *Disarmament Forum*, The Middle East, UNIDIR, Geneva: United Nations, No 2, 2001, pp. 3-5.
- <sup>4</sup> Ibid. See also, Benjamin Frankel, Ariel Levite, Khidir Hamza and Bruce Jentleson, "Middle East Arms Control and Regional Security Dilemmas" in Joseph Cirincione (ed.), *Repairing the Regime*, New York: Routledge, 2000, p. 196.
- <sup>5</sup> The notion of a zone larger than the central areas of the Middle East has been discussed by James Leonard, Jim Prawitz and Ben Sanders in the report of United Nations Secretary-General Pérez de Cuéllar: "Study on Effective and Verifiable Measures which would Facilitate the Establishment of a Nuclear-Weapon-Free Zone in the Middle East", New York: United Nations, 1991, Study Series on Disarmament No 22.
- <sup>6</sup> See also articles in *The Nonproliferation Review* between 1996 and 2001 covering Israel, Vol. 8, No 3, 2001; Iraq, Vol. 8, No 2, 2001; Iran and Iraq, Vol. 8, No 1, 2001; Saudi Arabia, Vol. 6, No 3, 1999; Sudan, Vol. 6, No 1, 1998; Egypt, Vol. 5, No 3, 1998; Syria, Vol. 5, No 1, 1997 and Libya, Vol. 4, No 3, 1997.
- <sup>7</sup> "Study on Effective and Verifiable Measures which would Facilitate the Establishment of a Nuclear-Weapon-Free Zone in the Middle East", New York: United Nations, 1991, Study Series on Disarmament No 22, p. 19.
- <sup>8</sup> Tanya Ogilvie-White, Ben Sanders and John Simpson, "Putting the Final Document into Practice: Possible Ways to Implement the results of the 2000 Review Conference", a PPNN Study, Southampton: Mountbatten Centre for International Studies, 2001, p. 41.
- <sup>9</sup> Ibid., p. 40.
- <sup>10</sup> Aluf Benn, "Israel's decision time" in *Bulletin of the Atomic Scientists*, Vol. 57, No 2, March/April 2001, p. 22.
- <sup>11</sup> Pamela Mills, "Preventing Chemical Warfare and Terrorism: The CWC and the Middle East" in *Disarmament Diplomacy*, Issue No 65, July/August 2002, p. 28.
- <sup>12</sup> Nabil Fahmy, "Special Comment" in *Disarmament Forum*, The Middle East, UNIDIR, Geneva: United Nations, No 2, 2001, pp. 3-5.
- <sup>13</sup> Matthew Meselson, "Averting the Hostile Exploitation of Biotechnology" in *The CBW Conventions Bulletin*, Issue No 48, June 2000, p. 16.
- <sup>14</sup> IUPAC, "Impact of Scientific Developments on the Chemical Weapons Convention", Report by the International Union of Pure and Applied Chemistry, November 2002, p. 5.

- 15 George Tenet, "Weapons of Mass Destruction: A New Dimension in U.S. Middle East Policy" in *MERIA: Middle East Review of International Affairs*, Vol. 4, No 2, June 2000, available at <http://meria.idc.ac.il/journal/2000/issue2/jv4n2a4.html>
- 16 Aluf Benn, "Israel's decision time" in *Bulletin of the Atomic Scientists*, Vol. 57, No 2, March/April 2001, p. 23.
- 17 Ibid.
- 18 Javad Ali, "Chemical Weapons and the Iran-Iraq War: A Case Study in Noncompliance" in *The Nonproliferation Review*, Vol. 8, No 1, Spring 2001, p. 56.
- 19 Mohamed Shaker, "The Middle East, Israel and Iraq" in John Simpson and Darryl Howlett (eds), *The Future of the Non-Proliferation Treaty*, Basingstoke: St. Martin's Press, 1995, p. 168.
- 20 "A Draft Convention to Prohibit Biological and Chemical Weapons Under International Criminal Law" in *The CBW Conventions Bulletin*, No 42, December 1998.
- 21 Aluf Benn, "Israel's decision time" in *Bulletin of the Atomic Scientists*, Vol. 57, No 2, March/April 2001, p. 24.
- 22 Gerald M. Steinberg, "Starting over: The Prospects for Regional Security and Arms Control in the Middle East in the Next Decade" in *Disarmament Forum*, The Middle East, UNIDIR, Geneva: United Nations, No 2, 2001, p. 69.

## **CHAPTER 4**

### **THE LATIN AMERICAN EXPERIENCE IN ESTABLISHING A NUCLEAR-WEAPON-FREE ZONE<sup>1</sup>**

Enrique Román-Morey

#### **BACKGROUND**

It is not possible to speak about nuclear-weapon-free zones (NWFZs) or weapons of mass destruction free zones (WMDfZs) without referring to one event in particular and its immediate response from the international community. The use of nuclear weapons in Hiroshima and Nagasaki definitively changed the code of war as it introduced a new kind of weapon, so special and powerful in substance, that it broke the weak international equilibrium that existed until then.

This new code of war ethics brought with it the sense that nuclear weapon use had no legal limits, no respect for political borders and finally no moral reasoning. Furthermore this weapon became the main actor of the so-called “Cold War era” for half a century. It gave super powers to two of the largest countries in the world, increased the military power of others and worst of all became coveted by countries looking for regional or world status through its possession.

However, a group of countries decided unilaterally and by sovereign political will not to be part of this nuclear competition. The so-called Cuban Missile Crisis of October 1962 between Washington and Moscow was the spark, which opened some countries in Latin America to the notion of a Nuclear-Weapon-Free Zone (NWFZ). It has to be said though, that the idea for creating a denuclearized zone first came from Africa. The nuclear tests carried out by the French government at the end of the 50s in northern Sahara (in the territory of Algeria), pushed some African states to seek the possibility of having the region declared free of nuclear weapons by the United Nations General Assembly. However, the reality of the times made

that important suggestion impossible. Then in 1960, the Brazilian representative to the United Nations proposed to his country that the idea be followed up; this was not possible however because of a *coup d'état* and the incoming military regime in Brazil. However the Mexican Ambassador in Rio de Janeiro, Alfonso Garcia-Robles (later Nobel Peace Prize winner for his role in the creation of the first NWFZ), took the idea back to Mexico. Together with Garcia-Robles' eagerness and the clear political will of the Mexican authorities, the international community was able to enjoy the birth of the Treaty of Tlatelolco for the Prohibition of Nuclear Weapons in Latin America.

### **COMMON FEATURES OF NWFZS**

Some Aspects that make NWFZs unique are that:

- All NWFZ initiatives to date have their roots in the political reality of the Cold War and as such three categories can be identified: initiatives that have failed because of the Cold War (Northern and Central Europe); initiatives that have prevailed and developed despite and challenging the Cold War (the Tlatelolco and Rarotonga Treaties); and initiatives that have come to fruition mainly because of the demise of the Cold War (the Bangkok and Pelindaba Treaties and the Mongolia Declaration);
- NWFZs have been recognized by the international community as a "step by step" approach in the process of arms control and disarmament. This has been more effective in disarmament matters than long, difficult and sometime impossible negotiations between the nuclear-weapon states.

### **BACKGROUND TO THE TREATY OF TLATELOLCO**

The thirteen days of October in 1962 was the spark that lit the beacon of Tlatelolco, though it took a full year for the countries in the region to coordinate national interests and arrive at a common goal. On 27 November 1963 the United Nations General Assembly approved by consensus the resolution entitled "Denuclearization of Latin America" which was drafted by Latin American diplomats. Though it was a challenge

for the countries in the region to work together with a common objective, the draft was testimony that the region had reached “its age of majority” and was ready to take its own political decisions. The draft Treaty bound the independent foreign policies of the countries in the region to an issue of common interest. More than three years later, on 12 February 1967, twenty-one member states of the preparatory commission approved the final text of the Treaty. Then two days later on 14 February the Treaty of Tlatelolco was opened for signature in the city of Mexico. The United Nations Secretary-General, U Thant, who attended the ceremony said: “In a world that all too often seems dark and ominous, the Treaty of Tlatelolco will shine like a beacon. This Treaty is a practical demonstration to all humanity of what can be accomplished when sufficient dedication and the necessary political will exist.”

### **SPECIAL FEATURES OF THE TREATY OF TLATELOLCO**

The Treaty of Tlatelolco for the Prohibition of Nuclear Weapons in Latin America and the Caribbean is one with only thirty-two articles and two short, but substantive Additional Protocols. Its special features are as follows:

- It is the first example of an unconditional prohibition on nuclear weapons in inhabited territories;
- It is an unequivocal repudiation of such types of Weapons of Mass Destruction (WMD);
- It has been the result of tenacious and non-stop efforts and not a consequence of improvisation;
- It was negotiated and adopted prior to the Non-Proliferation Treaty (NPT);
- It is, to date, the only NWFZ Treaty that has every state in the region fully party to its text, its amendments and its Additional Protocols;

### **CHARACTERISTICS OF THE TREATY OF TLATELOLCO**

The Treaty has some special characteristics and introduced some innovations that have definitely enriched international law as a whole and the Law of Treaties in particular. For example:

- Article 1 is a total prohibition on nuclear weapons;
- Though ‘the zone of application’ which was established by Article 4 is not universally adopted, it refers to “the whole of the territories for which the Treaty is in force”. The achievement of paragraph 1 of Article 26 means that the Treaty now covers the entire region.
- Article 5 defines nuclear weapons as any device which is capable of releasing nuclear energy in an uncontrolled manner and which has a group of characteristics that are appropriate for use for warlike purposes. An instrument that may be used for the transport or propulsion of the device is not included in this definition if it is separable from the device and not an indivisible part thereof;
- Under Articles 6 and 30 of the Treaty, signatory states can invoke the right to call a meeting of signatory parties under special circumstances. The meeting, however, is for consultative purposes as it is only the General Conference of member states that can take decisions;
- The Treaty creates its own organs: a general conference, a council (political body) and a secretariat, which provides political support and administrative management;
- Articles 12 to 16 and Article 18 on verification and control are very progressive in nature as they involve an innovative control system under permanent supervision of the parties and this also encourages transparency;
- The Treaty is different from other instruments, in that it does not contain an accession mechanism; Article 26 establishes that “the Treaty shall be opened indefinitely for signature”;
- Article 28 clearly establishes that “the Treaty should not be subject to reservations”;
- Article 29, which refers to entry into force, requires signature and ratification by the states in the region, as well as the conclusion of bilateral or multilateral agreements on the application of the safeguards system of the IAEA. The Treaty has also brought an innovative mechanism: the right of signatory states to waive this requirement through a declaration annexed to their respective instruments of ratification;
- Article 30 of the Treaty permits amendments to its text, thus making it possible to be updated or modernized;
- Article 31 introduced a new dimension stating that the “Treaty shall be of permanent nature and shall remain in force indefinitely”;
- Another important innovation for its time was the inclusion in the Treaty articles of the nuclear weapon states and others with territorial

interests in the region, through the signature and ratification of the Additional Protocols. This was the first time that nuclear negative security assurances came into force in the form of commitments by nuclear weapon states in favour of non-nuclear-weapon states.

## FINAL THOUGHTS

As Ambassador Alfonso Garcia-Robles stated, the Latin American countries “hurried up slowly, but hurried up”. The Treaty of Tlatelolco entered into force shortly after it was opened for signature as enough member states signed and ratified it. However, its complete universality was possible only more than thirty years later. In 1993, there were only twenty-five member states while some of the most politically and technically significant countries of the region like Argentina, Brazil, Chile and Cuba and some Caribbean countries, were not full members then. However it has finally reached the desired universality. Although Cuba ratified the Treaty in November 2002, the government aligned itself with the spirit of Tlatelolco when it signed the Treaty in 1995 and finalized full scope safeguards with the IAEA.

We could conclude that the end of the Cold War era has given us the greatest opportunity to put an end to what has been the worst threat devised by mankind against itself: the nuclear weapon. However, time has proven that it would be dangerous to mistake the end of the Cold War to mean the end of the nuclear danger. It would be worse to allow the times of terror that we have lived through during the Cold War to be replaced by nuclear complacency. The nuclear danger exists and it is alive in the enormous number of nuclear warheads that still endanger humankind's existence in the hands of the five recognized nuclear weapon states, the two *de facto* nuclear states and the one “non declared” weapon state. Moreover, this danger would only be compounded by other countries that objectively or subliminally have the ambition to become nuclear weapon states.

## CONCLUSIONS

- The nuclear threat persists so let us not allow nuclear complacency.

- The real interest of the international community is international security and so the abolition of the nuclear weapon should continue to be our main goal.
- The Treaties of Tlatelolco, Rarotonga, Bangkok and Pelindaba should be examples to follow for the creation of new NWFZs.
- NWFZs and the NPT represent the cornerstone of the international regime for nuclear disarmament and nuclear non-proliferation.
- NWFZs should be recognized as very important steps towards the achievement of a nuclear-weapon-free world.
- NWFZs do not represent an end in themselves, but a means for achieving an international regime of non-proliferation and prohibition of all WMD.

#### **Notes**

- 1 The author's ideas expressed in this paper do not represent those of the United Nations or of the Conference on Disarmament.



## CHAPTER 5

### **NUCLEAR-WEAPON-FREE ZONE TREATIES: BENEFITS AND DEFICIENCIES**

Jozef Goldblat

The idea of establishing nuclear-weapon-free zones was conceived with a view to preventing the emergence of new nuclear weapon states. As early as 1958, ten years before the signing of the Non-Proliferation Treaty (NPT), the Polish Government, which feared the nuclearization of West Germany and wanted to prevent the deployment of Soviet nuclear weapons on its territory, put forward a proposal called the Rapacki Plan (after the Polish Foreign Minister), for a nuclear-weapon-free zone in Central Europe. In this area, the stationing, manufacture and stockpiling of nuclear weapons and nuclear delivery vehicles would be prohibited and strict control of compliance exercised. The nuclear powers would undertake to respect the nuclear-weapon-free status of the zone and not use nuclear weapons against the territory of the zone. In the political climate of the 1950s, the Rapacki Plan had no chance of becoming a subject of an international agreement. Nonetheless, several of its elements were later adopted as guidelines for the establishment of denuclearized zones.

Efforts to ensure the absence of nuclear weapons in other populated parts of the world have been more successful. As of 2003 four regional denuclearization agreements namely, the Treaty of Tlatelolco covering the Latin American region, the Treaty of Rarotonga for the South Pacific, the Declaration on the Denuclearization of the Korean Peninsula and the Treaty of Bangkok encompassing the South-East Asian region have entered into force. However, the Treaty of Pelindaba which covers the African region has been signed but is not yet in force. The denuclearization of Central Asia is under negotiation.

Certain uninhabited areas of the globe have also been formally denuclearized. They include Antarctica under the 1959 Antarctic Treaty; outer space, the moon and other celestial bodies under the 1967 Outer Space Treaty and the 1979 Moon Agreement; and the seabed, the ocean floor and the subsoil thereof under the 1971 Seabed Treaty.

Article VII of the NPT affirmed the right of states to establish nuclear-weapon-free zones in their respective territories. The United Nations, in numerous resolutions, went further by encouraging the creation of such zones, and the 1995 NPT Review and Extension Conference expressed the conviction that regional denuclearization measures enhance regional and global peace and security. Nuclear-weapon-free zones have become part and parcel of the nuclear non-proliferation regime.

## **GUIDELINES FOR DENUCLEARIZED ZONES**

In 1975 the United Nations General Assembly formulated a set of principles, which should guide states in setting up nuclear-weapon-free zones. These principles were later expanded and included in a consensus report of the United Nations Disarmament Commission issued in 1999. The main recommendations are as follows:

Nuclear-weapon-free zones should be established on the basis of arrangements freely arrived at by the states in the region concerned.

The initiative to establish such a zone should emanate exclusively from states within the region and be pursued by all the states in that region.

Assistance should be provided, including through the United Nations, to the states concerned in their efforts to establish a zone.

All the states of the region concerned should participate in the negotiations on and the establishment of a zone.

The status of a nuclear-weapon-free zone should be respected by all states parties to the Treaty establishing the zone as well as by states outside the region, including the nuclear weapon states and, if there are any, states with territory or that are internationally responsible for territories situated within the zone.

The nuclear weapon states should be consulted during the negotiations of each treaty and its relevant protocol(s) in order to facilitate their signature and ratification of the protocol(s) through which they undertake legally binding commitments to the status of the zone and not to use or threaten to use nuclear weapons against states parties to the Treaty.

If there are states with territory or that are internationally responsible for territories within the zone, these states should be consulted during the negotiations of each treaty and its relevant protocol(s) with a view to facilitating their signature and ratification of the protocol(s).

The process of establishing the zone should take into account all the relevant characteristics of the region concerned.

The obligations of the parties should be clearly defined and be legally binding.

The arrangements should be in conformity with the principles and rules of international law, including the UN Convention on the Law of the Sea.

States parties to a nuclear-weapon-free zone exercising their sovereign rights and without prejudice to the purposes and objectives of such a zone remain free to decide for themselves whether to allow visits by foreign ships and aircrafts to their ports and airfields; allow transit of their airspace by foreign aircraft; and navigation by foreign ships in or over their territorial sea, archipelagic waters or straits that are used for international navigation, while fully honouring the rights of innocent passage, archipelagic sea lane passage or transit passage in straits that are used for international navigation.

States parties to the current nuclear-weapon-free zones should ensure that their adherence to other international and regional agreements does not entail any obligation contrary to their obligations under the zone treaties.

A nuclear-weapon-free zone should provide for the effective prohibition of the development, manufacturing, control, possession, testing, stationing or transporting by the states parties to the Treaty of any type of nuclear explosive device for any purpose, and should stipulate that

states parties to the Treaty do not permit the stationing of any nuclear explosive devices by any other state within the zone.

A nuclear-weapon-free zone should provide for effective verification of compliance with the commitments made by the parties to the Treaty.

A zone should constitute a geographical entity whose boundaries are to be clearly defined by prospective states parties to the Treaty through consultations with other states concerned, especially in cases where territories in dispute are involved.

