

Contribution of the Office for Disarmament Affairs (ODA) for the discussions of the Consultative Process on Oceans and the Law of the Sea, March 2009

At the ninth meeting¹ of the Consultative Process on Oceans and the Law of the Sea held in June 2008, delegations underscored the danger posed to maritime security by the illicit trafficking of small arms and weapons of mass destruction (WMD). The issue of proliferation of WMD is addressed at different fora and at different levels including measures to avoid the acquisition of WMD by non-state actors. There is a recognition that the legal regimes governing maritime security and maritime safety may have common and mutually reinforcing objectives that may be interrelated and could benefit from synergies with those non-proliferation measures and instruments such as the Sea-Bed Treaty and relevant resolutions adopted by the Security Council and the United Nations General Assembly.

I. Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof (Sea-Bed Treaty)

- The Sea-Bed Treaty was opened for signature on 11 February 1972 and entered into force on 18 May 1972. As stated in its Preamble, the Treaty constitutes an important step towards the exclusion of the sea-bed, the ocean floor and its subsoil from an arms race. It also represents progress towards the ultimate goal of general and complete disarmament under strict and effective international control. It expresses the awareness of the international community that the extension of arms race to the sea-bed would only add new dangers to the threat to international peace and security. The Treaty recognized that scientific and technological advances could open the possibilities for new military uses of the sea-bed, the ocean floor and the subsoil thereof.
- The Treaty calls for continued negotiations on further measures for the prevention of an arms race on the sea-bed and the ocean floor and in the subsoil thereof. This commitment was reaffirmed by the General Assembly in the final Document of its first special session devoted to disarmament as well as by the three revision conferences held in 1977, 1983, 1989 (RevCon(s))
- The main task of the RevCon(s) was to conduct a thorough review of the current situation taking into account relevant technological developments.
- Since the third Conference held in 1989, fifteen additional States are Parties to the Treaty, bringing the total number to 97 States Parties.
- On 15 December 1989, the United Nations General Assembly adopted resolution 44/116 O entitled “Review Conference of the Parties to the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof.” The resolution noted that all States parties to the Treaty confirmed that they had not emplaced any nuclear weapons or other weapons of mass destruction on the sea-bed outside the zone of application of the Treaty as defined by its Article II and had no intention to do so. It recognized that in the Final Declaration the States parties to the Treaty reaffirmed the commitments undertaken in Article V to continue negotiations in good faith concerning

¹ See page 13, paragraph 45 of Doc. A/63/174 entitled Report of the work of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea.

further measures in the field of disarmament for the prevention of an arms race on the sea-bed and the ocean floor in the subsoil thereof. The resolution calls upon all States to refrain from any action which might lead to the extension of the arms race to the sea-bed and the ocean floor and the subsoil thereof. Also requests the Secretary-General to report by 1992, and every three years thereafter until the four RevCon is convened, on technological development relevant to the Treaty and to the verification of compliance with the Treaty, including dual-purpose technologies for peaceful and specified military ends;

- Since the adoption of resolution 44/116 O the following States had provided views for the Secretary-General's reports² entitled "Further measures in the field of disarmament for the prevention of an arms race on the seabed and the ocean floor and in the subsoil thereof": Antigua and Barbuda, China, Côte D'Ivoire, Finland, Lebanon, Mexico, Panama, Poland, Saudi Arabia, Slovenia, Switzerland, the United Kingdom and Ukraine. Among those views submitted to the Secretary-General, the proposals made by the Government of **Mexico**³ underlined the importance of examining the performance and characteristics of existing international monitoring mechanisms (such as the hydroacoustic stations of the International Monitoring System (IMS) of the Comprehensive Nuclear-Test-Ban Treaty Organization) with a view to identifying their specific qualities that might be proposed in respect of the Sea-Bed Treaty. It further proposes that until a fourth Conference of the Parties to the Sea-Bed Treaty is convened, presentations by experts and informative sessions within the framework of the interactive debate within the United Nations General Assembly on technologies related to the Treaty might be sponsored by States parties, scientific and disarmament research institutions or international organizations dealing with the matter.

II. Additional multilateral measures include, *inter-alia*, the following:

1. In 1996, the Convention on Nuclear Safety entered into force. The Convention obliges Parties to submit a report on the implementation of their obligations for "peer review" at meetings of the Parties to be held at the International Atomic Energy Agency (IAEA).
2. In 2001, the IAEA Secretariat prepared a set of "Physical Protection Objectives and Fundamental Principles," endorsed by the Board of Governors. The IAEA also assist States through its "International Physical Protection Advisory Service" and has developed a plan of action against nuclear terrorism supported by an extra-budgetary Nuclear Security (Multi-Donor Fund).
3. In 2003, the IAEA approved a revised Code of Conduct and Safety and Security of Radioactive Sources. The Agency has issued several reports and adopted several resolutions on Measures to Protect against Nuclear Terrorism.
4. In 2003, the Proliferation Security Initiative (PSI) was launched. PSI recognizes the need for more robust tools to stop proliferation of WMD globally and specifically identifies interdiction as an area where greater focus will be placed. Today more than 90 countries have joined PSI.

