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**REPORT OF THE WORKSHOP ON
“COORDINATING GLOBAL AND REGIONAL EFFORTS
TO COMBAT WMD TERRORISM”**

by Mirko Sossai

Report of the workshop on “Coordinating Global and Regional Efforts to Combat WMD Terrorism”,
jointly organised by the Istituto Affari Internazionali and the Italian Ministry of Foreign Affairs
Rome, 24 October 2008

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1. Introduction

The workshop on “Coordinating Global and Regional Efforts to Combat WMD Terrorism” was organised jointly by the Istituto Affari Internazionali and the Italian Ministry of Foreign Affairs. It took place in Rome on 24 October 2008. This report is a brief account of the proceedings of the meeting: it is not an official record and does not reflect the official views of any of the participants.

The workshop was divided into three sessions, which addressed the following topics: assessing the threat of WMD terrorism; coordinating global and regional efforts to combat WMD terrorism; addressing the threat of nuclear terrorism: the Global Initiative to Combat Nuclear Terrorism (GICNT) and other initiatives.

In his welcoming address, Counsellor Emanuele Farruggia, of the Italian Foreign Ministry, recalled the purpose of the workshop: to explore how better to coordinate global and regional efforts to combat the threat represented by the use of weapons of mass destruction by terrorist groups. He pointed out that only concerted activities by the international community can defeat this scourge, emphasising the need for multilateral prevention. He underlined Italy’s strong commitment to the universal and effective implementation of both the counterterrorism treaties and Security Council resolution 1540 (2004) and the Government’s support for the Proliferation Security Initiative. Finally, after having stressed the role played by the G8 in anti-WMD proliferation, Counsellor Farruggia stated that the Italian G8 Presidency in 2009 will support the existing initiatives and try to find new ways to cooperate with the other partners.

2. Assessing the Threat

2.1 Small groups can inflict catastrophic damages

The European Security Strategy, adopted in December 2003, emphasizes that in the event of terrorist use of weapons of mass destruction, “a small group would be able to inflict damage on a scale previously possible only for States and armies”.

In the opinion of one author, three elements need to be considered in assessing the threat of a terrorist attack with WMD: the availability of relevant materials; the necessary know-how to use them; and the existence of motivated actors.

As for the latter point, all speakers agreed that Al-Qaeda still represented the major threat. In that respect, it was held that the complex structure of this terrorist network should not be underestimated. At least three different levels can be indentified: first, that of Osama Bin Laden, Al-Zahawiri and the leaders; second, the level of regional affiliated groups; third, the level of less coordinated individuals living in Western societies.

It was noted that there is a debate on the likelihood that Al-Qaeda's threat of using WMD will change from intentions to action. Some experts believe that it is a question of when not if. Osama Bin Laden has already affirmed that acquiring nuclear weapon is a "religious duty". It was noted that Al-Qaeda's interest in acquiring or developing WMD has increased exponentially, since this is the only way to alter the balance of power in its favour. The matter of the financing of terrorism was also raised at the workshop: the United Nations estimates that the total amount of illegal funds is between 500 and 1000 billion dollars, a significant part of which is devoted to terrorist activities.

Other experts observed that the threat has diminished since September 2001. Al-Qaeda's capabilities are far below its desires. Therefore, the terrorist use of conventional weapons now constitutes a greater threat than WMD terrorism.

Even if the risk is low, the potential catastrophic consequences of the use of WMD by terrorist groups nevertheless must be addressed with considerable attention and adequate resources.

To understand the whole scenario better, one of the speakers stressed the connections between terrorist networks and other actors, including sponsoring States, organised crime and the so called 'private proliferation' networks. A well known example of the latter threat is the nuclear black market created by Pakistani scientist A.Q. Khan.

Finally, the issue of the terrorist groups' motivation to use WMD was widely discussed. Attention was devoted to the literature analysing the spread and impact of apocalypse cults worldwide. In that regard, the various initiatives at regional and universal level aimed at understanding and addressing the root causes of terrorism were deemed a positive development.

2.2 The different impact of the three WMD categories

WMD is a catchall notion that includes nuclear, radiological, chemical and biological weapons and materials. It is important to differentiate the level of the threat, according to the variables of destructive power, probability and political effect.

The use of chemical weapons was considered the least threatening scenario. On the one hand, the 'possession prestige' is limited at present in comparison with other WMD, as confirmed by the attitude of States, especially since the entry into force of the Chemical Weapons Convention. In addition, significant technical difficulties associated with obtaining the necessary materials were reported. Nevertheless, the risk remains concrete.

The threat that non-state actors might use them became a reality when Tamil Tigers used chlorine in 1990 and, later in 1994 and 1995, when the Japanese Aum Shinrikyo sect used sarin in attacks in Japan. It was reported that Al-Qaeda had planned to use chemicals in the United Kingdom, Jordan and the United States.