Nuclear weapon states should, for their part, assume in full their obligations with regard to nuclear-weapon-free zones upon signing and ratifying relevant protocols.

A nuclear-weapon-free zone should not prevent the use of nuclear science and technology for peaceful purposes and could also promote international cooperation for the peaceful use of nuclear energy in the zone.

However, given the dissimilar geographical circumstances as well as different political, cultural, economic and strategic considerations of the states concerned, there can be no uniform pattern of denuclearized zones. The differences may relate to the scope of the obligations assumed by the parties; the responsibilities of extra-zonal states; the geographical area subject to denuclearization; the verification arrangements; and the conditions for the entry into force of the zonal agreement as well as for its denunciation.

## **THE TREATY OF TLATELOLCO**

The Treaty for the Prohibition of Nuclear Weapons in Latin America was signed on 14 February 1967 at Tlatelolco, a district of Mexico City.

### **Scope of the Obligations**

The Treaty of Tlatelolco prohibits the testing, use, manufacture, production or acquisition by any means as well as the receipt, storage, installation, deployment and any form of possession of nuclear weapons in

Latin America. Encouraging or authorizing or in any way participating in the testing, use, manufacture, production, possession or control of any nuclear weapon is equally prohibited. Research and development directed towards acquiring the nuclear weapon capability is not expressly forbidden.

Explosions of nuclear devices for peaceful purposes are allowed under the Treaty, and procedures for carrying them out are specified in Article 18. However, a proviso is made that such activities must be conducted in conformity with Article 1, which bans nuclear weapons, as well as with Article 5, which defines a nuclear weapon as any device capable of releasing nuclear energy in an uncontrolled manner and having characteristics appropriate for use for warlike purposes. An instrument that may be used for the transport or propulsion of the device is not included in this definition if it is separable from the device and not an indivisible part thereof. Most countries interpret all these requirements as prohibiting the manufacture of all nuclear explosive devices, unless or until nuclear devices are developed which cannot be used as weapons. This interpretation had for a long time been contested by Argentina and Brazil. Subsequently, however, both countries undertook to prohibit in their respective territories the testing, use, manufacture, production or acquisition by other means of any nuclear explosive device, as long as no technical distinction can be made between nuclear explosive devices for peaceful purposes and those for military purposes. It is obvious that allowance for any kind of nuclear explosion would defeat the purpose of a nuclear-weapon-free zone. Each party must conclude an agreement with the International Atomic Energy Agency (IAEA) for the application of safeguards to its nuclear activities.

One of the purposes of the treaties establishing zones free of nuclear weapons is to make a nuclear attack against states parties militarily unjustifiable and, consequently, less likely. To achieve this goal, all potential targets of a nuclear strike would have to be removed from the denuclearized areas. These targets include nuclear weapon-related support facilities, such as communication, surveillance and intelligence-gathering facilities, as well as navigation installations, serving the nuclear strategic systems of the great powers. The Treaty of Tlatelolco does not, however, specifically ban such facilities.

### **Area Subject to Denuclearization**

The zone of application of the Treaty of Tlatelolco embraces the territory, territorial sea, airspace and any other space over which the zonal state exercises sovereignty in accordance with its own legislation. It will also include vast areas in the Atlantic and Pacific Oceans, hundreds of kilometres off the coasts of Latin America (Article 4), upon fulfilment of several requirements specified in Article 28. These requirements are: adherence to the Treaty by all states of the region; signature and ratification of the Additional Protocols to the Treaty by all the states concerned; and conclusion of agreements with the IAEA for the application of safeguards to the nuclear activities of the parties. The extra-continental or continental states of France, the Netherlands, the United Kingdom and the United States, which are internationally responsible, *de jure* or *de facto*, for territories lying within the limits of the geographical zone established by the Treaty—have undertaken to apply the statute of military denuclearization to these territories by adhering to Additional Protocol I of the Treaty. All nuclear weapon powers have unreservedly assumed an obligation under Additional Protocol II to respect the denuclearization of Latin America as “defined, delimited and set forth” in the Treaty, that is, as covering the designated portions of the high seas as well. However, in statements contradicting this obligation, the signatories of Additional Protocol II pointed out that they would not accept any restrictions on their freedom at sea.

Furthermore, since the Treaty has not explicitly prohibited transit of nuclear weapons, the question arose whether such activity is actually permitted. According to the interpretation given in 1967 by the Preparatory Commission for the Denuclearization of Latin America (COPREDAL), it is the prerogative of the territorial state, in the exercise of its sovereignty, to grant or deny permission for transit. In joining the Additional Protocols of the Treaty, the United States and France made a declaration of understanding to the same effect, while the Soviet Union expressed the opinion that authorizing transit of nuclear weapons in any form would be contrary to the objectives of the Treaty. China considers that the passage of means of transport or delivery carrying nuclear weapons through Latin American territory, territorial sea or airspace is prohibited. Indeed, once nuclear weapons are allowed in transit, even if such transit is limited to port visits or overflights, it will be difficult to maintain that the zone has been denuclearized. In any event, since the great powers refuse, as a matter of

policy, to disclose the whereabouts of their nuclear weapons, they are unlikely to request permission of transit for specific nuclear weapon carrying ships or aircraft. The right of zonal states to deny permission for transit of nuclear weapons is thus purely hypothetical.

### **Security Assurances of Extra-Zonal States**

Under Additional Protocol II to the Treaty of Tlatelolco, the “powers possessing nuclear weapons” must fully respect the statute of denuclearization of Latin America in respect of warlike purposes, not to contribute to the performance of acts involving a violation of the Treaty, and not to use, or threaten to use, nuclear weapons against the parties to the Treaty. However, the obligations which the nuclear weapon powers have actually assumed under this Protocol are conditional. The United States and the United Kingdom made interpretative statements at the time of signing and ratifying Protocol II, which reflected their military doctrines. They reserved the right to reconsider their non-use obligations with regard to any state in the nuclear-weapon-free zone in the event of an armed attack by that state carried out with the support or assistance of a nuclear weapon power. The Soviet Union formulated a similar qualification with regard to a party to the Treaty committing an act of aggression with the support of, or together with, a nuclear weapon state. For France, its non-use undertaking would present no obstacle to the full exercise of the right of self-defence enshrined in the United Nations Charter.

### **Entry into Force and Denunciation**

The Treaty of Tlatelolco enters into force among states that have ratified it only when certain conditions have been met—the same conditions that are required under Article 28 for the extension of the geographical area of the Treaty’s application. These conditions may be waived. The Treaty became operative in April 1968, when El Salvador joined Mexico in ratifying it and in waiving the requirements for its entry into force.

The Treaty is of a permanent nature and is not subject to reservations. However, any party may denounce it with three months notice if, in its opinion, circumstances have arisen, or “may arise”, connected with the content of the Treaty or of the Additional Protocols to the Treaty, which affect its supreme interests or the peace and security of one or more parties.

After the entry into force of the Treaty for all countries of the zone, the rise of a new power possessing nuclear weapons could have the effect of suspending the execution of the Treaty for those countries which have ratified it. Such a suspension could be enacted without waiving the requirement that Additional Protocol II be signed and ratified by all powers possessing nuclear weapons, and which would request such suspension. The Treaty would then remain suspended until the new power ratified the protocol.

### **Amendments**

In 1992, at the initiative of Argentina, Brazil and Chile, several articles of the Treaty of Tlatelolco were amended. The most important amendments concerned the so-called special inspections which, according to a new Treaty paragraph, would be carried out exclusively by the IAEA.

Another amendment, adopted in 1990, added to the official title of the Treaty of Tlatelolco the words "and the Caribbean" in order to incorporate the English-speaking states of the Caribbean area into the zone of application of the Treaty. By yet another amendment, adopted in 1991, all the independent states of the region became eligible to join the regime of denuclearization, whereas, according to the original version, a "political entity", part or all of whose territory was the subject of a dispute or claim between an extra-continental country and one or more Latin American states, could not be admitted. Owing to this amendment, Belize and Guyana could join the Treaty.

## **THE TREATY OF RAROTONGA**

On 6 August 1985, the states members of the South Pacific Forum signed at Rarotonga, in the Cook Islands, a treaty establishing a nuclear-free zone in the region.

### **Scope of the Obligations**

The South Pacific Nuclear-Free Zone Treaty prohibits the manufacture or acquisition by other means, as well as the possession or control, of any nuclear explosive device by the countries of the zone. It also bans seeking or receiving assistance in the manufacture or acquisition of nuclear



explosive devices. Protocol III, prohibiting tests of any nuclear explosive device anywhere within the zone, was opened for signature by all the five declared nuclear weapon powers, but it was clearly addressed to France, the only state which at the time of signing was engaged in such tests in the region.

By “nuclear explosive device”, the Treaty of Rarotonga means any nuclear weapon or other explosive device capable of releasing nuclear energy, irrespective of the purpose for which it could be used. The term includes such a weapon or device in unassembled and partly assembled forms, but does not include the means of transport or delivery of such a weapon or device if separable from and not an indivisible part of it. As in the Treaty of Tlatelolco, research and development directed towards acquiring a nuclear weapon capability are not expressly forbidden.

In addition to banning nuclear explosive devices, the Treaty contains a ban on dumping radioactive matter at sea anywhere within the South Pacific Zone. Hence the zone is called “nuclear-free”, which conveys a wider notion than “nuclear-weapon-free”. The relevant provision reflects the concern, often voiced in the United Nations and other international organizations, over the inability of the nuclear industry to dispose safely of its wastes.

As regards weapon-related prohibitions, the Treaty of Rarotonga appears to be stricter than the Treaty of Tlatelolco, because it prohibits the possession or testing of nuclear explosive devices for peaceful purposes. Nevertheless, as in the Treaty of Tlatelolco, the denuclearization measures taken in the South Pacific region have not removed all the potential targets for nuclear attack, because the Treaty of Rarotonga does not prohibit the facilities serving nuclear strategic systems.

Full-scope IAEA safeguards must be applied to nuclear activities of the parties, and no nuclear exports to any non-nuclear weapon state may take place without the application of such safeguards.

#### **Area Subject to Denuclearization**

Although it is claimed that the Treaty of Rarotonga set up a nuclear-free zone stretching to the border of the Latin American nuclear-weapon-free zone in the east and to the border of the Antarctic demilitarized zone in the

South, it bans the presence of nuclear weapons only within the territories of the South Pacific states, up to the twelve-mile territorial sea limit. It does not seek—as the Treaty of Tlatelolco does—to have nuclear weapon prohibitions applied to a larger ocean area. This omission seems to be justified by a specific reference to international law with regard to freedom of the seas, although no law, including the law of the sea, can exclude constraints on any activity, if the constraints are internationally agreed. Establishment of extensive nuclear-weapon-free maritime areas adjacent to nuclear-weapon-free territories would reinforce the sense of security of zonal states.

Each party may allow visits by any foreign ships and aircraft to its ports and airfields, transit of its airspace by foreign aircraft, and navigation by any foreign ships in its territorial sea or archipelagic waters in a manner not covered by the rights of innocent passage, archipelagic sea lane passage or transit passage of straits. The frequency and duration of such permitted visits and transits are not limited. It is therefore not clear to what extent they differ from the “stationing” (defined in the Treaty as “emplantation, emplacement, transportation on land or inland waters, stockpiling, storage, installation and deployment”) of nuclear weapons, which is prohibited. Under Protocol I to the Treaty of Rarotonga, open for signature by France, the United Kingdom and the United States, the signatories are to apply the prohibitions contained in the Treaty in respect of the territories in the zone for which they are internationally responsible.

### **Security Assurances of Extra-Zonal States**

Protocol II to the Treaty of Rarotonga provides for assurances to be given by the nuclear weapon powers not to use, or threaten to use, nuclear explosive devices against the parties to the Treaty or any territory within the zone for which a state that has become a party to Protocol I is internationally responsible. In signing this protocol, the Soviet Union stated that in case of action taken by a party or parties violating their major commitments concerning the status of the zone, it would consider itself free from its non-use commitments. The same would apply in case of aggression committed by one or several parties to the Treaty, supported by a nuclear weapon state, or together with it, with the use by such a state of the territory, airspace, territorial sea or archipelagic waters of the parties for visits by nuclear weapon-carrying ships and aircraft or for transit of nuclear

weapons. Eventually, Protocols II and III were ratified by the Soviet Union without reference to the above statement.

China signed the same protocols with an understanding that it might reconsider its obligations if other nuclear weapon states or parties to the Treaty took action in gross violation of the Treaty and its protocols, thus changing the status of the zone and endangering the security interests of China. This understanding was not referred to at the time of ratification.

France and Great Britain decided to become parties to the protocols upon the termination of the last series of French nuclear tests in the Pacific. In its statement of reservation and interpretation, the French government made it clear that it did not consider its inherent right to self-defence to be restricted by the signed documents, and that the assurances provided for in Protocol II were the same as those given by France to non-nuclear weapon states parties to the NPT. The British government stated that it would not be bound by its undertaking under Protocol II in the case of an invasion or any other attack carried out or sustained by a party to the Treaty in association or alliance with a nuclear weapon state, or if a material breach of the non-proliferation obligations under the Treaty were committed. The US government signed the protocols without a formal reservation, but as of 2003 is still not a party to them.

### **Entry into Force and Denunciation**

The Treaty of Rarotonga entered into force in 1986, upon the deposit of the eighth instrument of ratification. This procedure was much simpler than that provided for in the Treaty of Tlatelolco. The denunciation formula of the Treaty of Rarotonga is also different. It is more restrictive than that of the Treaty of Tlatelolco, because it concedes the right of withdrawal only in the event of violation of a provision essential to the achievement of the objectives of the Treaty, and it requires twelve months notice. Reservations are not allowed.

### **THE DECLARATION ON KOREA**

Whereas the Republic of Korea (South Korea)—which joined the NPT in 1975—has all along been subject to full-scope safeguards, as provided for in that Treaty, the Democratic People’s Republic of Korea (North Korea)—

party to the NPT since 1985—refused to sign a safeguards agreement with the IAEA within the time-limit prescribed by the Treaty. It put forward several political conditions for signing, which were not directly related to the NPT.

Following the statement by the South Korean President that there were no nuclear weapons in his country, the Government of North Korea finally accepted the NPT safeguards. On 20 January 1992, both Korean states signed a Joint Declaration on the Denuclearization of the Korean Peninsula. The stated aim of the Declaration was to “eliminate the danger of nuclear war” and, in particular, to “create an environment and conditions favourable for peace and peaceful unification of our country”.

The parties agreed not to test, manufacture, produce, receive, possess, store, deploy or use nuclear weapons. They further undertook to use nuclear energy solely for peaceful purposes, and not to possess nuclear reprocessing or uranium enrichment facilities. To verify compliance, each side may conduct inspections of the objects agreed upon by both sides. However, South Korea’s proposal for a system of challenge inspections to be conducted upon the initiative of the requesting party was not accepted by North Korea. A South-North Joint Nuclear Control Commission is to be in charge of implementing the obligations of the parties.

The Joint Declaration entered into force upon the exchange of appropriate instruments, which took place on 19 February 1992. However, the decision by North Korea to withdraw from the NPT has rendered the Korean nuclear-weapon-free zone agreement null and void.

If brought fully into effect, the Korean Declaration would significantly complement the global non-proliferation regime. Its ban on reprocessing and enrichment activities—which goes beyond the obligations assumed by the parties to other nuclear-weapon-free zone treaties—is particularly noteworthy. However, since these activities, which have legitimate civilian applications, are not prohibited by the NPT, they may not be banned in other zonal denuclearization agreements.

## **THE TREATY OF BANGKOK**

The idea of setting up a nuclear-weapon-free zone in South-East Asia was developed as part of the Declaration on the Zone of Peace, Freedom and Neutrality, issued in 1971 by the Association of South-East Asian Nations (ASEAN). On 16 December 1995, the Treaty on the South-East Asia Nuclear-Weapon-Free Zone was signed in Bangkok.

### **Scope of the Obligations**

Parties to the Treaty of Bangkok may use nuclear energy for their economic development and social progress, but are prohibited from developing, testing, manufacturing or otherwise acquiring, possessing or having control over nuclear weapons, both inside and outside the zone. Research on nuclear explosive devices is not expressly banned. The parties will not allow other states to engage in such activities on their territories, including the use of nuclear weapons. A “nuclear weapon” is defined simply as any explosive device that is capable of releasing nuclear energy in an uncontrolled manner. The means of transport or delivery of such a device are not included in this definition if they are separable from and not an indivisible part thereof. Nuclear explosive devices in unassembled or partly assembled forms are not explicitly covered. Dumping of any radioactive material or waste at sea or discharge into the atmosphere within the zone is not allowed, nor is it allowed to dispose of radioactive material or wastes on land, unless the disposal is carried out in accordance with IAEA standards and procedures. Seeking or receiving assistance in the commission of acts which would violate the above provisions, as well as assisting in or encouraging the commission of such acts, is equally prohibited.

Parties which have not yet done so must conclude an agreement with the IAEA for the application of full-scope safeguards to their peaceful nuclear activities. Prior to embarking on a peaceful nuclear energy programme, each party must subject the programme to rigorous nuclear safety assessment conforming to the guidelines and standards recommended by the IAEA for the protection of health and minimization of danger to life and property.

Stationing—defined as deploying, emplacing, implanting, installing, stockpiling or storing nuclear weapons—in the South-East Asia zone is

prohibited. However, each party, on “being notified”, may decide for itself whether to allow visits by foreign ships and aircraft to its ports and airfields, transit of its airspace by foreign aircraft, navigation by foreign ships through its territorial sea or archipelagic waters and overflight of foreign aircraft above those waters in a manner not governed by the rights of innocent passage, archipelagic sea lanes passage or transit passage. As elsewhere, it is doubtful whether the presence of nuclear weapons on foreign ships or aircraft would ever be notified.

#### **Area Subject to Denuclearization**

The South-East Asia nuclear-weapon-free zone comprises the territories of Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam, as well as their respective continental shelves and Exclusive Economic Zones (EEZ). The inclusion of continental shelves and of EEZ is a new development, but, according to the language of the Treaty, the right of states with regard to freedom of the high seas is not to be prejudiced.