² A/47/362 (1992), A/50/383 (1995), A/53/160 ((1998), A/56/172 (2001), A/59/177 and Add.1 (2004), A/62/99 (2007) last report.

³ References to these proposals are contained in the Secretary-General's reports Doc. A/59/117/Add.1 and A/62/99.

5. The 2005 Protocol to the Convention for the Suppression of Unlawful Acts (SUA), which has yet to enter into force, adds a new Article 3bis which states that a person commits an offence within the meaning of the Convention if that person unlawfully and intentionally:
 - When the purpose of the act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from any act:
 - uses against or on a ship or discharging from a ship any explosive, radioactive material or BCN (biological, chemical and nuclear) weapon in a manner that causes or is likely to cause death or serious injury or damage;
 - discharges from a ship, oil, liquefied natural gas, or other hazardous or noxious substance, in such quantity or concentration that causes or is likely to cause death or serious injury or damage;
 - uses a ship in a manner that causes death or serious injury or damage;
6. In June 2008, the G8 Global Partnership against the Spread of Weapons and Materials of Mass Destruction stressed the need for appropriate physical protection of WMD material and sources.

III. United Nations Security Council resolution 1540 and relevant resolutions adopted by the United Nations General Assembly

- **The United Nations Security Council, by its resolution 1540 (2004)** decided that all States shall refrain from providing any form of support to non-states actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use of nuclear, chemical and biological weapons and their means of delivery, and requires all States to adopt and enforce appropriate effective laws to this effect. The resolution also requires States to establish various types of domestic controls to prevent the proliferation of such weapons. By operative paragraph 3 it decided also that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical and biological weapons and their means of delivery including by establishing appropriate controls over related materials and to this end shall: develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport; develop and maintain appropriate effective physical protection measures; develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent, and combat, including through international cooperation if necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law. Resolution 1540 makes no exception for acts in territorial waters, exclusive economic zones, or ships on the high seas, in that all States must take appropriate effective measures. Certainly, a catastrophic WMD event either in or implicating a port or sea-lane would likely reduce commercial sea traffic regionally or globally for a lengthy period. In addition, as more than 80% of global cargo moves by sea, effective implementation of obligations to prevent illicit trafficking in nuclear, chemical, biological weapons, their means of delivery, and related materials depends on the international community taking measures to prevent the exploitation of seaborne transport services, financing, flag-of-convenience ship registries or use of fixed platforms by terrorists and criminal organizations seeking such items. To address for example, operative

paragraph 8 (a) of the resolution calls on all States to promote the universal adoption, implementation, and strengthening of multilateral treaties on nonproliferation, which would include the 2005 Protocol to the SUA (see above).

- Since 2002, the United Nations General Assembly annually adopts without a vote a resolution on “**Measures to prevent terrorists from acquiring WMD**”⁴ and requests the Secretary-General to submit an annual report⁵ containing the views of Member States as well as information provided by international organizations.
- Since 2005, the United Nations General Assembly adopts without a vote on a biennial basis a resolution on “**Preventing the acquisition by terrorists of radioactive materials and sources**”.⁶ The resolution, *inter-alia*, encourages Member States to enhance their national capacities with appropriate means of detection and related architecture or systems, including through international cooperation and assistance in conformity with international law and regulations, with a view to reflecting and preventing the illicit trafficking of radioactive materials and sources.
- Since 1996, the United Nations General Assembly adopts without a vote on a biennial basis a resolution on “**Prohibition of the dumping of radioactive wastes**”⁷. The resolution recalls the IAEA General Conference resolution adopted by the Agency on 21 September 2001⁸ in which States shipping radioactive materials are invited to provide, as appropriate, assurances to concerned States, upon their request, that the national regulations of the shipping States take into account the Agency’s transport regulations and to provide them with relevant information relating the shipment of such materials; the information provided should in no case be contradictory to the measures of physical security and safety.
- With the adoption of UNGA Res. 60/288 on 8 September 2006⁹ on the **United Nations Global Counter-Terrorism Strategy** (GCTS), ODA had been assigned additional responsibilities to assist Member States in the implementation of that strategy. Specifically, within the framework of the Counter-Terrorism Implementation Task Force which is composed of UN departments, programmes, funds and agencies—ODA is responsible for the establishment of a single comprehensive Biological-Incident Database and the updating and maintenance of the roster of experts and laboratories for the Secretary-General’s investigation mechanism on alleged use of biological weapons.

⁴ See Res. 63/60

⁵ See last report contained in Doc. A/63/153

⁶ See Res. 62/46

⁷ See Res. 62/34

⁸ See Res. GC(45)/RES/10

⁹ See Res. 60/288