Furthermore, recent advances in chemistry and the convergence of chemistry and biology would create new risks in this regard given the dual-use potential of many chemical compounds. These developments complicate the verification efforts of the Organisation for the Prohibition of Chemical Weapons (OPCW). Finally, the worst scenario in this context was recognised as being the threat of terrorist attacks against chemical industries. The WMD Commission, chaired by Hans Blix, recommended in its

2006 final report entitled ‘Weapons of Terror: Freeing the World of Nuclear, Biological, and Chemical Arms’, that all States should ensure security in and for chemical facilities through legislation and agreements with industry.

As for biological weapons, it was recalled that former UN Secretary-General Kofi Annan warned that the most important under-addressed threat was terrorists using a biological weapon. Various experts indeed expressed their concern over the likelihood of bio-terrorist attacks. Several reasons were identified: relevant materials would be much easier to acquire than nuclear weapons; the effects on the population of an attack would be difficult to counter; progress in life sciences would favour the availability, even to individuals, of the technological know-how; and finally, there would be technical difficulties in detecting production facilities.

However, several workshop participants agreed that the most problematic aspect was the lack of an effective cooperation mechanism among States. The institutional framework to counter the proliferation of biological weapons is the least developed. Unlike both the Chemical Weapons Convention (CWC) and the Nuclear Non-proliferation Treaty (NPT), the 1972 Biological and Toxic Weapons Convention (BTWC) did not envisage a verification system to monitor the treaty’s implementation and to provide the necessary assistance in building States’ capacities.

The proposal made by former UN Secretary-General Kofi Annan in the 2006 report “Uniting against Terrorism” has received little consideration so far. He suggested that the United Nations should coordinate and facilitate a forum that would “bring together the various stakeholders — Governments, industry, science, public health, security, the public writ large — into a common programme, built from the bottom up, to ensure that biotechnology’s advances are used for the public good and that the benefits are shared equitably around the world.”

2.3 “How real is this nuclear terrorism thing?”

This was the question posed by President George Bush to his intelligence briefer in 2006. In the view of one analyst, nuclear terrorism appears to be inevitable in the present scenario: the prevention of such an attack should be a priority for the next US President. Two factors explain why the threat is so real for the United States: “poorly guarded” nuclear facilities in the former Soviet Union and “America’s porous border controls”.

It was observed that it would be hard for even the most sophisticated terrorist group to produce a nuclear weapon. Three elements are essential in designing and manufacturing such a device: the availability of fissile material; technical knowledge and adequate infrastructure. That is why it can be argued that it is more plausible for terrorists to steal nuclear material and radioactive sources from vulnerable locations or to acquire them through the black market. The International Atomic Energy Agency (IAEA) Illicit Trafficking Database recorded, in the period between 1995 and 2007, 1340 confirmed trafficking incidents.

Given the difficulties in making or obtaining nuclear explosive devices, it was noted that Al-Qaeda might try to use radiological weapons, or dirty bombs. Terrorist groups might also seek to disperse radioactivity by attacks on nuclear facilities. The most

effective response is limiting the access to such material and devices by non-state actors: therefore physical security measures are crucial.

The fact that terrorists have not yet used nuclear weapons is due to a “lack of means rather than lack of motivation.” But this conclusion was questioned by one of the participants, who pointed out the importance of another variable: given the complexity of its preparation and organisation, the materialising of a nuclear attack also depends on the efficacy of the decision-making process within a terrorist network.

3. Global Responses to WMD Terrorism

Threat assessment revealed that each type of weapon and material poses a distinct set of challenges for States and the international community. However, all participants in the workshop shared the view that cooperation at various levels was essential to address the threat adequately. A wide range of multilateral tools have been developed prior to and after 9/11.

3.1 System of multilateral treaties

The traditional framework of inter-State cooperation to counter the global threat of WMD terrorism is based on a system of multilateral treaties. Before September 2001, the treaty regime consisted of two distinct networks of interlocking treaties: the former aimed at fostering the prevention and repression of terrorist acts; the latter aimed at stopping the horizontal (inter-State) spread of nuclear, chemical and biological weapons.

The legal framework in the field of counter-terrorism is composed of 13 sectorial conventions that identify and criminalize specific terrorist activities. The conventions were developed under the auspices of the United Nations and its specialized agencies: their core provision obliges States to either extradite or prosecute persons suspected of the covered offences. Notably, some of those instruments address the threat of WMD terrorism: the 1980 Convention on the Physical Protection of Nuclear Material and the recently adopted 2005 International Convention for the Suppression of Acts of Nuclear Terrorism.

In that context, one of the participants referred to the persistent difficulties in working out a comprehensive convention on international terrorism. Disappointment was expressed regarding the lack of progress during the past few sessions of the UN *ad hoc* Committee, due to divergent views essentially on the exceptions to the Convention’s scope of application.

The NPT, the CWC, and the BTWC are the three key treaties which constitute the pillars of the WMD non-proliferation and disarmament regime. Though these instruments were not designed to address the threat of chemical terrorism directly, it was argued that correct national implementation of their provisions contributes to ensuring that WMD are not misused in any manner, including for terrorism.