#### **Security Assurances of Extra-Zonal States**

Under the protocol annexed to the Treaty of Bangkok and open for signature by China, France, Russia, the United Kingdom and the United States, the signatories would assume the following obligations: to respect the Treaty and not to contribute to any act which would constitute its violation, and not to use or threaten to use nuclear weapons against any state party to the Treaty and, in general, within the zone. The protocol is of a permanent nature, but each party may withdraw from it if it decides that extraordinary events related to the subject matter of the protocol have jeopardized its supreme interests.

In the event of breach of the protocol, a special meeting of the Commission for the South-East Asia Nuclear Weapon Free Zone may be convened to decide on appropriate measures to be taken. No other denuclearization treaty provides for such action.

The United States expressed concerns (shared by some other nuclear weapon powers) that because of the geographical extent of the zone—which it considers inconsistent with the 1982 Convention on the Law of the Sea—regular movement of nuclear-powered and nuclear-armed naval

vessels and aircraft through South-East Asia would be restricted and regional security arrangements disturbed. The US is unwilling to heed to the demands of the South-East Asian states to provide what it deems to be sweeping negative security assurances to a zone as large as that prescribed in the Treaty. China made known its objection to the geographical scope of the Treaty, specifically to the inclusion of parts of the South China Sea to which it and some ASEAN members have conflicting claims. The signatories of the Treaty were asked by some states to revise the language of the protocol so as to make it acceptable to all nuclear weapon powers.

### **Entry into Force and Denunciation**

The Treaty of Bangkok entered into force on 27 March 1997, upon the deposit of the seventh instrument of ratification. Reservations are not permitted. The Treaty is to remain in force indefinitely, but each party has the right to withdraw from it, with twelve months notice, in the event of a breach by any other party, which would be essential to the achievement of the objectives of the Treaty.

The operation of the Treaty is to be reviewed 10 years after its entry into force at a meeting specially convened for this purpose. Amendments can be adopted only by a consensus decision.

## **THE TREATY OF PELINDABA**

In 1995, as a result of several years' work, experts from the Organization of African Unity (OAU) and from the United Nations elaborated a draft Treaty on the African Nuclear-Weapon-Free Zone, called the Treaty of Pelindaba (after the former seat of the South-African nuclear weapon related activities). After a few amendments, the draft was approved by the OAU Assembly. In many respects the Treaty of Pelindaba followed the pattern of the nuclear-weapon-free zone arrangements in force in other parts of the world. On 11 April 1996, it was opened for signature.

### **Scope of the Obligations**

The Treaty of Pelindaba prohibits the manufacture, testing, stockpiling or acquisition by other means, as well as possession and control of any nuclear explosive device (in assembled, unassembled, or partly assembled

forms) by the parties. In addition—and this is an important novelty—research on, and development of, such a device is banned. The Treaty also bans seeking, receiving or encouraging assistance in these activities. Under Protocol II, open for signature by the five declared nuclear weapon states, the signatories should undertake not to test or assist in or encourage the testing of any nuclear explosive device within the African zone. Nuclear explosive device is defined in the same way as in the Treaty of Rarotonga.

In a clear allusion to the past South African nuclear weapon programme, the Treaty of Pelindaba requires the dismantlement and destruction of any nuclear device that was manufactured prior to the entry into force of the Treaty, as well as the destruction of the relevant facilities or their conversion to peaceful uses. All such operations must take place under the supervision of the IAEA. These provisions aim at dispelling any lingering suspicion that some nuclear items have been hidden away in South Africa or that certain prohibited activities are still taking place there. They have set a precedent for future nuclear weapon-free-zone treaties concluded with the participation of nuclear-capable states.

The Treaty of Pelindaba prohibits armed attacks against nuclear installations and the dumping of radioactive matter anywhere within the African zone. It also contains an undertaking by the parties to implement or to use as guidelines the measures contained in the 1991 Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, in so far as it is relevant to radioactive waste. The parties undertake to strengthen the mechanisms for cooperation, at the bilateral, subregional and regional levels, with a view to promoting the use of nuclear science and technology for economic and social developments.

Whereas stationing of nuclear explosive devices in the territory of the zonal states is prohibited, visits and transit by foreign ships and aircraft—in a manner not covered by the rights of innocent passage, archipelagic sea lane passage or transit passage of straits—may be allowed by the parties on the (rather unclear) condition that no prejudice should be caused to the purposes and objectives of the Treaty. It is not prohibited in the African zone to establish facilities serving the nuclear strategic systems of the nuclear weapon powers.



Verification of the uses of nuclear energy is to be performed by the IAEA, which must apply full-scope safeguards to prevent the diversion of nuclear material to nuclear explosive devices. Furthermore, the Treaty obliges the parties to observe international rules regarding the security and physical protection of nuclear materials, facilities and equipment in order to prevent their theft or unauthorized use.

### **Area Subject to Denuclearization**

The Treaty of Pelindaba bans nuclear weapons in the territory on the continent of Africa, on island states that are members of the OAU and on all islands considered in OAU resolutions (presumably also resolutions which may be adopted in the future) to be part of Africa. For the purpose of the Treaty, "territory" means land territory, internal waters, territorial seas and archipelagic waters and the airspace above them, as well as the seabed and subsoil beneath. A reference made to the freedom of the seas is clearly intended to preclude restrictions on the presence of nuclear weapons beyond the territorial sea limits of the zonal states. Under Protocol III of the Treaty of Pelindaba, open for signature by France and Spain, the signatories should undertake to apply (in respect of the territories for which each of them is *de jure* or *de facto* internationally responsible, and which are situated in the African zone) the denuclearization provisions contained in the Treaty, and to ensure the application of IAEA safeguards there.

The geographic extent of the application of the Treaty of Pelindaba and of its protocols is illustrated in a map annexed to the Treaty. The main difficulty in drawing up this map was the status of the Chagos Archipelago, that comprises the island of Diego Garcia which harbours a US military base. The Archipelago is covered by the map with a proviso by both the United Kingdom and Mauritius that this is "without prejudice to the question of sovereignty". It was thus made clear that the resolution of the sovereignty issue would have to take place outside the framework of the Treaty. However, the United Kingdom stated that it did not accept the inclusion, without its consent, of the British Indian Ocean Territory (of which Diego Garcia is a part, within the African nuclear-weapon-free zone) and that it did not accept any legal obligations in respect of that Territory. In a related statement, the United States noted that neither the Treaty nor Protocol III apply to the activities of the United Kingdom, the United States or any other state not party to the Treaty on the Island of Diego Garcia or elsewhere in the British Indian Ocean Territories, and that, accordingly, no

change was required in US armed forces operations there. Russia, however, pointed out that, as long as a military base of a nuclear weapon power is situated on the Chagos Archipelago islands, and as long as certain nuclear powers consider themselves free from the obligations under the protocols to the Treaty of Pelindaba with regard to these islands, Russia could not regard them as meeting the requirements of nuclear-weapon-free territories.

### **Security Assurances of Extra-Zonal States**

Under Protocol I, open for signature by China, France, Russia, the United Kingdom and the United States, the signatories should undertake not to use or threaten to use a nuclear explosive device against any party to the Treaty, or any territory within the African zone for which a state that has become party to Protocol III is internationally responsible. However, in signing this protocol, the United States, the United Kingdom and France declared that they would not be bound by it in case of an invasion or any other attack upon them, carried out or sustained by a party to the Treaty in association or alliance with a nuclear weapon state. Russia made a similar statement, but added that it did not consider itself bound by the obligations under Protocol I in respect of the Chagos Archipelago islands.

Parties to the protocols would undertake not to contribute to any act constituting a violation of the Treaty or the relevant protocol. This undertaking is unverifiable without the transparency of the nuclear powers' naval and air deployments in the nuclear-weapon-free zone as well as in the areas adjacent to the zone.

### **Entry into Force and Denunciation**

The Treaty of Pelindaba is not subject to reservations. It will enter into force on the date of the deposit with the Secretary-General of the OAU of the twenty-eighth instrument of ratification. The Treaty is of unlimited duration, but any party may withdraw from it by giving twelve months notice, if some extraordinary events have jeopardized its supreme interests. The denunciation clause is thus less rigorous here than in the Treaty of Rarotonga which permits withdrawal only in the event of a material breach of the Treaty.

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## **NEGOTIATIONS FOR THE DENUCLEARIZATION OF CENTRAL ASIA**

On 27 February 1997, following the proposal made by the President of Uzbekistan, the leaders of central Asian states (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan) met in Almaty (Kazakhstan) and declared their intention to establish a Central Asian Nuclear-Weapon-Free Zone (CANWFZ). The initiative was endorsed by the UN General Assembly, and in 1998 governmental experts from the five republics, assisted by the United Nations, started negotiating a denuclearization treaty.

The negotiations proved difficult. The problems that arose were directly or indirectly related to the special characteristics of the region. As distinct from other nuclear-weapon-free zones, the CANWFZ is to border on two nuclear weapon states, China and Russia. Furthermore India and Pakistan, countries which have demonstrated their nuclear weapon capability and potential, are situated in relative proximity to the envisaged zone. The territory of Central Asia had served, until the late 1980s, as the main site of Soviet nuclear explosions, and nuclear weapons were withdrawn from the area only in the 1990s. Moreover, some central Asian states are bound by the collective security arrangements (under the 1992 Tashkent Treaty) within the framework of the Commonwealth of Independent States (CIS), dominated by Russia. These central Asian states would not assume commitments which they (and/or Russia) consider inconsistent with these arrangements. In addition, political rivalry among the states of the region impeded progress.

### **Area Subject to Denuclearization**

Whereas land territories, waters within these territories and the air space above them, belonging to the five central Asian states, are to be included in the nuclear-weapon-free zone, the Caspian Sea, although lying in the region, cannot be included, because only two (Kazakhstan and Turkmenistan) of the five littoral states will be covered by the CANWFZ. The territorial waters of the parties cannot become part of the CANWFZ—as is the case in other zones—because the Caspian Sea is not subject to the Law of the Sea regime; there is no legally recognized division there between territorial and international waters. It appeared, therefore, necessary to leave the Caspian Sea, in its entirety, outside the geographic scope of the CANWFZ.

### **Transit of Nuclear Weapons**

Most treaties establishing nuclear-weapon-free zones contain a clause (imposed by the nuclear weapon powers), according to which parties may allow or deny visits or transit through their land territories, waters or air space, by foreign ships or aircraft. This clause, which implies that temporary presence of nuclear weapons could be tolerated by the CANWFZ states, has been accepted by the negotiating parties. It reads as follows: "...each party, in the exercise of its sovereign rights, is free to resolve issues related to transit...".

### **Parties to the Treaty**

The signatories of the 1997 Almaty Declaration expressed the wish that the CANWFZ be open to other states in the region. After extensive negotiations it was agreed that only neighbouring states, those having common borders with the CANWFZ, would be allowed to accede to the CANWFZ Treaty, if they accepted the obligations under the Treaty and if the Treaty was amended accordingly. A precedent for such an enlargement can be found in the Treaty of Rarotonga, which envisages the possibility that a member of the South Pacific Forum whose territory is outside the South Pacific nuclear-free zone could become a party to this Treaty. The parties to the protocol to the CANWFZ Treaty would be free to refuse to accept alterations to their obligations under the protocol that might be brought about by the enlargement of the CANWFZ.

### **Parties to the Protocol**

The nuclear weapon-free-zone agreements (with the exception of the Declaration on the Denuclearization of the Korean Peninsula) are accompanied by a protocol containing assurances of no use and of no threat of use of nuclear weapons against the parties to the Treaty. In this connection, the Treaty of Tlatelolco refers, in general terms, to all powers "possessing nuclear weapons", whereas the protocols to other treaties specify that the assurances are to be given by China, France, the Soviet Union/Russia, the United Kingdom and the United States. After India and Pakistan had carried out a series of nuclear test explosions and asserted themselves as nuclear weapon states, a question arose as to whether these countries, too, should be invited to sign the projected protocol to the CANWFZ Treaty. However, the parties to the NPT do not consider that

India and Pakistan have acquired the status of a nuclear weapon state because, according to the NPT, only countries, which had exploded a nuclear device before 1 January 1967, may enjoy this status. Consequently, the states negotiating the CANWFZ Treaty decided that the protocol to the Treaty would be open for signature only by the above-mentioned five, generally recognized nuclear weapon powers. A question that has not been resolved is whether the security assurances to be provided by the nuclear weapon powers should be unconditional, or conditional. If these security assurances are conditional they are valid under *any* circumstances; if they are unconditional they permit the use of nuclear weapons against the parties to the CANWFZ Treaty under certain circumstances and as postulated by most nuclear weapon states.

#### **Status of Other Security Arrangements**

The sharpest controversy arose over the validity of the security arrangements already in force. Some negotiators insisted on making a proviso in the CANWFZ Treaty to the effect that the rights and the obligations under other international treaties, which they may have concluded prior to the entry into force of the CANWFZ Treaty, must not be affected. Those opposed to this proviso argued that, in entering a nuclear-weapon-free zone treaty prohibiting the deployment of nuclear weapons on its territory, a state renders invalid any previous agreement (open or secret) which may allow such deployment. They referred to the United Nations Guidelines (see above) stating that parties to nuclear-weapon-free zones should ensure that their adherence to other agreements did not entail any obligation contrary to their obligations under the zone treaties. They also referred to the customary rule of law that *lex posterior derogat legi priori* (the most recent law takes precedence over older laws), a rule enshrined in the 1969 Vienna Convention on the Law of Treaties.

By way of “concession”, the partisans of the proviso in question agreed to add the following sentence: “The Parties shall take all necessary measures for effective implementation of the aims and purposes of the Treaty in accordance with the main principles contained therein”. This addition has changed little, if anything. If the wording of the relevant article remains unaltered, the western nuclear weapon powers may refrain from signing the protocol to the Treaty.

## **SUMMARY**

### **Benefits**

To the extent that the incentive to acquire nuclear weapons may emerge from regional considerations, the establishment of areas free of nuclear weapons is an important asset for the cause of nuclear non-proliferation. Countries confident that their enemies in the region do not possess nuclear weapons may not be inclined to acquire such weapons themselves. The zones, which have been established so far, meet other postulates as well. Besides prohibiting the acquisition of nuclear weapons by zonal states, they proscribe (unlike the NPT) the stationing of these weapons in the territories of non-nuclear weapon states. Zonal procedures to verify compliance with non-proliferation obligations are even stricter than the procedures prescribed by the NPT. Moreover, zonal states benefit from some legally binding security assurances of the great powers.

### **Deficiencies**

Nevertheless, the nuclear-weapon-free zone treaties are deficient in several respects. In particular:

1. None of the treaties specify that the denuclearization provisions are valid both in time of peace and in time of war;
2. Research on nuclear explosive devices is explicitly prohibited only in the Treaty of Pelindaba;
3. Only the Treaty of Rarotonga and the Treaty of Pelindaba make it clear that the bans cover nuclear explosive devices also in unassembled or partly assembled forms;
4. So-called peaceful nuclear explosions may be allowed by the Treaty of Tlatelolco (although only under certain specified conditions);
5. Nuclear weapon related support facilities serving the strategic systems of the nuclear weapon powers are not banned by any nuclear-weapon-free zone treaty;
6. Only the Treaty of Pelindaba prohibits attacks on nuclear installations;
7. Only the Treaty of Tlatelolco and the Treaty of Bangkok provide for the denuclearization of maritime areas adjacent to the territorial waters of zonal states;
8. The possibility of nuclear weapons transiting the territories of zonal states, including visits by foreign ships and aircraft with nuclear

weapons aboard, is not excluded under any of the treaties; total absence of nuclear weapons in the zone cannot, therefore, be ensured;

9. The withdrawal clauses of the Treaty of Tlatelolco and the Treaty of Pelindaba, which refer to the “supreme interests” of the parties, are too permissive as compared to the Treaty of Rarotonga and the Treaty of Bangkok, which concede the right of withdrawal only in the event of a material breach of the parties’ obligations;
10. The nuclear weapon powers’ undertaking to respect the status of the denuclearized zones is unverifiable;
11. Assurances not to use nuclear weapons against zonal states, as given by most nuclear weapon powers, are not unqualified; they are subject to the same conditions as the assurances given to all non-nuclear weapon states parties to the NPT;
12. Only the Treaty of Bangkok calls for some action in the event of violation of the obligations assumed by the nuclear weapon powers.

The above deficiencies may be removed through amendments of the existing nuclear-weapon-free zone treaties and avoided in the drafting of new such treaties, provided that due account is taken of the particularities of each region.





## **CHAPTER 6**

### **THE ROLE OF THE INTERNATIONAL ATOMIC ENERGY AGENCY IN VERIFYING NON-PROLIFERATION COMMITMENTS AND IN PROMOTING THE APPLICATION OF COMPREHENSIVE SAFEGUARDS IN THE CONTEXT OF EFFORTS TOWARDS A ZONE FREE OF NUCLEAR AND OTHER WEAPONS OF MASS DESTRUCTION IN THE MIDDLE EAST**

Vilmos Cserveny

#### **INTRODUCTION**

The Middle East remains one of the most complex and difficult regions in the world for developing a common strategic language leading to mutual security for all states of the region. The region's defining characteristics include the salience of the proliferation of nuclear and other unconventional weapons as well as their means of delivery. During the Cold War, the Middle East was second only to Europe in amassing the engines and tools of war. Per capita military expenditure concomitantly was and remains among the highest. With the end of the Cold War, the Middle East is the fastest arming region in the world—receiving advanced weaponry from those very states that fought the Cold War. Is there—can there—be a light at the end of the tunnel of war and death? Can the creative potential and the energy of this region, the cradle of history and faith, be harnessed for peace rather than conflict?

The path to a peaceful and secure future for the region lies in developing and implementing an approach that must be, at the same time, both inclusive and comprehensive. Inclusivity refers to the inclusion of all states and peoples of the region in a regional arms control and disarmament process; comprehensiveness means capturing all classes and types of weapons. The following will focus only on aspects of nuclear and other

weapons of mass destruction as a more complete discussion is outside the scope of this paper.

### **NON-PROLIFERATION CHALLENGES**

In his 2002 report on the implementation of the Millennium Declaration, United Nations Secretary-General Kofi Annan stated that the importance of eliminating weapons of mass destruction is clearer than ever, and the pace towards eliminating such weapons, in particular nuclear weapons, is slow. More than 20,000 such weapons remain in existence and more than half of these will still be around in a decade despite the claims of deep reductions.

Despite the ending of the Cold War, non-proliferation and disarmament challenges abound across the different categories of weapons of mass destruction, i.e. nuclear, biological and chemical weapons and their means of delivery. To compound the problem, the spectre of radiological weapons, including radiation dispersal devices, looms over the world.

Three conflict-prone regions of the world comprise the hotbeds of proliferation concern: the Middle East, South Asia and Northeast Asia. The primary driver for proliferation in these regions is unresolved regional disputes. It is indeed a truism that proliferation begets proliferation. At least two of these regions are hovering on the brink of war—war that might well entail the use of nuclear or other mass destruction weapons. Yet, multilateral efforts to contain, defuse and resolve these conflicts remain pitifully absent or unfocused.

While the nuclear non-proliferation regime has attracted the largest number of adherents, paradoxically it is the regimes for biological and chemical weapons that are universal in nature and mandate their elimination. The Biological and Toxin Weapons Convention (BTWC) still has no verification system and efforts to create one, failed at the Fifth Review Conference and prospects for developing one have not improved materially since then. The implementation of the Chemical Weapons Convention (CWC) continues. However, the largest possessor states are reported to be unable to eliminate their stocks of weapons and chemical warfare agents within the stipulated time frame and will need additional time. As for the Treaty on the Non-Proliferation of Nuclear Weapons (NPT),

there are two states, which continue to be in a long-standing non-compliance with their non-proliferation undertakings. In addition, the five nuclear weapon states are far from the elimination of their arsenals and the universality of the Treaty continues to be out of reach.

These regrettable developments and facts are in contradiction with a statement by the then United Nations Under-Secretary General for Disarmament, Jayantha Dhanapala in which he says, “that weapons that kill large numbers of human beings indiscriminately have no moral or legal justification regardless of who is holding them. The world will be best able to keep such weapons out of the hands of terrorists only when they and their special weapons materials are in the hands of no one”.

## **PROLIFERATION PROBLEMATIQUE**

*Proliferation problematique* can be characterized as comprising three elements: motivation, security, and compliance.

Scholarly research into the motivation for nuclear proliferation, and proliferation of other mass destruction weapons, suggests a number of drivers ranging *inter alia* from security considerations to national prestige. While different drivers might have prevailed in different situations a broader or holistic approach suggests multi-causality, albeit with unequal weight given to various factors. The rationales behind proliferation decisions in the last decades of the 20<sup>th</sup> century might well be different from those of the 1950s, 1960s or 1970s. The growth in multilateral arms control and disarmament regimes, including export controls, established new international security norms leading to the vast majority of nations making a political choice of not having any nuclear, biological or chemical weapons. Only a handful of states today possess these weapons. However, some others are suspected of seeking their possession.

Except for the five permanent members of the United Nations Security Council, the remainder of cases, none of which are new and which have been around for differing periods of time, appear to be driven more by security than by other concerns. This holds true in the Middle East, in South Asia, and in Northeast Asia. Why is this not the case in regions like Latin America, the South Pacific, South-East Asia, or Europe?

Without going into detail, it is clear that Nuclear-Weapon-Free Zone (NWFZ) arrangements and adherence to other multilateral arms control and disarmament instruments have reduced or controlled the proliferation potential in some regions, while in others the so-called “nuclear umbrella” has provided security. Thus, in regions where security is provided through some mechanism there is little or no “demand” for mass destruction weapons. Hence, the regions facing a security deficit, unresolved conflict and where multilateral arms control and disarmament instruments are incomplete, are the regions with a continuing “demand”. The possible solutions to address these problem regions are rife with complexity, pitfalls and lack of political will.

Traditional strategies have relied on export controls, embargoes, exhortations aimed at the universality of the multilateral regimes, double-standards, and in extreme cases even the use of force whether unilaterally or through a multilateral veneer. What is abundantly clear is that the traditional strategies are no longer relevant or have run their course—new thinking and new strategies need to be devised and implemented.

## **NUCLEAR VERIFICATION**

One of the major areas of the International Atomic Energy Agency (IAEA) activity that has been receiving the most prominent attention in recent months is nuclear verification.

The IAEA’s verification or safeguards mandate (one of the three pillars of its work) relates to the verification of compliance with non-proliferation obligations undertaken by states party to the Treaty on the Non-Proliferation of Nuclear Weapons and other legally binding international non-proliferation agreements. An increasing array of techniques for such verification is used which include material accountancy, remote surveillance, on-site inspections, and satellite monitoring. IAEA authority is based on the “comprehensive safeguards agreement,” which a state is required to conclude with the Agency under the NPT and other non-proliferation agreements. The safeguards agreement provides the IAEA with the authority mainly to verify that a state has not diverted any of its “declared” nuclear material (that is, the inventory provided by the state) for non-peaceful purposes.

However the experience in Iraq in the early 1990s, and the discovery there of a clandestine nuclear weapons programme, made it clear that the IAEA verification system, with its focus on declared nuclear activities and its limited rights of access to information and to other locations, was neither sufficiently robust nor comprehensive. This new reality prompted the international community to adopt a number of measures to strengthen the system, and to provide the IAEA with the authority necessary to provide further comprehensive and credible assurance.

The most important measures were those incorporated into a model protocol additional to safeguards agreements, which was approved in 1997 by the IAEA Board of Governors. The Additional Protocol greatly enhances the IAEA's verification capability by endowing it with expanded rights of access to information and to sites. The Agency is now able to provide credible assurance not only for the diversion of *declared* nuclear material but also for the absence of *undeclared* nuclear material and activities. But this authority exists only for those states that have concluded both a comprehensive safeguards agreement and an additional protocol with the IAEA. For states with no additional protocol, the IAEA rights of inspection are essentially the same as in the days preceding the adoption of the Model Additional Protocol. In the Middle East all states, with the exception of Israel, are party to the NPT, but only 14 have comprehensive safeguards agreements, and only one—Jordan—has an additional protocol in force. Thus, much remains to be done in order to provide the IAEA with the required legal authority to implement all the strengthened safeguards measures in the states of the Middle East.

The verification system of the IAEA, however, is only one component of the efforts to prevent the further spread of nuclear weapons and other weapons of mass destruction. Despite the end of the Cold War, non-proliferation and disarmament challenges remain in all categories of weapons of mass destruction. As noted, the unfortunate reality of today is that at least eight countries are believed to possess nuclear weapons, a number of states possess or are suspected of possessing biological and/or chemical weapons, and the goal of a world free of nuclear and other weapons of mass destruction remains elusive.

## **NUCLEAR AND WEAPONS OF MASS DESTRUCTION FREE ZONES IN THE MIDDLE EAST**

In the Middle East region, all states except one are party to the NPT and adherence to the BTWC and the CWC is held up due to linkage between the regimes. It is precisely because proliferation is a region-wide trend in the Middle East that an inclusive *and* comprehensive approach is called for. It was also the lack of such an approach that led to the failure of the Arms Control and Regional Security (ACRS) working group. One of the main lessons is that there needs to be a parallel process addressing both peace and security matters, but progress in each area need not necessarily be in perfect symmetry or phasing—work must be done where and when possible. In this context perhaps it is useful to recall that the Cold War did not prevent the establishment of the Conference [later Organization] for Security and Co-operation in Europe process, nor the negotiation of the Anti-Ballistic Missile (ABM) Treaty, Strategic Arms Limitation Talks (SALT), Intermediate-Range Nuclear Forces (INF) Treaty, Conventional Armed Forces in Europe (CFE) Treaty or the Strategic Arms Reduction Treaties (START I and II) all having been signed at the height of Cold War rivalry. Furthermore, the continuation of regional conflicts did not prevent negotiations over the various Nuclear-Weapon-Free Zones (NWFZs) established by the treaties of Pelindaba (Africa), Bangkok (South-East Asia), Rarotonga (South Pacific) and Tlatelolco (Latin America).

The genesis of the concept of NWFZs can be traced back to the mid-1950s and through the establishment of such zones in Latin America (1967), the South Pacific (1986), Africa (1995) and South-East Asia (1996). Article VII of the NPT endorses NWFZs; NPT states in 1995 and again in 2000 encouraged the establishment of such zones as a matter of priority. United Nations Resolution 3472 B, adopted on 11 November 1975, defined a NWFZ. The Final Document of the First United Nations Special Session on Disarmament (UNSSOD I) in 1978 established criteria for setting up such zones, and in 1993 and 1999 the United Nations Disarmament Commission also addressed NWFZs. Thus, there is a plethora of internationally agreed elements regarding the establishment of NWFZs in addition to four NWFZ treaties. In this context it should be noted that a fifth such treaty, for Central Asia, has nearly been finalized.

Weapons of mass destruction were defined by the United Nations Commission for Conventional Armaments, on 13 August 1948, as “atomic explosive weapons, radioactive material weapons, lethal chemical and biological weapons, and any weapons developed in the future which have characteristics comparable in destructive effect to those of the atomic bomb or other weapons mentioned above”. In today’s terminology, these are nuclear, radiological, biological, and chemical weapons, or weapons with similar effects.

As far back as 1974, Iran with the support of Egypt proposed the establishment of a Middle East NWFZ. Since that year, the United Nations General Assembly has adopted a resolution annually to this effect, and since 1980 the resolution has been adopted by consensus—garnering the support of all Arab states, Iran and Israel.

In 1990, President Hosni Mubarak proposed the establishment of a Middle East Weapons of Mass Destruction Free Zone (WMDFZ), as an objective to be pursued in parallel with a Middle East NWFZ. NPT states supported the concept of a Middle East WMDFZ in both 1995 and 2000—in fact, the resolution on the Middle East adopted by the NPT Review and Extension Conference in 1995 was an integral component of the package that made it possible to indefinitely extend the NPT. It is also to be recalled that in 1988, the United Nations prepared a report on the establishment of a Middle East NWFZ, and in 1996 it did one on a Middle East WMDFZ.

Furthermore, the IAEA has been deeply involved in the negotiation and verification of NWFZ commitments. For several years (since 1991), the IAEA General Conference has been annually adopting by consensus a resolution on the application of IAEA Safeguards in the Middle East, and the Director-General has been requested by the Agency’s member states to: (1) take such measures as are necessary to facilitate the early application of comprehensive safeguards to all nuclear activities in the region; (2) prepare model agreements as a step towards the establishment of a Middle East NWFZ; and (3) convene a forum on the experience relevant to the establishment of such a zone. Regrettably, years after, the IAEA Director-General has had to report lack of progress in this area. Nonetheless, the Secretariat of the IAEA continues to consult with Middle East states on these and related issues.

While states of the Middle East region have agreed in principle on the need to establish a NWFZ in the Middle East and apply IAEA safeguards to all nuclear material and facilities in the region, differences remain on whether this can be divorced from a broader peace agreement. Israel takes the view that safeguards, as well as all other regional security issues, cannot be addressed in isolation from the regional peace process but only within the context of a comprehensive peace settlement. The other states of the region maintain that there is no automatic sequence which links the application of comprehensive safeguards to all nuclear facilities in the Middle East, or the establishment of a NWFZ in the region, to the prior conclusion of a peace settlement. In their view, these former initiatives could support the latter.

As for the verification agreements, these obviously would depend on the material obligations to be verified. In this context, the Agency is actively seeking to better acquaint the relevant states with the wide range of material obligations available and the verification modalities and scenarios, which could flow from them. Despite its efforts, the IAEA still needs further clarity from the states of the Middle East region about their preferences with regard to material obligations. Without such clarity, it cannot meaningfully embark on preparing the model verification agreements foreseen. What is already clear, however, is that, for the Middle East, the Agency's global verification arrangements would have to be supplemented by very stringent and intrusive regional arrangements. The establishment of a NWFZ in the Middle East could therefore be tailored to the specific characteristics and features of the region and thus contribute to both regional and international peace and security.

In accordance with internationally recognized criteria governing the establishment of NWFZs, a Middle East NWFZ should ensure, *inter alia*, the total absence of nuclear weapons within the area encompassed by the zone; a clear definition of the geographic zone of application; the establishment of an international system of verification and control to monitor compliance; the creation of a regional nuclear cooperation and verification mechanism; universality of membership of the states of the region; and the provision of assurances by the five nuclear weapon states to unconditionally refrain from the use or threat of use of nuclear weapons against the states of the zonal treaty. Additional features could include prohibitions on: enrichment or reprocessing of nuclear material; dumping of nuclear and radioactive waste; attacking nuclear facilities; stationing or



transit of nuclear weapons; and unsafeguarded and undeclared nuclear activities. Other key features could include provisions for: verified dismantlement and destruction of any existing nuclear weapons and irreversibly placing under safeguards all weapon-usable nuclear material; converting all existing weapon-usable nuclear material to a form not suitable for weapon use; universal regional implementation of comprehensive and strengthened IAEA safeguards; enhanced physical protection of nuclear material and facilities; nuclear safety; conversion or destruction of nuclear weapon related facilities; mutual verification and joint research; a regional nuclear fuel repository; and a permanent secretariat.

The establishment of a zone comprising such elements would also facilitate the establishment of a WMDFZ in the Middle East. The IAEA stands ready to render whatever assistance might be required in developing a WMDFZ in the Middle East.

## **ENSURING COMPLIANCE**

The inspection activities in Iraq that came to a halt in December 1998 had successfully thwarted Iraq's efforts to develop a nuclear weapons programme. At that time the IAEA was of the belief that it had neutralized Iraq's nuclear weapon programme, and that Iraq no longer had the capability to produce the nuclear material needed for weapons purposes.

In the months leading up to the recent war in Iraq, the resumption of inspections in the country has been the subject of intense diplomatic effort. These efforts culminated in the acceptance by Iraq of the resumption of inspections without conditions and the adoption of United Nations Security Council Resolution (UNSCR) 1441 on 8 November 2002.

The Security Council resolution, *inter alia*, affirmed the unified resolve of the Council to fully support the inspection process. It granted additional authority in a number of areas to the inspecting organizations—the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), responsible for verifying the status of Iraq's chemical and biological weapons and ballistic missiles, and the IAEA, responsible for verifying the status of Iraq's nuclear weapons programme—including immediate access to all sites in Iraq without distinction, the right to determine the modalities

and locations for interviewing relevant persons, and the ability to freeze activities during the inspection of a site. The resolution also encouraged all states to provide timely information to the inspecting organizations relevant to their mandate, with a view to improving inspection effectiveness.

The first inspections by the IAEA and UNMOVIC began on 27 November 2002, with the cooperation of Iraq. On 7 December, Iraq submitted to the IAEA and UNMOVIC the declaration required by UNSCR 1441 of all aspects of its programmes to develop weapons of mass destruction and their delivery systems, as well as all other chemical, biological and nuclear programmes not related to weapon production or material. Both inspection organizations assessed this important document within their respective mandates, to ensure that it was accurate, full and complete.

At times, some have criticized the inspection process as being effective only if the inspected country is fully cooperative. This is a misunderstanding, because by its very nature the inspection process is not based on “trust” as such, but on a thorough process of fact finding, through access to all available information. Naturally, information available to states that is relevant to the purpose of the inspection is key to success, particularly if the inspected country is not fully cooperative. If all such information is made available to the inspecting organizations, then legally sanctioned and internationally endorsed inspections are, according to the IAEA, the most effective mechanism for controlling the proliferation of nuclear weapons and other weapons of mass destruction, which by its very nature includes the detection of possible undeclared nuclear material and activities. Inspection is sometimes time consuming, but its results are predictable and, when successful it has the ability to spare innocent lives. Naturally, the Agency will make every effort to effectively discharge its mandate, with the aim of bringing to verified compliance the disarmament process required by the Security Council. In his statement to the United Nations Security Council on 27 January 2003, Dr ElBaradei, the Director-General of the IAEA concluded that the Agency has “to date found no evidence that Iraq has revived its nuclear weapons programme since the elimination of the programme in the 1990s”. He added that “our work is steadily progressing and should be allowed to run its natural course. With our verification system now in place, barring exceptional circumstances, and provided there is sustained proactive cooperation by Iraq, we should be able within the next few months to provide credible assurance that Iraq has no nuclear

weapons programme. These few months would be a valuable investment in peace because they could help us avoid a war and verify Iraq's nuclear disarmament through peaceful means thereby demonstrating that the inspection process can and does work, as a central feature of the international nuclear arms control regime".

It should be added that paragraph 14 of UNSCR 687—the resolution on the disarmament of Iraq—reiterates the call for the establishment of a zone free of mass destruction weapons in the Middle East. The international effort to disarm Iraq has not been matched by any comparable effort to create a Middle East WMDFZ. A parallel effort toward achieving a Middle East WMDFZ certainly could have contributed, to a more conducive political context for the implementation of UNSCR 687. In this regional context the recent European Union (EU) declaration on Iraq is recent evidence of the recognition of this interrelationship. The EU committed again to the "need to invigorate the peace process in the Middle East and to resolve the Israeli-Palestinian conflict", and to work "for the disarmament of Iraq" and "for peace and stability in the region and for a decent future of all its people".

## **CONCLUSION**

The path toward regional and global nuclear disarmament and non-proliferation present both challenges and the opportunities. It should not be surprising that without meaningful progress in nuclear disarmament, nuclear non-proliferation efforts will be hampered. The lack of universal implementation of the objectives embedded in the NPT and other global WMD treaties should not be tolerated. The Canberra Commission stated a few years ago that the present situation "cannot be sustained, [because] the possession of nuclear weapons by any state is a constant stimulus to other states to acquire them". The same might be said for any weapon of mass destruction. Hence the goal of achieving nuclear disarmament and the universality of the nuclear non-proliferation regime are and should remain vital prerequisites to a world free of nuclear weapons.



## **CHAPTER 7**

### **PRINCIPLES OF ESTABLISHING A MIDDLE EAST WEAPONS OF MASS DESTRUCTION FREE ZONE MONITORING AND VERIFICATION SYSTEM\***

Fawzy H. Hammad and Adel M. Ali

#### **INTRODUCTION**

At the 1995 Non-Proliferation Treaty (NPT) Review and Extension Conference, the Middle East was described as a region of tension. In the context of Decision 2 paragraph 6 of the Conference it was stated that “the development of nuclear-weapon-free zones especially in regions of tension such as the Middle East, as well as the establishment of a zone free of all Weapons of Mass Destruction (WMD) should be encouraged as a matter of priority taking into account the specific characteristics of each region”. The Middle East has suffered conflicts and wars at higher frequency and intensity than any other region during the last half century with all that this implies for WMD proliferation in the region. Furthermore, the Middle East was the largest importer of conventional weapons in the world in the last decade, in spite of the Madrid-Oslo Middle East peace process. This arms race is fuelled by stockpiles of nuclear and other WMD and missiles.

The situation is further complicated by the serious problems facing the Middle East peace process; the escalating tension raging in the region since is seriously damaging the peace process. This unstable and risky situation is not only threatening peace and security in the region but also in the world. It cannot continue like this and cannot be handled by a step by step approach any more. The future of the Middle East lies in a peaceful settlement based on the establishment of a regional security system, the core of which based on the widely supported, verifiable Middle East Weapons of Mass Destruction Free Zone (WMDFZ) proposed by President Hosni Mubarak of Egypt in 1990. The following paper deals with:

- The global support to establish a Nuclear-Weapon-Free Zone (NWFZ) or a WMDFZ in the Middle East; and will discuss:
  - Lessons learned from the NWFZ movement and other Non-Proliferation, Arms Control and Disarmament (NPACD) developments;
  - The establishment of a Middle East WMDFZ;
  - The principles of establishing a Middle East WMDFZ monitoring and verification system.

### **GLOBAL SUPPORT TO ESTABLISH A MIDDLE EAST WEAPONS OF MASS DESTRUCTION FREE ZONE**

The establishment of a zone free of nuclear weapons and other WMD in the Middle East has received overwhelming national, regional and global support. The global standing on establishing this Middle East WMDFZ is equivalent to the standing on the decision to extend the NPT indefinitely. It is also clear that the USA has also supported the establishment of a WMDFZ in the Middle East. Indications of Arab States' commitment to the concept of a NWFZ been seen as early as 1964 when Egypt hosted the first Organization of African Unity (OAU) summit which declared the denuclearization of Africa. Then in 1996, Arab states of North Africa signed the African NWFZ Treaty commonly referred to as the Treaty of Pelindaba.

Following the October 1973 war in the Middle East, Iran and Egypt submitted a draft resolution to the United Nations General Assembly on the establishment of a Middle East NWFZ, which was adopted as resolution 3263 in December 1974. It called upon all parties concerned in the region to proclaim their intentions to refrain from producing or otherwise acquiring nuclear weapons and to accede to the NPT (all Arab states and Iran are parties to the NPT; Israel is the only country in the Middle East which is not a party to the NPT). Since then, this resolution has been adopted annually without a vote.<sup>[1, 2]</sup>

Then in April 1990 (shortly before Desert Storm) President Hosni Mubarak<sup>[3-5]</sup> declared Egypt's support for ensuring that the Middle East becomes a zone free from all types of WMD. The Mubarak visionary initiative emphasized the following:

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- That all WMD, i.e. nuclear, chemical and biological without exception, be prohibited in the Middle East;
  - All states of the region without exception, should make equal and reciprocal commitments in this regard;
  - Verification measures and modalities should be established to ascertain full compliance by all states of the region with the full scope of the prohibitions without exception.

A year after the Mubarak initiative, United Nations Security Council Resolution (UNSCR) 687 (1991)<sup>[6]</sup> was issued after Desert Storm, under Chapter VII of the United Nations Charter. The preamble stated that the Council was conscious of the threat that all WMD pose to peace and security in the area and of the need to work towards the establishment in the Middle East of a zone free of such weapons. Furthermore, paragraph 14 stated that the goal is to establish in the Middle East a zone free from WMD and all missiles (including ballistic missiles) with a range greater than 150km. This also included related major parts, repairs and production facilities (paragraph 8b). A few years later in 1999 under UNSCR 1284,<sup>[7]</sup> United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) was established after the collapse of UNSCOM in Desert Fox in 1998. This resolution also supported the establishment of a Middle East WMDFZ.

The 1995 NPT Review and Extension conference<sup>[8]</sup> which extended the NPT indefinitely and unconditionally adopted (in addition to paragraph 6 in Decision 2) a resolution on the Middle East establishing a WMDFZ. The was proposed by the Russian Federation, United Kingdom of Great Britain and Northern Ireland and the USA (NPT depositary countries). It also referred to the UNSCR 687 (1991) in particular paragraph 14. Important elements of this resolution are that the conference:

- Reaffirmed the importance of the early realization of universal adherence to the Nuclear Non-Proliferation Treaty (NPT) and called upon all states in the Middle East that have not yet done so, without exception, to accede to the Treaty as soon as possible and place their nuclear facilities under full-scope International Atomic Energy Agency (IAEA) safeguards;
- Called upon all states in the Middle East to take practical steps in appropriate forums aimed at making progress towards, *inter alia*, the establishment of an effectively verifiable Middle East zone free of

WMD and their delivery systems, and to refrain from taking any measures that preclude the achievement of this objective.

The 2000 NPT Review Conference<sup>[9, 10]</sup> reaffirmed the importance of the resolution on the Middle East and recognized that the resolution remains valid until the objectives are achieved. The conference also reaffirmed the importance of Israel's accession to the NPT and placement of all of its nuclear facilities under comprehensive IAEA safeguards, realizing the goal of universal adherence to the Treaty in the Middle East; this was the first time that Israel was named in this regard.

## **LESSONS LEARNED FROM THE NUCLEAR-WEAPON-FREE ZONE MOVEMENT AND OTHER NON-PROLIFERATION, ARMS CONTROL AND DISARMAMENT DEVELOPMENTS**

### **Development of Nuclear-Weapon-Free Zones**

The development of Nuclear-Weapon-Free Zones (NWFZs) has been recently addressed and reviewed<sup>[11, 12]</sup> and important lessons have been identified. Security and political considerations have played major roles in establishing the NWFZ and this is why some NWFZs have taken longer to develop than others. For example the regional and global threats of the Cuban Missile Crisis in 1962 were the major driving force for establishing the Tlatelolco Treaty in 1967 and the NPT in 1970. The driving force for the Rarotonga Treaty (1985) was the threat to the region from nuclear testing in the South Pacific. The associated protocols were completed in 1996, immediately after the end of the last group of French and Chinese nuclear testing. The declaration of the denuclearization of Africa in 1964 by the OAU in response to the French nuclear testing in Algeria 1960 gave support to the Latin America movement; it was also the driving force in establishing the Pelindaba Treaty. The African efforts to conclude that Treaty were possible only after the political changes in South Africa which ended the apartheid regime and led to the accession of South Africa to the NPT in 1991.<sup>[11]</sup>

With the passage of more than a quarter of century since the United Nations General Assembly resolution to establish a Middle East NWFZ and more than a decade since Mubarak's initiative to establish a Middle East



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WMDFZ, the implementation of either is not in sight in spite of the global support. Several peace opportunities since the Egypt-Israel peace treaty in 1979, which have provided chances to move in this direction, have been missed. The multilateral Middle East Arms Control and Regional Security (ACRS) collapsed in 1995 with no significant results. In view of the rising tensions concerted regional and global efforts have to be undertaken, as a matter of priority, to take practical steps towards the establishment of Middle East WMDFZ. This should move parallel to the peace process.

It is unfortunate that the US agreed to protect the Israeli deterrent and formalized this in the 1998 memorandum of agreement between the two countries.<sup>[13]</sup> The US international obligations, and commitment to the Middle East WMDFZ is clear and should prevail. Furthermore, the US role as a leader in non-proliferation and counter-proliferation is crucial and should not be subject to compromise.

### **Evolution of the Scope of Nuclear-Weapon-Free Zones**

While the Treaty of Tlatelolco and the NPT allow for peaceful nuclear explosions (and implicitly the possession or the handling of nuclear devices), the Treaty of Rarotonga (1985) prohibits stationing of any kind of nuclear weapon (assembled or unassembled). The Treaty of Pelindaba prohibits research and development, related to nuclear weapons and the manufacturing, storing and acquisition of nuclear weapons. The prohibition of research and development related to nuclear weapons is new to the scope of NWFZs. It is fallout from the UNSCR 687 (paragraph 12) on Iraq and this development should be considered in the scope of the Middle East since several members in the Pelindaba Treaty are potential members to the Middle East WMDFZ.

Verification in all NWFZs is undertaken by the IAEA. The role of commissions created by various treaties is nominal and the verification of the dismantling of nuclear weapons that exist is addressed only by the Treaty of Pelindaba. Under Article 6 of the Treaty this process requires multilateral verification.<sup>[12, 14]</sup> The establishment of regional-global monitoring and verification systems is an important development. Such a system allows regional parties to take a prime responsibility in monitoring and verification of their region. The linkage to the global system (i.e. IAEA) is also essential to assure the international community that the commitment

to non-proliferation, arms control and disarmament is maintained. The two regional-global systems in existence are:

- (i) The IAEA-EURATOM (European Atomic Energy Community) system;<sup>[15]</sup>
- (ii) The IAEA-ABACC (Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials).<sup>[16]</sup>

In view of the support to establish a Middle East NWFZ, it is important to recommend to the IAEA and the League of Arab States to study and consider the setup of a similar IAEA-MEACC (Middle East Agency for Accounting and Control of Nuclear Materials) as a first step towards establishing a zone free of WMD. This arrangement should be open to other non-Arab parties in the region to join.

#### **Important Global Developments in Recent Non-Proliferation, Arms Control and Disarmament Agreements**

Developments have taken place to enhance transparency in recent non-proliferation, arms control and disarmament agreements. Several documents have been concluded and are in operation: (a) the entry into force of the Chemical Weapons Convention (CWC)<sup>[17]</sup> and the establishment of the Organization for the Prohibition of Chemical Weapons (OPCW); (b) the conclusion of the IAEA Model Protocol INFCIRC/540<sup>[18]</sup> additional to INFCIRC/153<sup>[19]</sup> to strengthen the IAEA safeguards system; (c) the conclusion of the Comprehensive Test Ban Treaty (CTBT) as decided by the 1995 NPT Review and Extension meeting and the establishment of a Provisional Technical Secretariat for the CTBT organization. Advanced inspection techniques have been introduced such as challenge inspections, managed access, special inspections, and on-site-inspections. Advanced monitoring technologies and sensors are also now available.

#### **The Rise and Demise of UNSCOM<sup>[21, 22, 23]</sup>**

The United Nations Special Commission (UNSCOM) campaign to establish a WMDFZ in Iraq according to UNSCR 687 and 715<sup>[20]</sup> dominated the nineties. UNSCOM undertook the most non-cooperative intrusive disarmament campaign ever taken in history. It has been said that UNSCOM destroyed more of Iraq's WMD than the entire bombing campaign of Desert Storm. UNSCOM had extensive rights and powers to

do anything, go anywhere, and destroy any element of WMD. It was mandated to destroy equipment and apparatus including dual use equipment and filled heavy machinery with concrete, buried machines and materials etc. UNSCOM was staffed with high quality permanent employees and was also well equipped. It had the use of U-2 plane, helicopters, laboratory facilities at Baghdad, a monitoring and verification center and access to laboratories in a number of countries. In addition economic sanctions and serious food shortages caused severe human devastation and air attacks weakened the Iraqi resistance to disarmament.

UNSCOM's activities generated strong resistance, until the Desert Fox military strikes which brought about its demise. Yet after 7 years of UNSCOM (1991-1998) complete disarmament would appear not to have been achieved. Richard Butler's assessment of the situation is "Iraq is as dangerous as it was a decade ago". It is important to conclude that it is only through the political will of the parties, their cooperation and working together in building and managing a cooperative monitoring and verification system that a Middle East WMDFZ can be established.

However, the UNSCOM-IAEA system was the only one which dealt with the monitoring and verification of nuclear, biological, chemical weapons and missiles as well as their technologies and facilities at various stages of development, utilization, concealment and dismantling. This experience is unique, relevant and should be carefully studied from the technical, operational and administrative aspects. Lessons learned should be valuable in establishing the Middle East WMDFZ monitoring verification and inspection system.<sup>[20, 24, 25]</sup>

## **ESTABLISHMENT OF A MIDDLE EAST WEAPONS OF MASS DESTRUCTION FREE ZONE**

### **Middle East Weapons of Mass Destruction Free Zone Treaty**

The cornerstone of establishing a Middle East WMDFZ is the political commitment and will of the regional parties to enter into this solemn and universally supported undertaking, in the context of a Middle East regional security system. The translation of this commitment to a legally binding and a sound Middle East WMDFZ Treaty is the essential step in building a new

Middle East. The potential members of the Treaty are states in the League of Arab States plus Iran and Israel, though a number of core countries must be defined to start the WMDFZ. Preparatory work should be started by Egypt, Israel, Jordan and Palestine, countries which have peace treaties, as well as states sponsoring the peace process.

The Treaty should prohibit the development, production, stockpiling, placing and use of WMD and missiles with a “range beyond 150km” to be agreed upon by regional parties, as well as the dismantling and destruction of existing ones. It should also prohibit research and development work related to nuclear weapons, as well as other WMD as in Pelindaba Treaty and should establish a Middle East organization for the prohibition of WMD. It is essential to build a credible Cooperative Integrated Monitoring and Verification System (CIMVS) to inspect and verify compliance with treaty obligations. Cooperative monitoring—as defined by Sandia National Laboratories Cooperative Monitoring Center (CMC)—deals with the process of obtaining and sharing of agreed information among parties to enhance their security. This concept should be emphasized in the Middle East.

#### **Main Functions of the Proposed Cooperative Integrated Monitoring and Verification System**

These functions should include, but not be limited to the following:

- (a) Monitoring and verification of the dismantling and destruction of existing stockpiles of WMD and missiles (above 150km range);
- (b) Dismantling of relevant production facilities or their conversion to peaceful uses;
- (c) Safeguarding chemical, biological, nuclear and missile activities in order to detect, at a very early stage, any deviation to initiate or resume development, production and stockpiling of proscribed activities, or items;
- (d) Undertaking relevant research and development work to improve *inter alia* WMD verification technologies;
- (e) Establishing an export-import control mechanism for relevant dual use technologies;
- (f) Establishing relevant information and a database related to non-proliferation, arms control and disarmament and illicit trafficking of WMD materials;

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- (g) Undertaking physical protection and other measures to combat illegal nuclear materials and devices.

### **Regional Experience**

There is valuable relevant experience that can be utilized and drawn from in the Middle East for the development of the WMDFZ, for instance the Egyptian experiences in achieving the Sinai-I Agreement in 1974, the Sinai-II Agreement in 1975 and the Egypt-Israel Peace Treaty in 1979. Furthermore the monitoring and verification system with various sensors<sup>[26]</sup> established by the US to monitor the Israeli withdrawal from Sinai between 1979-1980 was an early cooperative monitoring system in which Egypt, Israel and the US were involved. The mission was successfully implemented and generated considerable confidence between the parties. The recent Israeli-Jordanian experience in negotiating the 1996 peace treaty, which contained an article on the establishment of a Middle East WMDFZ, is also a great achievement.

During intervals of peace, good progress has taken place but has not been fully utilized. The collapse of the multilateral ACRS talks should be assessed, as it seems that the efforts made were not sufficient to sustain the process. Since then, significant track-2 efforts have been devoted to Middle Eastern studies, meetings and conferences by regional and international organization.<sup>[27]</sup> Though these activities are useful they have not been sufficient to produce noted progress. The establishment of the WMDFZ requires institutionalized planning, systematic studies and efforts on the political, technical and legal aspects to achieve significant and timely results. Enhancing the role of science and technology and cooperative monitoring will add a new and essential dimension. Action programs are needed on the national and regional level and the establishment of new institutions nationally and regionally should be considered.

### **PRINCIPLES FOR THE MONITORING AND VERIFICATION SYSTEM**

A set of principles governing the control of nuclear, chemical, biological weapons and missiles have been formulated by Hammad<sup>[28, 29]</sup> in a manner similar to the IAEA nuclear safety fundamentals.<sup>[30]</sup>

- Principle 1: The design, establishment and management of a cooperative monitoring and verification system shall be based on the political mission and will of the parties to establish a Middle East WMDVZ in the context of a regional security system. This should enhance regional security and responsibility.
- Principle 2: The monitoring and verification system shall be applied to nuclear, biological, chemical weapons and missiles (above 150km range) as well as related activities in an integrated and coordinated manner.
- Principle 3: The enhanced transparency and openness in monitoring and inspections embodied in the Chemical Weapons Convention and the IAEA model protocol INFCIRC/540, (which is additional to INFCIRC/153) shall be applied to all WMD and missiles as appropriate.
- Principle 4: The regional system shall be linked to global verification systems to enhance the effectiveness of both systems and to assure the international community that the commitment to the non-proliferation, arms control and disarmament of WMD in the region is maintained. The experience available in regional-global linkages in connection with the NPT, with emphasis on relevant experiences gained in the IAEA-ABACC and the IAEA-EURATOM arrangements should be utilized.
- Principle 5: Only one monitoring and verification organization shall be created to undertake the overall establishment and management of the CIMVS in order to maximize integration of various monitoring and verification functions, minimize institutional conflicts and strengthen verification through joint (cross-disciplinary) inspections and group assessments.
- Principle 6: Dismantling, and destruction of existing WMD and missiles (with a range above 150km), as well as the infrastructure and facilities used for their development and production or their conversion to peaceful uses shall be undertaken multilaterally, according to approved procedures to ensure adequate verification on regional and global levels.
- Principle 7: The highest standards of security and physical protection of nuclear and related materials, facilities and equipment to prevent theft or unauthorized use and handling shall be maintained.
- Principle 8: The design of the CIMVS shall be based, as appropriate, on the concepts of defence-in-depth, which include redundancy and diversity. This will allow the use of several layers of monitoring as well as various monitoring technologies in an optimized manner in order to

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maximize effectiveness, efficiency, and to minimize the risk of proliferation.

- Principle 9: The availability of appropriate and advanced monitoring technologies and techniques and knowledge management system shall be ensured. Technical and analytical support in relevant disciplines shall be maintained. Relevant technological and technical experience gained from relevant global systems shall be applied as appropriate. Furthermore relevant experience generated from the application of UNSCR 715 (1991) and the UNSCOM operation in Iraq has to be assessed to extract lessons to enhance the effectiveness of the CIMVS.
- Principle 10: Sufficient numbers of adequately trained and authorized inspectors shall be ensured. Appropriate training and qualification programmes shall be established in accordance with approved procedures.
- Principle 11: Appropriate quality control and quality assurance programmes shall be established and implemented in all non-proliferation, arms control and disarmament measures.
- Principle 12: The timely analysis of the monitoring and verification results is essential for timely and adequate response in case of non-compliance. Lessons learned from the operating experience shall be used to enhance the effectiveness and efficiency of the system. Furthermore a comprehensive periodic evaluation, analysis and correlation of data and information gathered from various sources including surveillance, monitoring and inspection as well as intelligence information shall be carried out to maximize the effectiveness of the system to and identify future plans.
- Principle 13: Promotion of scientific, technical and economic cooperation in peaceful uses of dual technologies is essential to achieve significant social, technical and economic benefits. The cooperation shall include research and development to improve verification technologies. Further, cooperation in safety, environmental protection, trans boundary releases, waste management and peaceful dual technologies should be included. Such undertakings will enhance confidence building and institutionalize the partnership imperative in development and security.
- Principle 14: A disarmament culture shall be established and disseminated in verification organizations, educational programmes that will provide education and public information to promote communal responsibility towards non-proliferation, arms control and disarmament and enhance societal verification.

- Principle 15: Each regional party shall establish a competent body to undertake the needed regulatory functions and act as a counterpart for the organization for prohibition of WMD. Competent national organizations are the fundamental units of the regional system. The network of national organization will further strengthen the cooperative monitoring imperative.

These principles are developed for the use in the design, operation and development of a credible CIMVS for the first time, to be used in establishing a Middle East WMDFZ. The CIMVS should ensure with the highest possible level of confidence that WMD and missile proliferation is at its "lowest possible". It should also enable prompt detection of any attempt to violate the disarmament process or the safeguards system.

Another essential factor underlying the development of the above principles is that the NPT, CWC and BWC are not applicable to all states in the Middle East. With these varying attitudes, it is imperative to develop these principles to address the situation. While the NPT and the CWC has global monitoring and verification systems, the BWC has no formal compliance monitoring and verification regime. Efforts to strengthen the effectiveness of the BWC and to improve its implementation started in 1991, when VEREX, an ad-hoc group of experts were formed. The VEREX report was accepted in 1994 and another group was formed to negotiate a legally binding Protocol. After a decade of debate a Chairman's text on a Protocol to the BWC is now available.<sup>[31, 32]</sup> However, disagreements<sup>[33]</sup> arose in the negotiations about the ability of the text to provide acceptable measures that enhance compliance with the convention. The US rejected the Protocol, while most of the Western Group led by the UK, Sweden and Germany consider that the BWC can be verified like the CWC with properly chosen measures. This is a considerable improvement to build upon. In the case of a Middle East WMDFZ a group of Middle East experts should further examine the Chairman's text and to develop an acceptable position for the potential Middle East WMDFZ.

## **SUMMARY AND CONCLUSIONS**

The presence of WMD (nuclear, biological, chemical) and missiles in the Middle East a region of tension, poses serious threats to peace and security in the region and the world. Early establishment of a verifiable



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Middle East WMDFZ is a matter of priority that necessitates taking practical steps, towards realization. This has received unparalleled global support, which is reviewed here. 15 principles have been developed for the first time for use in the design, operation and development of the CIMVS for a Middle East WMDFZ. However, neither the NPT depositary countries, nor the UNSCR, which supported establishing the zone, have exerted effort towards this effect. It is important to emphasize that establishing the zone should move parallel to the peace process.

The Middle East WMDFZ is an achievable objective and at the core of a Middle East security system; a vital step in building the new Middle East. The issues involved require urgent institutionalized planned and systematic studies on the political, legal and technical levels.

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## **CHAPTER 8**

### **ESTABLISHMENT OF A ZONE FREE OF MASS DESTRUCTION WEAPONS IN THE REGION OF THE MIDDLE EAST: REQUIREMENTS AND CONSTRAINTS**

Ibrahim Othman and Maha Abdulrahim

#### **INTRODUCTION**

The concept of a Nuclear-Weapons-Free Zone (NWFZ) describes an independent regional security system or one that complements other world arrangements concerned with international peace and security. There is no global model of such a zone since each part of the world has its own specific geographical features. The purpose of creating a nuclear or weapons of mass destruction free zone (WMDFZ) then is to rid the region from the threats of using these weapons in a potential conflict that may arise among the states of the region. Geo-political conditions have a major role in defining the limits and objectives of the zone which are mainly to prevent horizontal proliferation of nuclear weapons and enlargement of the nuclear club and to create a world free of tensions and instability where confidence and good relations prevail in order to establish peace and security on both regional and global levels.

The idea of creating a NWFZ in the Middle East is not a new one. Similar zones in Latin America and the Caribbean, the South Pacific and Africa have preceded it. Clearly, each of these zones has its specific features which makes it a "unique" venture in spite of the basic elements common amongst them. Indeed the establishment of a WMDFZ in the Middle East is a concept that no region in the world has yet applied. Freeing the region from three main types of weapons is a highly complicated matter especially given that the Middle East is a hot and high risk spot as a result of the Arab-Israeli conflict. Therefore any measures taken towards the establishment of this zone will help reduce tensions and strengthen the universality of the nuclear Non-Proliferation Treaty (NPT).

### **A WEAPONS OF MASS DESTRUCTION FREE ZONE IN THE MIDDLE EAST**

Theoretically the main objectives of a WMDFZ in the Middle East are to:

- Reduce tensions and conflicts in the region that are threatening world peace;
- Settle disputes by peaceful means, dialogue and understanding;
- Promote stability and security at both regional and global levels by preventing horizontal proliferation of nuclear weapons and limiting their geographical spread through countries that already possess them; reinforcing confidence and transparency; and improving relations among countries of the region;
- Facilitate and encourage cooperation for the development and peaceful use of nuclear energy within the region and with countries outside the region.

Arab countries' approval of the establishment of a WMDFZ through numerous official declarations and their adherence to the NPT reflects their:

- Deep conviction that the use of weapons of mass destruction (WMD) for solving conflicts in the Middle East will inflict long-lasting disaster on the whole region, harm all its states and may ultimately lead to a devastating world war without solving these conflicts;
- Conviction that their vital security interests will be strengthened upon the establishment of this WMDFZ in that all states in the region will be denied such devastating weapons that threaten the security of the region and instead transparency, mutual trust and confidence will develop;
- Belief that the Middle East is a hotbed of tension with old deep-rooted conflicts. Eliminating such weapons will help mitigate the tension and establish just and comprehensive peace. It will also thwart ambitious parties from launching war against the others;
- Desire to protect their people against the hazards of nuclear, chemical, biological arms race and their devastating effects on people, environment and future generations;

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- Desire to put forward before world public opinion, their own good intentions and to draw attention to the calls for the urgent adherence by Israel to the nuclear Non-Proliferation Treaty and to place its nuclear installations under the safeguards regime of the International Atomic Energy Agency (IAEA).

In 1990, following the United Nations initiative for establishing a NWFZ, President Hosni Mubarak of Egypt declared his initiative to establish a WMDFZ in the Middle East. It prohibited all WMD whether nuclear biological or chemical, and advocated that all countries of the region should make equal and mutual pledges in this regard and establish procedures and devise ways to guarantee the full compliance by all countries in the region, without any exception with the agreement.

In May 1991, President Bush took up an initiative proposing arms reduction in the Middle East including nuclear weapons, and called upon the countries of the region to apply a verifiable ban on the production and possession of nuclear material used in the manufacturing of nuclear weapons. This initiative also called upon all countries of the region that were not yet parties to the NPT to adhere and to place all nuclear facilities in the region under the supervision of the IAEA and to lend continuous support to the establishment of the NWFZ.

Permanent members of the Security Council held a meeting in July 1991 and issued a declaration on both the transportation and non-proliferation of arms. The declaration expressed strong support for the establishment and implementation of a WMDFZ in the Middle East and called for the nuclear activities of all countries of the region to be placed under the safeguards regime of the IAEA. It also called for the prohibition of importing or manufacturing material used in the production of nuclear weapons.

In December 1991, the Islamic Summit Conference in Dakar requested that Israel submit to the Security Council and the IAEA a complete statement of its stockpiles of nuclear material. The European Commission in November 1992 also expressed its support for the establishment of a WMDFZ in the Middle East and asked the international community to support it fully as well.

## **REQUIREMENTS AND CONSTRAINTS FOR THE ESTABLISHMENT OF A WEAPONS OF MASS DESTRUCTION FREE ZONE IN THE MIDDLE EAST**

### **Definition of the Middle East**

Defining the Middle East is still controversial as the region, per se, is a political and not a geographical concept. Many events confirm this view. When Israel was established in 1948 it attempted to join one of the five geographical groups of the United Nations, a matter which most countries opposed until the end of the Cold War and the collapse of the Soviet Union when the balance of power changed in favour of the USA. This gave Israel another chance to try to join one of these groups as a first step towards membership of the Security Council. It is not surprising then that the definition of the Middle East is still subject to many questions.

In 1989, the IAEA reached a definition of the Middle East based on the "essential countries" to which other countries could be added later with a view to finally including all countries directly related to current conflicts in the region. The IAEA definition includes the area extending from Libya (to the west) to Iran (to the east) and from Syria (to the north) to Yemen (to the South). It thus appears that the definition of the IAEA excludes Turkey, Cyprus and Malta. Turkey is a member of NATO and there may be nuclear weapons on its territory. There are British military bases on the territory of Cyprus and Malta where no nuclear weapons have been declared. However, the definition does not refer to Pakistan and Afghanistan and assumes that their political and military orientations are directed to other matters. The above definition includes, therefore, the "essential" countries only and not the "marginal" ones on geographical basis and takes into account existing tensions and the ability of certain countries to develop weapons of mass destruction. Djibouti, Sudan, Somalia and the Arab Maghreb countries of Tunisia, Algeria, Morocco and Mauritania were also excluded.

The concepts of "essential" and "marginal" countries, may appear to show that a smaller group is needed to launch serious work for the establishment of a WMDFZ, which others may join later. However, it is necessary to remember that the Middle East is different than Latin America or the Southern Pacific. The Middle East has neighbours on all sides and



some of them possess nuclear weapons. Moreover, discrepancies in the possession of nuclear facilities, whether or not under safeguards, within the Middle East or in neighbouring countries are additional factors impeding the geographical delimitation of the region.

Another important point is whether or not the expected WMDFZ area will include maritime areas like the Mediterranean, Red Sea, Arab Gulf, Gulf of Akaba coasts and straits separating these seas such as Gibraltar, Bab Elmandab, Hormuz and the Suez Canal. This is a matter that should be discussed during the final stages of negotiations of the WMDFZ including conditions of use and navigation for vessels carrying nuclear weapons belonging to nuclear powers

In 1978, the United Nations General Assembly issued a broad definition of a WMDFZ based on what the countries of the region may freely decide together. It is therefore easier to reach an agreement on the limits of a WMDFZ in certain areas rather than in others. The United Nations definition states that a WMDFZ is any zone recognized by the United Nations General Assembly and established by a group of countries under a treaty or an agreement to which they are parties that specifies:

1. The regime under which the WMDFZ is to be completely free from those weapons including the delimitation of its boundaries;
2. The creation of an international verification and control body to ensure compliance with the obligations of the regime.

The geographical frontiers of any region should be defined by common agreement between concerned parties. Until then any discussion aimed at determining a list of member of countries of the Middle East region is futile and cannot be conclusive in military and political terms. It is therefore necessary for the delimitation of a geographical area free of nuclear weapons and other WMD to create a political and legal environment that will then enable all parties in the region to agree on a treaty.

### **The Role of External Powers in the Establishment of the Weapons of Mass Destruction Free Zone**

A WMDFZ, in particular one free from nuclear weapons, cannot be created unless encouraged by neighbouring countries especially those possessing nuclear weapons. This is particularly important in the Middle

East, which is an area of conflict and where external rivalries motivate certain local parties to act in a way that is incompatible with the interests of the region. External powers therefore need to:

1. Extend support for the elimination of nuclear threats from the region by opposing nuclear tests and non-compliance with the NPT;
2. Propose practical measures for reducing tension, promote confidence-building and control the arms race in the region;
3. Provide external support for peaceful nuclear activities in the region;
4. Organize support and cooperation with countries of the region in order to reinforce transparency of activities, including bilateral technical assistance programmes and programmes by the IAEA.

The nuclear powers, in particular, can contribute significantly to the establishment of WMDFZ through their conduct. Countries in the Middle East will be reassured if the nuclear powers:

1. Ratify relevant treaties and comply with their provisions;
2. Observe all requirements fixed by treaties and agreements establishing nuclear-weapon-free zones;
3. Refrain from any violation of treaties they are party to and from the use or threat of use of nuclear weapons against the countries of the region;
4. Observe the aims and objectives of the Middle East WMDFZ;
5. Pledge not to place on the WMDFZ territory, arms that could be used or threaten to be used against countries of the region.

It appears from these points that any progress towards the establishment of a WMDFZ in the Middle East requires a major contribution not only from major external powers but also from the entire international community in order to reduce threats to international peace. These contributions depend on the security guarantees that can be provided. These may be either negative—by refraining from certain acts—or positive—by taking certain pre-defined measures under certain conditions.

It is more difficult for concerned countries to provide positive rather than negative guarantees, since positive guarantees involve obligations to assist a country facing ill-defined and unpredictable dangers. Assistance can vary from humanitarian aid to diplomatic support and military assistance. Positive guarantees involve the risk of jeopardizing the independence and

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the sovereignty of receiving countries if the guarantor country considers that it has the right to exert pressure on the receiving country.

### **Main Measures and Obligations**

The following measures are needed to reach the objectives of the WMDFZ:

1. Non-possession of WMD by countries of the region;
2. No country must place nuclear weapons or other WMD in the geographical area included in the zone;
3. No use or threat of use of WMD against targets within the zone. In the case of nuclear weapons non-possession may be ensured through the NPT.

Countries must also commit to:

1. Not possessing nuclear explosives for peaceful purposes. Such a commitment is contained in the Comprehensive Test Ban Treaty (CTBT);
2. Not placing weapons on the territory of transit countries and undertaking to regulate the innocent passage of weapons through land, sea or air;
3. Giving legal form to measures regarding the prohibition of use of weapons against third parties. The five major nuclear powers have unilaterally declared that they will not attack or threaten to attack, with nuclear weapons, countries that do not possess such weapons. These declarations are, however, qualified and contain reservations regarding countries belonging to a NWFZ or to a military alliance whose members possess nuclear weapons;
4. Adopting a system of prohibiting attacks on nuclear reactors and related facilities in order to avoid emissions from radio-active material which could spread to large areas.

### **Confidence-Building**

One of the most important confidence-building measures is to apply the conditions of the NPT, regarding the protection of nuclear facilities, to all countries of the region. Israel, for example, which is not a party to the NPT, would have to place all its nuclear facilities under the safeguards

regime. It is obvious that a NWFZ in the Middle East can only be established by either placing the Dimona Reactor under the comprehensive safeguards regime or by closing it down completely. Either of these options may halt the source of Plutonium used in nuclear weapons, but will not eliminate the nuclear weapons already available to Israel.

As for parties to the NPT, regular declarations of their peaceful nuclear activities could restate their commitment to the establishment of the WMDFZ, a matter which other countries in the region accomplished through the safeguards agreements of the IAEA. Another opinion considers that confidence-building may be reinforced through an informal inspection system based on invitations to representatives of the IAEA to ascertain existing activities.

Other confidence-building measures include agreements preventing attacks on nuclear facilities, thus reinforcing current international law. Commitments not to attack should be as comprehensive as possible since caveats to such undertakings would leave the door open to attack facilities, which are not explicitly declared as being used for peaceful purposes in the opinion of the attacking party.

### **Verification**

An effective WMDFZ requires a verification system ensuring that all countries abide by their commitments whether within or outside this zone. The nature of the system, its scope and methods depend on the type of related commitments. The Treaty must, however, include provisions on the mechanism of verification of compliance and ways to deal with and settle cases of non-compliance. Such a system in the Middle East can make use of other regional experiences and of the IAEA verification systems. It is important that the following be subject to verification:

1. All WMD related activities in order to ensure that peaceful ones are not oriented towards arms production;
2. The obligation not to place any WMD in the WMDFZ. Special systems should be devised for maritime areas and other areas within the zone belonging to countries possessing WMD and in particular nuclear ones;
3. Removal of WMD concurrently with the entry into force of the agreement;

4. Implementation of all other measures defined by the agreement.

Some parties to the agreement may prefer to establish permanent verification agencies. However, in case of the Middle East it may be better to entrust the IAEA with the verification of peaceful nuclear activities of the countries of the region—this could be supplemented by bilateral arrangements. The agreement may provide for verification activities like site inspections to be undertaken by any party in the territory of another country. It is also possible to make use of documents and other proven experiments undertaken by international or regional organisations.

#### **ISRAEL AND THE NUCLEAR WEAPONS FREE ZONE IN THE MIDDLE EAST**

The Arab countries have great respect for international efforts exerted in the field of disarmament and have all become party to the NPT. Israel however has not seen the need to be in full compliance with United Nations resolutions regarding the Arab-Israeli conflict and this has not helped alleviate the tension in the Middle East.

Though Israel has signed peace treaties with Egypt, Jordan and the Palestinian Authority, its nuclear activities have not been declared or subjected to inspection. Israel seems convinced that it should increase its strategic arms production in accordance with its own understanding of security concepts. This concept appears to stand on two bases: 1) qualitative supremacy over the quantitative advantage of the Arab States, and 2) reinforcement of its alliance with the West. This raises many questions about Israel's position towards conventional and WMD disarmament and also raises questions about its position towards initiatives to free the Middle East from WMD, in particular from nuclear weapons.

Israel's stance towards the issue of disarmament is contradictory: though in statements it opposes weapons of mass destruction, it has not fully joined any of the WMD treaties<sup>1</sup> nor has it been transparent about its capabilities. Israel's position towards a WMDFZ in the Middle East was declared in its answer to the United Nations General Assembly report at the forty-sixth session in 1991. In it, Israel stated that WMD included all weapons capable of killing civilians in an indiscriminate manner and:

- (a) Removal should apply to all kinds of weapons;
- (b) Any country in the region should be publicly recognized and accepted as an integral part thereof;
- (c) The establishment of the NWFZ and associated confidence-building measures should be negotiated and agreed upon before it places its nuclear installations under an inspection regime.

Israel's nuclear capabilities have been a matter of many international resolutions. At the thirty-sixth session of the United Nations General Assembly in 1981 the group of experts, appointed by the Secretary General to prepare a study on Israeli Nuclear Armament, submitted its report<sup>2</sup>. The report concluded that Israel has the technical capacity to manufacture nuclear weapons and possesses the means of delivery of such weapons to targets in the area.<sup>3</sup> On the basis of the available authoritative information, the Group of Experts was unable to conclude definitively whether or not Israel was in possession of nuclear weapons. However, the Group of Experts emphasized that they did not doubt that Israel has the capability to manufacture weapons within a very short time.<sup>4</sup>

A report was submitted to the fortieth session of the United Nations General Assembly on 9 August 1985<sup>5</sup>, which contained information relevant to Israeli nuclear armament and further nuclear development. The 1985 report corroborated the 1981 Group of Experts report and reached no definitive conclusion because of the lack of available reliable information. In spite of all this international attention to the issue, Israel has never shown any intention of joining the NPT.

In 2002, under the terms of the draft resolution contained in the report on the establishment of a NWFZ in the Middle East,<sup>6</sup> the United Nations General Assembly urged all concerned parties seriously to consider taking the necessary practical and urgent steps to implement the proposal of turning the Middle East into a zone free of nuclear weapons. For this purpose the United Nations General Assembly invited all concerned countries in the region who had not yet joined the NPT to do so and to place all their nuclear activities under the safeguards regime of the IAEA. The First Committee approved the draft resolution on 21 October without a vote.

The issue of Israel's nuclear capabilities has remained a main item on the Agenda of the General Conference of the IAEA for many years. The

General Conference issued a number of resolutions the last of which was in September 1991<sup>7</sup>, which called upon Israel to comply, without delay, with United Nations Security Council Resolution (UNSCR) 487 of 1981 and place all its nuclear facilities under the safeguards regime of the IAEA. This resolution was sponsored by Egypt, Iraq, Jordan, Kuwait, Lebanon, Morocco, Qatar, Saudi Arabia, Sudan, Syria, Tunisia and the United Arab Emirates. A roll call vote was conducted on this text resulting in 39 parties in favour, 31 against and 13 abstentions. The resolution was adopted. The General Conference also urged all countries supplying Israel with nuclear material or equipment to apply the comprehensive safeguards regime on their exports.

The Agency also issued a number of resolutions on “The implementation of the Agency’s safeguards in the Middle East” the last of which was on 20 September 2002<sup>8</sup> calling upon all directly concerned countries seriously to consider taking appropriate and practical steps to establish the proposed NWFZ in the Middle East, in a reciprocally verifiable and effective manner. It also called upon concerned countries to join international regimes of non-proliferation, including the NPT, as a means to full participation in a WMDFZ in the Middle East; to reinforce regional peace and security; as a confidence-building measure amongst all countries of the region; and as a step towards reinforcing international peace and security. The resolution was tabled by Egypt and co-sponsored by Yemen and was adopted by consensus.

The obvious target of the IAEA resolutions was Israel as it is the only country in the region not party to the NPT and having no facilities under safeguards. It was hoped that this would help push Israel to place its nuclear facilities under international control through a comprehensive safeguards agreement with the IAEA.

Parties to the NPT, in particular Arab states who are all NPT states parties, are still trying through the Review Conferences and the preparatory committees of the review conferences, to call upon the international community especially sponsors of the 1995 resolution to abide by their commitments and fully implement the resolution which they adopted and sponsored as part of a package to extend the NPT indefinitely. They also urge them to convince Israel of the pressing necessity to adhere to the NPT and to place its nuclear facilities under international control through the comprehensive safeguards regime of the IAEA.

Accordingly, and in spite of the numerous international resolutions<sup>9</sup> the United Nations Security Council has never obliged Israel to implement them and has yet to impose sanctions to that end.

## CONCLUSION

Requirements for the establishment of a WMDFZ in the Middle East can be met, and obstacles removed, through intensive international efforts aimed at preventing any threat to world peace and security and through abiding by the aims and modalities of the non-proliferation regime. This is all the more possible since the establishment of such a zone has been approved by all the countries of the region, as well as the permanent members of the Security Council, on the basis of two similar precedents in both Latin America and the Caribbean and Africa.

For that purpose to be achieved:

- (a) WMD need to be eliminated so that vital security interests of the countries of the region will be reinforced. Possession of these arms by any country in the region will increase its stubbornness in dealing with its neighbours and will keep the region under continuous threat of war. The use of such weapons will not lead to a comprehensive settlement of the current conflict;
- (b) Countries of the region should declare their desire to remove all causes of tension and conflict and to achieve a comprehensive and just peace in accordance with United Nations resolutions;
- (c) Israel should join the NPT and open all its nuclear facilities for inspection under the safeguards regime of the IAEA;
- (d) Israel should submit to the IAEA a full declaration of its nuclear capabilities;
- (e) On signing the NPT, Israel should demonstrate its nuclear-weapon-free status in light of the experience of South Africa;
- (f) No country from outside the region should be allowed to use territories in the region or under its jurisdiction to place WMD or any components thereof;
- (g) Necessary action should be taken to implement United Nations General Assembly resolutions concerning the establishment of a NWFZ in the Middle East;



- (h) Pledges should be made to refrain from producing or acquiring fission material or any material used for the production of WMD;
- (i) Until the WMDFZ is established, parties should refrain from manufacturing, producing, testing or acquiring in any way new nuclear weapons and from allowing the placing of any nuclear weapons, explosives or devices on their territory or on territories under their jurisdiction.

**APPENDIX 1****ARAB INITIATIVES TO FREE THE MIDDLE EAST FROM WEAPONS OF MASS DESTRUCTION, IN PARTICULAR FROM NUCLEAR WEAPONS**

The UN General Assembly included on the agenda of its twenty-ninth session in 1974, an item on the “Establishment a Nuclear-Weapons-Free Zone in the Middle East” upon a request from Iran stating that “in view of the political and economic situation prevailing in the Middle East... introducing nuclear weapons to the region could lead to more than just an exhausting arms race and may become a catastrophe in itself. The region looks forward to a complete ban on the production, possession, testing, stockpiling and transportation of nuclear weapons under effective international control”. Egypt supported the Iranian request and added that “the establishment of a NWFZ in the Middle East should not prevent parties from enjoying the benefits of peaceful use of atomic energy and especially for economic development purposes of the developing countries”.

Iran and Egypt jointly submitted a draft resolution that was adopted by the General Assembly of the United Nations (29/3263) in December 1974 which invited countries of the region to work for the establishment of the NWFZ as a means to strengthening international peace and security. It called upon all concerned parties in the region to declare their intention on a reciprocal basis; to refrain from the production or the acquisition in any way of nuclear weapons; and to adhere to the NPT. It also indicated that such a zone cannot be established in the Middle East without a climate of confidence.

Since 1974 the idea of a NWFZ in the Middle East has remained on the agenda of the regular and extraordinary sessions of the UN General Assembly where decisions are taken annually by consensus. A NWFZ in the Middle East, it was thought would strengthen international peace and security as countries of the region would have to declare, on a reciprocal basis, that they would: refrain from producing or otherwise possessing or acquiring nuclear weapons or explosives; refrain from allowing third parties

to place such weapons on their territory; agree to placing all their nuclear installations under the safeguards regime of the IAEA.

### **The Initiative of President Mohamed Hosni Mubarak in 1990**

On 8 April 1990 President Mohamed Hosni Mubarak, President of the Arab Republic of Egypt declared an initiative to set up a WMDFZ in the Middle East. The most salient features of the declaration were:

1. To ban WMD in the Middle East, whether nuclear, biological or chemical;
2. That all countries of the region should make equal and mutual pledges in this regard;
3. That appropriate measures and procedures to ensure the full compliance of all countries of the region to the convention needed to be taken.

### **The 1990 Summit Conference**

The Extraordinary Session of the Summit Conference held in Baghdad from 28 to 30 May 1990 discussed creating a WMDFZ in the Middle East. The Declaration stated that "Focusing on the disarmament of just one type of WMD in the Middle East means basically adopting a selective approach for the region."

### **Damascus Declaration on Coordination and Cooperation among Arab Countries**

On 6 March 1991 the countries of the Gulf Cooperation Council (GCC), Egypt and Syria, all participated in the Damascus Meeting. The meeting proceeded from their common bonds of solidarity and brotherhood and from their keen desire to strengthen their ability to uphold their responsibilities towards their Arab nation, to serve its causes and preserve its security and common interests. It also reaffirmed their intention to instill a new spirit in the joint Arab action and to establish Arab cooperation on solid grounds.

The Damascus Declaration called upon the participating states to endeavour to establish a WMDFZ—in particular from nuclear weapons—in the Middle East through competent international agencies and through:

1. Coordination and cooperation in conformity with the Charters of the League of Arab States (LAS), the United Nations and other Arab and international Charters;
2. Reinforcement of historical ties, good neighbourhood, respect of territorial integrity, regional security and equal sovereignty of all countries;
3. Confidence building and the creation of a reinforced Arab joint cooperation system on the basis of arrangements agreed upon by participating countries;
4. Confronting challenges to stability and security in the region through all available means and to achieve a fair and comprehensive settlement of the Arab-Israeli conflict and the Palestine cause based on the Charter of the United Nations and its relevant resolutions;
5. Reinforcing economic cooperation between participating countries with a view to achieving economic and social development;
6. Maintaining the sovereignty of each Arab country over its natural and economic resources.

### **Egyptian Confidence-Building Proposals**

On 4 July 1991 the Minister of Foreign Affairs of Egypt announced some confidence-building proposals which were to invite:

1. Main arms exporting countries, especially the permanent members of the UN Security Council, as well as Israel and the Arab countries, to deposit with the UN Security Council an explicit and unconditional declaration supporting the establishment of a WMDFZ in the Middle East and an undertaking not to impede its realization;
2. Main arms exporting countries and the parties to the NPT to ensure that all countries of the Middle East adhere to that Treaty and place its nuclear facilities under international supervision;
3. Countries of the Middle East, which have not done so, to declare that they undertake the following:
  - (a) Not to use nuclear, biological or chemical weapons;
  - (b) Not to produce or acquire nuclear weapons;
  - (c) Not to produce or acquire any nuclear material for military use;
  - (d) To accept the international inspection regime of the IAEA and apply it to all its nuclear facilities.

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### **Resolutions of the Council of the League of Arab States**

Resolution 5232 of the ninety-eighth session of the Council of the League of Arab States, issued on 13 September 1992 sponsored by the Arab Republic of Egypt, deals with the coordination of the Arab position towards WMD and its efforts to establish a WMDFZ in the Middle East. It also refers to the recommendations of the UN General Assembly which invites all parties to: consider ways and means to contribute to full and complete disarmament and the establishment of a NWFZ in the Middle East; submit constructive proposals leading to a quantitative and qualitative balance of military capabilities of countries in the region; ensure security through reciprocal and enforceable pledges in the field of disarmament that should be made measurable by the same standard for all countries of the region. The resolution also calls for the following:

1. To reaffirm support for the removal of all WMD (nuclear, biological, chemical) from the Middle East as being the best means to guarantee the security of all countries of the region;
2. Implementing the Chemical Weapons Convention in the context of efforts exerted to establish the WMDFZ and a positive response from Israel to the international demands to adhere to the NPT and the international control system in accordance with UN Security Council Resolution 487 of 1981;
3. To call upon arms exporting countries and parties to the NPT to take necessary action so that all countries in the Middle East place their nuclear installations under the supervision of the IAEA;
4. To draw the attention of the international community to the dangers that Israel's capabilities to produce different types of advanced armament, (whether conventional or mass destruction) represent;
5. To form a committee composed of Arab members of the Conference on Disarmament to follow up this question and coordinate Arab positions with other international groupings.

Moreover, resolution 5285 of the ninety-ninth session of the Council of the League of Arab States issued on 19 April 1993:

1. Reaffirms resolution 5232;
2. Mentions the formation of a Committee from amongst member countries to undertake a technical study to support the action of the

Secretary General with regard to the Arab position concerning the establishment of a WMDFZ in the Middle East;

3. Requests the Secretary General to intensify efforts and contacts with a view to declare the Middle East as a zone free from WMD and to declare the Arab countries' pledge to abide by its rules.

Resolution 5335 of the hundredth session of the Council of the League of Arab States issued on the 21 September 1993:

1. Reaffirms resolution 5232 and 5285;
2. Mentions the formation of a Committee (which includes Jordan, Algeria, Saudi Arabia, Syria, Iraq, Egypt, Morocco) to undertake required technical study in light of responses that the secretariat received and to define joint Arab positions towards this issue in various fora;
3. Mentions intensifying efforts within the UN in order to declare a WMDFZ in the Middle East.

#### Notes

- <sup>1</sup> Israel signed the CWC in 1993 but has yet to ratify; it signed the CTBT in 1996 but has yet to ratify; it has neither signed nor ratified the BTWC or the NPT.
- <sup>2</sup> *Study on Israeli Nuclear Armament*, United Nations document A/36/431, 19 June 1981.
- <sup>3</sup> *Study on Israeli Nuclear Armament*, United Nations document A/36/431, 19 June 1981, paragraph 78.
- <sup>4</sup> *Study on Israeli Nuclear Armament*, United Nations document A/36/431, 19 June 1981, paragraph 82.
- <sup>5</sup> *Israeli Nuclear Armament*, Report of the United Nations Institute for Disarmament Research, United Nations document A/40/520, 9 August 1985.
- <sup>6</sup> *Establishment of a nuclear-weapon-free zone in the region of the Middle East*, United Nations document A/57/507, 7 November 2002.
- <sup>7</sup> *Israeli Nuclear Capabilities and Threat*, International Atomic Energy Agency Document GC(XXXV)/RES/570, 20 September 1991.
- <sup>8</sup> *Application of IAEA Safeguards In the Middle East*, International Atomic Energy Agency Document, GC(46)/RES/16, September 2002.
- <sup>9</sup> These resolutions do not fall under Chapter 7 of the UN Charter.

## **CHAPTER 9**

### **MIDDLE EAST WEAPONS OF MASS DESTRUCTION FREE ZONE: REGIONAL SECURITY AND NON-PROLIFERATION ISSUES**

Mohammed Kadry Said<sup>1</sup>

#### **INTRODUCTION**

The following paper is divided into three sections. The first will view the reasons for Middle East defence and armament trends and the consequences for weapons of mass destruction proliferation, while section two will outline the development of the idea of a weapons of mass destruction free zone in the Middle East. The final section will then summarize the current status of the weapons of mass destruction free zone idea and will provide some suggestions to aid its establishment in the Middle East.

#### **REASONS FOR DEFENCE AND ARMAMENT TRENDS IN THE MIDDLE EAST**

The Middle East still remains the most militarised region in the world; this is not surprising given that the region has been conflict-ridden for a long time. The Iraq-Iran war (1980-1988) and the second Gulf War in 1991 revealed a considerable proliferation level of weapons of mass destruction (WMD) and ballistic missiles, which have had an impact on regional security and stability. The Iran-Iraq war introduced missiles as a means of power projection in the Middle East and showed that they could be capable of carrying nuclear as well as chemical and biological warheads. The Gulf War in 1991 demonstrated US technological superiority and introduced what is now known as the "Revolution in Military Affairs" (RMA). As a result the Middle East has been exposed to advances in information and sensor

technology, precision guided ammunition, C<sup>4</sup>I systems,<sup>2</sup> and changes in military organization and doctrine.<sup>3</sup> New weapons like the Theater Anti-Ballistic Missile systems (TABM) are now part of the military vocabulary in many Middle Eastern states.

States of the Middle East seek to acquire WMD for different reasons including deterrence, arms races with neighbours, ability to attack outside advanced power projection options or to compensate for conventional weaknesses and costs of conventional weapons acquisition, particularly those with high technological value. Israel was the first state in the region that pursued a potential independent nuclear and missile capability. In the autumn of 1956, France agreed to provide Israel with a 24 mega-watt reactor and to build a chemical processing plant at Dimona, which became the foundation of the Israeli capability programme. Intelligence and expert reports estimate that Israel has produced enough material for 100 to 200 nuclear devices that could be warheads for its mobile Jericho-1 and Jericho-2 ballistic missiles and free fall bombs, in addition to other possible tactical applications.<sup>4</sup> Israel has a sophisticated nuclear military capability. There are reports<sup>5</sup> of a weapons programme and of biological warfare activities conducted at the Biological Research Institute in Ness Ziona. Israel's missile capabilities are ranging from theatre ballistic missiles to long-range delivery systems. Most of these systems are thought to be "nuclear capable".

There is no more controversial issue in Israel than its nuclear deterrent and its policy of ambiguity. Israel has long been considered a nuclear weapons capable state, yet it has not overtly demonstrated a nuclear capability, preferring instead a policy of "nuclear ambiguity". Many details of Israel's nuclear weapons program and its delivery systems are uncertain and speculative. Israel has long maintained "it will not be the first to introduce nuclear weapons into the Middle East". This declaration was adopted by the Israeli leadership between 1967-73 and accepted by the US as a strategy of ambiguity. Even after the dramatic revelations in 1986 of nuclear technician Mordechai Vanunu, Israel's nuclear status is still regarded as inaccessible.<sup>6</sup>

However, some credible Israeli analysts have expressed concerns that under the culture of opacity, the Israeli leadership might be tempted to develop a different attitude regarding nuclear weapons, namely their use in situations less than an existential threat to the state. Such leadership might see them for example as an "appropriate" Israeli response to a chemical or



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biological attack. Such concerns led Israeli analyst Ze'ev Schiff to propose "The Red Button Law" that would place checks and balances on Israel's decision-making system in this most sensitive field.<sup>7</sup>

From the Israeli perspective, Israel has been seeking nuclear capability not for the sake of hegemonic aspiration or national prestige but to develop an independent nuclear ultimate deterrent to balance the fundamental geopolitical asymmetries in conventional military power between Israel and the Arab states. Israel sees its nuclear capability as the ultimate insurance policy.<sup>8</sup> Although it is widely believed that Israel acquired a nuclear option sometime in the late 1960s, it has not declared, tested, or made any other visible use of this option, resulting in an "opaque" nuclear policy.<sup>9</sup> Israel's strategic thinking has also led its government to contribute to a vigorous nuclear denial strategy based on enhanced political and intelligence coordination with other friendly states.

On 2 February 2000, for the first time in Israel's history, the Knesset held a discussion on Israel's nuclear program. Issam Mukhl, an Arab member of the communist Hadash Party, spurred debate on the controversial nuclear subject. During the abbreviated debate, which lasted only less than hour Chaim Ramon, the government's minister for Jerusalem affairs, reiterated Israel's long-standing policy that Israel would not be the first nation to introduce nuclear weapons into the Middle East.<sup>10</sup> Although Makbul's attempt to break the decades of silence sparked off a flurry of articles in the Israeli press, most of these were concerned with the safety procedures of the Dimona nuclear reactor and avoided the strategic or philosophical issue. Other articles emphasized the danger that any uncertainty over such sensitive issues in the highly volatile Middle East may result in dangerous escalations.

The most that the Israeli nuclear discourse allows is to refer to an Israeli "nuclear option" as a "capability" consisting of "unsafeguarded nuclear facilities". Israel made clear in the Arms Control and Regional Security Meeting (ACRS) meetings that, as a matter of national strategy, it will continue to insist on linking progress on the peace front, as well as on linking the nuclear issue to visible progress in other areas of arms control, both conventional and unconventional. On the contrary, Israeli defence sources have publicly insisted that in a leaner peacetime Israeli army must have an even stronger strategic deterrent component. It is the nuclear option in their view that will preserve peace.

Former Prime Minister Benjamin Netanyahu in 1996 clarified the Israeli position by noting that “lasting peace” could only mean peace among democracies: “Until the region becomes democratic, Israel is forced to maintain its strategic deterrence”. Similarly, Prime Minister Ehud Barak, stated that Israel would need to maintain its nuclear option indefinitely. Such a point of view sees peace based on the presence of Israeli nuclear weapons and it seems that the Israeli public supports this view. Nearly all Israelis consider the nuclear option indispensable to their security; a view that will not completely recede once a comprehensive peace treaty is signed. The Arab States perceive the Israeli nuclear capability as a means not only of deterrence, but also as a means of coercion and potential use in pre-emptive strike missions.

The Middle East is also an area close to Indian and Pakistani nuclear and missile threats. The multiple nuclear tests by both India and Pakistan in May 1998 coupled with their advanced missile and space programs have echoed in the Middle East region. The threats have been made visible through India’s testing of the Agni-1 and Agni-2 ballistic missile systems with ranges of 1,500 and 2,000km respectively and Pakistan’s testing of the Ghauri ballistic missile system with ranges up to 1,300-2,000km. Furthermore India has tried to increase its influence in the region, sending aircraft carriers like the INS Viraat to the Gulf as part of its continuing “military diplomacy”. The Indian Navy has also held naval exercises with Kuwait and Iran and conducted one-day manoeuvres with the navies of Saudi Arabia and Oman as part of its strategic thrust in the area.<sup>11</sup>

The north-south security interactions have also had an impact on weapons of mass destruction proliferation trends in the Middle East. One of the important results of the war in the Gulf and in the Balkans has been the NATO realization of the urgent need to modernize the European military forces in the areas of precision strike and mobility in addition to command, control and communications. In 1998 the US proposed the implementation of the “Defence Capabilities Initiative” (DCI) adopted later by NATO in 1999. The DCI is aimed at upgrading the key military systems and capabilities of the European allies and making them interoperable with the US systems.<sup>12</sup> NATO’s “new Strategic Concept” emphasizes “multidimensional” risks emanating from beyond NATO’s area of action and reflects a geographic shift to a more diverse set of risks; these risks are believed to be located in or emanate from the Middle East. The expanded definition of NATO’s interests and scope for action has therefore raised

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questions in Middle Eastern countries about how far NATO's geographic mandate extends.<sup>13</sup>

### **EVOLUTION OF THE IDEA OF A WEAPONS OF MASS DESTRUCTION FREE ZONE IN THE MIDDLE EAST**

It was at the 17<sup>th</sup> session of the United Nations General Assembly in 1963, that Egypt first suggested nine conditions for establishing a nuclear-weapon-free zone (NWFZ) in the Middle East. These conditions reflected Egyptian fears of foreign domination, interference in its internal affairs and high sensitivity over the issue of "sovereignty" in any arms control measures. At the heat of this position was the Arab-Israeli conflict and the concept of defensive and just wars.

Then at the 29<sup>th</sup> session of the United Nations General Assembly in 1974, Egypt and Iran introduced a resolution calling for the establishment of a NWFZ in the Middle East. The resolution was adopted at the United Nations General Assembly by a majority of 138 members, with only Israel and Burma abstaining.<sup>14</sup> From 1980 onwards no country, including Israel, made any opposition to the resolution or abstained from it.<sup>15</sup>

During the debates on the NWFZ resolution, Egypt stressed four basic principles:

- That all states of the region should refrain from producing, acquiring and possessing nuclear weapons;
- That the nuclear weapons states should refrain from introducing nuclear weapons into the area or using nuclear weapons against states in the region;
- That an effective international safeguards system affecting both the nuclear weapon states and the states of the region should be established; and
- That the establishment of a NWFZ in the Middle East should not prevent parties from enjoying the benefits of the peaceful uses of atomic energy, especially for economic development.<sup>16</sup>

In 1982, Egypt ratified the Non-Proliferation Treaty (NPT), and in 1986 froze all domestic nuclear programs. During the Paris Conference on

chemical weapons in January 1989, Egypt supported multinational efforts to impose a total ban on chemical weapons, but asked that any chemical weapons convention should include effective security guarantees for its members. These were guarantees not only against the use or the threat of use of chemical weapons, but also against the use or the threat of use of any weapons of mass destruction. Nuclear weapons countries however refused to accept this linkage.

Then in the fall of 1988, Egypt requested the Secretary-General to “undertake a study on effective and verifiable measures which would facilitate the establishment of a NWFZ in the Middle East. The consultations undertaken in the course of the preparation of the United Nations report, in the summer of 1990, showed a degree of common views among many states in the area on fundamental matters. Arab states, as well as Iran and Israel, believed that:

- The process of establishing a NWFZ in the Middle East would take several years;
- The geographical concept suggested in the report was generally accepted;
- Positive security assurances, beyond those outlined in Security Council Resolution 255 (1968), would be necessary;
- Verification procedures would need to be much more far reaching than those prescribed under the NPT would be necessary. In addition, Israel indicated the need for bilateral verification rights similar to those prescribed in several arms control agreements adopted within the Conference on Security and Co-operation in Europe (CSCE);
- Initial confidence-building measures would be an effective method for supporting the process of establishing a NWFZ in the Middle East.

The report was prepared before the Iraqi invasion of Kuwait in August 1990 and was adopted by consensus that same year.<sup>17</sup> It suggested a catalogue of confidence-building measures and steps for the creation of the NWFZ including a regional nuclear test ban; the application of International Atomic Energy Agency (IAEA) safeguards on nuclear facilities in the area; the accession to the NPT of states currently non-parties and provisions for transparency regarding all major nuclear projects in the area.<sup>18</sup> The United Nations report suggested that nuclear weapon powers could extend advanced negative nuclear security assurances to prospective zonal states and commit themselves not to station nuclear weapons in the area. The

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report further recommended that outside support for peaceful nuclear activities in the area would be more appropriate if it were multilateral or regional in character. The report finally endorsed the importance of applying verification procedures that are significantly far-reaching than those so far implemented under the NPT.<sup>19</sup>

In 1990 under President Mubarak, Egypt proposed the establishment of a zone free of weapons of mass destruction in the Middle East.<sup>20</sup> This proposal was not intended to replace the earlier idea of a nuclear-weapon-free zone, but rather to be pursued in parallel with earlier proposal. The expansion of the Middle East zone concept, to include all weapons of mass destruction and also their means of delivery, seemed politically acceptable. Then at the Review and Extension Conference of the NPT in May 1995, the parties adopted a resolution calling upon all states in the Middle East to take practical steps towards “the establishment of an effectively verifiable Middle East zone free of weapons of mass destruction, nuclear, chemical and biological, and their delivery systems”.<sup>21</sup>

## CONCLUSIONS

The proposal of establishing a WMDFZ has been in what might be called the “pre-negotiation” stage. Due to negative political developments in the Middle East this pre-negotiation stage has not been followed by an actual treaty text to be negotiated.

The Arms Control and Regional Security working group was established in October 1991 as a direct result of the Madrid conference. This multilateral forum for discussion showed that although states accepted the “regional” approach to arms control there were fundamental differences between the Arab and Israeli position on how to address the larger issues of arms control. By 1995, it became evident that the ACRS forum was incapable of functioning as a substantive arms control mechanism and the process eventually broke down primarily due to major disagreements among the parties over the nuclear issue.

The negotiations showed that Arabs and Israelis had opposite interests, approaches and priorities regarding the arms control agenda and nuclear issues. By 1995-96, in the wake of the Egyptian-Israeli confrontation over

the issue of the NPT extension, it became evident that the ACRS process had reached a point of complete impasse.<sup>22</sup>

The situation in the Middle East requires a realistic perspective and new formulas to address its nuclear and other WMD dimension. The peace process must be brought back on track on all fronts and Confidence- and Security-Building Measures (CSBMs) should be encouraged as part of a recommended step-by-step incremental approach in the Middle East. Track-two talks could be a practical step towards resuming bilateral and multilateral official talks. The chances for success of any resumed talks will be better if countries absent in the past, like Iran, the future government of Iraq, Libya, and Syria, were included.

To incorporate the nuclear issue within a regional architecture of peace and arms control, as well as within the wider context of global nuclear disarmament, the way out from the nuclear dilemma in the Middle East should go through linking arms control measures with a political time table for the overall settlement. Arms control talks in Europe would not have accomplished anything without prior agreements on the arms that talks intended to control. Consistent with these ideas, transparency is required by all states of the region concerning their conventional and unconventional arsenal. The three-phased approach would be as follows:

**Phase one: Confidence- and Security-Building Measures +  
“No-First-Use”**

- This phase will target building confidence and preventing deterioration of the region’s proliferation conditions. In this phase, states of the region will commit themselves to the creation of WMDFZ as one of the fundamental outcomes of the process, by entering into serious talks on how a WMDFZ can be established and what its components might be. The task will represent a new challenge to establish inspection and verification regimes covering the three kinds of mass destruction weapons: nuclear, chemical and biological. In this regard, the talks could discuss the incorporation of special and additional verification measures if it is to be politically, technically and publicly acceptable. In order to satisfy the concerns of some countries a special verification regime might be proposed to allow for mutual, reciprocal and intrusive inspections of both a routine and challenge nature.

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- Analysis of the conditions under which the states of the region would be prepared to give up their WMD options and the interim steps on the road to the creation of a WMDFZ, needs to be undertaken;
  - A “no first use” of WMD declaration by the countries of the region needs to be established. To encourage countries of the region to give a pledge of “no first use” of WMD some additional measures could be suggested like a non-offensive redeployment of conventional forces near the border areas or by taking voluntarily unilateral initiatives in selected security areas;
  - The interaction between missiles and some types of conventional weapons with WMD weapons could also be discussed in phase one.

#### **Phase Two: Capping of Weapons of Mass Destruction Stock**

- In October 1990, a group of experts presented to the United Nation Secretary-General a study on effective and verifiable measures, which would facilitate the establishment of a NWFZ in the Middle East. The study suggested practical measures to cap Israeli nuclear capabilities, such as putting the Dimona reactor under IAEA safeguards within the NPT system. This would keep the Israeli nuclear deterrent intact until further political steps are taken. What is interesting about this study is that it does not confine itself solely to the nuclear field, but instead seeks to limit other weapons of mass destruction and conventional weapons as well, including missiles. Absent in this study is a time frame during which Israel would be introduced to the Middle Eastern nuclear-weapon-free zone;
- The Bush proposal for arms control in the Middle East in May 1991 addressed the prohibition of the production of fissile material as a necessary step towards the establishment of a Middle East NWFZ. The advantage of this proposal is that it can be future-oriented and it makes no specific reference to nuclear weapons, only banning fissile materials for weapons. Applying this proposal could lead to capping Israel’s unsafeguarded nuclear program and impose quantitative constraints on Israel’s nuclear capabilities.

#### **Phase Three: Establishing the Middle East Weapons of Mass Destruction Free Zone**

- Weapons of mass destruction could be gradually be phased-out over a period of time. Some could be eliminated as a result of international

guarantees, while others should be traded according to peace treaties between Israel and Arab countries. The rest should be eliminated once full normalization of relations is achieved and different types of economic and functional cooperation are installed;<sup>23</sup>

- This overall linkage between the political and economic aspects of ending the Israeli nuclear monopoly should be understood in the light of putting constraints on the attempts of any country to acquire nuclear or other mass destruction capabilities. Egypt has for example suggested having an agreement “in principle” on the creation of a nuclear free zone in the Middle East and accepted a postponement of the negotiations concerning Israeli nuclear capabilities until Israeli signs peace treaties with its neighbours.

#### Notes

- <sup>1</sup> This paper is a summary of the presentation made by Dr Mohammed Kadry Said at the symposium jointly held, by the League of Arab States and UNIDIR, on the 24-25 February 2003, in Cairo.
- <sup>2</sup> C<sup>4</sup>I = Command, Control, Communication, Computer and Intelligence.
- <sup>3</sup> T. Donnelly, “Revolution in Military Affairs: Revolution? What Revolution?”, *Jane’s Defense Weekly*, Vol. 33, 7 June 2000, p. 22.
- <sup>4</sup> See Israel’s Nuclear Weapons at Federation of American Scientists, <http://www.fas.org/nuke/guide/israel/nuke/>, 23 October 2002, p. 3 of 6.
- <sup>5</sup> B. R. Schneider (ed.), “Middle East Security Issues: In the shadow of Weapons of Mass Destruction Proliferation”, USAF Counter-Proliferation Center, AU Press, December 1999, p. 25.
- <sup>6</sup> D. Eshel, “Israel’s nuclear deterrent faces first public scrutiny”, *Jane’s Intelligence Review*, Vol. 12, No 7, July 2000, p. 14.
- <sup>7</sup> A. Cohen, “Regional Security and Arms Control in the Middle East: The Nuclear Dimension”, in *Middle East Security Issues in the Shadow of Weapons of Mass Destruction Proliferation*, B. R. Schneider (ed.), USAF Counter-Proliferation Center, December 1999, p. 92.
- <sup>8</sup> See Cohen, Note 7, p. 78.
- <sup>9</sup> Some reports speculate that a suspected nuclear explosion in the southern Indian Ocean in 1979 was a joint South African-Israeli test. See: Israel’s Nuclear Weapons at Federation of American Scientists,



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- <http://www.fas.org/nuke/guide/israel/nuke/>, 23 October 2003, p. 3 from 6.
- <sup>10</sup> See Arms Control Association at: <[http://www.armscontrol.org/act/2000\\_03/brmr00.asp](http://www.armscontrol.org/act/2000_03/brmr00.asp)>.
- <sup>11</sup> Rahulbedi, "India despatches aircraft carrier to the Gulf", *Jane's Defense Weekly*, 10 March 1999.
- <sup>12</sup> J. W. Canan, "The lessons of Kosovo", *Aerospace America Magazine*, June 2001, p. 25.
- <sup>13</sup> I. O. Lesser, J. D. Green, F. S. Larrable, M. Zanini, "The Future of NATO's Mediterranean Initiative: Evolution and Next Steps", *RAND Europe 2000*, p. 21.
- <sup>14</sup> United Nations Document A/RES/3263 (XXIX).
- <sup>15</sup> See Cohen, Note 7, p. 84.
- <sup>16</sup> United Nations General Assembly Records, A/C.1/PV.2001, p. 32-36.
- <sup>17</sup> United Nations Document A/RES/45/52. See also M. Karem, *A Nuclear-Weapons-Free Zone in the Middle East: Problems and Prospects*, New York: Greenwood Press, 1988.
- <sup>18</sup> An IAEA workshop held in Vienna on 4-7 May 1993 specifically dealt with Modalities for the Application of Safeguards in a future Nuclear-Weapon-Free Zone in the Middle East.
- <sup>19</sup> J. Prawitz and J. F. Leonard (eds), *A Zone Free of Weapons of Mass Destruction in the Middle East*, UNIDIR, Geneva: United Nations, 1996, pp. 60-61.
- <sup>20</sup> Document CD/989, 20 April 1990.
- <sup>21</sup> Document NPT/CONF. 1995/32/RES/1.
- <sup>22</sup> See Cohen, Note 7, p. 88.
- <sup>23</sup> A.I Monem Said, "In the Shadow of the Israeli Nuclear Bombs: Egyptian Threat Perceptions", *The Brown Journal of World Affairs*, Summer/Fall 1996, Vol. III, Issue 2, p. 160.