In that respect, it was pointed out that the CWC represented a good case-study. Although the Convention does not contain the word “terrorism”, since 2001 the OPCW has worked with other organisations to build States’ capacities against terrorism. In

particular, the implementation of Article X CWC – according to which Member States have the right to request and to receive assistance and protection against the use or threat of use of chemical weapons if they consider that CW have been used against them – offers an important contribution to global anti-terrorist efforts.

In addition, one of the speakers at the workshop focused on the initiatives taken by the IAEA to reinforce the NPT regime as a tool to counter nuclear terrorism. Stress was preliminarily put on the interconnections between the goal of fighting terrorism and the question of an effective nuclear non-proliferation regime.

In that respect, he first mentioned the initiatives by IAEA Director General ElBaradei for multinational control of fuel enrichment and reprocessing. A Special Event on Assurances of Supply and Assurances of Non-Proliferation took place in September 2006 during the 50th regular session of the IAEA General Conference. In recent years, options have been discussed to create a new mechanism that would assure supply of nuclear fuel and reactors to countries which want them, while strengthening non-proliferation through better controls over the sensitive parts of the nuclear fuel cycle.

It was acknowledged that a second crucial element of the nuclear non-proliferation regime is the safeguards agreements that non-nuclear-weapons States parties are obliged to conclude with the IAEA under Article III of the NPT. In particular, the Additional Protocol to such agreements, based on the model approved by the IAEA Board of Governors in 1997, represents an instrument of vital importance: but the number of States in which the Additional Protocol is in force is low – far from satisfactory. This raised the question whether conclusion of the protocol is legally required under the NPT. Some States Parties argued that the conclusion of the instrument is mandatory under Article III, but several counter-arguments could be made against that proposition. Finally, it was noted that the shortcomings of the existing disarmament and non-proliferation treaties were well-known, even before 2001. However, with the rise to the top of the world agenda of the threat of WMD terrorism, it became clear that the existing regime was not designed to address the risk of non-state actors acquiring and using non-conventional weapons. In the post 9/11 era, the Bush Administration sought to fill the gap left by the agreements in force, launching several initiatives. One of which was the adoption of a Security Council resolution under Chapter VII of the UN Charter.

3.2 UN action against terrorism: the role of UN political organs

All participants at the workshop agreed on the indispensable role of the United Nations in the fight against WMD terrorism. It was stressed that UN action against international terrorism dated back to the seventies. Both the political organs of the United Nations – the General Assembly and the Security Council – have adopted a series of resolutions on the fight against terrorism.

During the Cold War period and the nineties, the General Assembly played a leading role. It adopted a series of crucial resolutions on the topic, also promoting the adoption of multilateral conventions on specific terrorist acts. In 2006, the General Assembly eventually adopted a comprehensive counter-terrorism strategy, on the basis of the proposals included in “A More Secure World: Our Shared Responsibility”, a report prepared in 2004 by the Secretary-General’s High-Level Panel on Threats, Challenges,

and Change. The Panel's five-pronged-approach was then refined and reconfigured by the Secretary General's "Uniting against Terrorism" follow-up report. In particular, the last three dimensions of the comprehensive strategy adopted by the General Assembly were taken to constitute the global framework of international efforts to control terrorism and prevent terrorist access to weapons of mass destruction. The three pillars are: developing legal and operational frameworks for countries' cooperation in suppressing terrorist networks; building states' capacity to suppress them; and controlling WMD materials.

After 9/11, with the urgency of responding to the threat posed by global terrorist networks, a useful tool was found in the Security Council's powers under Chapter VII of the UN Charter. It was noted that the post-Cold War system of international relations allowed the Security Council to substitute for the General Assembly as the key actor in UN counter-terrorism action.

With the adoption of resolution 1373 (2001), the Security Council, for the first time in its history, qualified an abstract phenomenon – "terrorist attacks" generally – as "a threat to international peace and security". It provided a series of general and abstract mandatory rules on the fight against terrorism that seemed to be intended to remain in force without any limitation in space and time. One of the speakers emphasized that the adoption of the resolution was only possible in the setting of the existing legal regime provided by general international law and the universal counter-terrorism instruments. In particular, the resolution contained key provisions from the two international conventions that the General Assembly had adopted in late nineties: the 1997 International Convention for the Suppression of Terrorist Bombings and the 1999 International Convention for the Suppression of the Financing of Terrorism.

It was clear that the traditional law-making process could not establish universal detailed obligations in a short time. As a matter of fact, the adoption and entry into force of international conventions have drawbacks that rule out a quick response: the limited number of State parties, the lengthy internal procedures of ratification and the recourse to reservations.

Resolution 1373 (2001) established a monitoring body, the Counter-Terrorism Committee (CTC), with the mandate to receive and examine reports from member States. In fact, the resolution called on "all States to report to the Committee, no later than 90 days from the date of adoption of this resolution..., on the steps they have taken to implement this resolution". The response was indubitably successful: all 192 member states made at least one report to the CTC. In 2004, the Security Council created a permanent secretariat under the CTC, the Counter-Terrorism Committee Executive Directorate (CTED). Its task is to strengthen capacity in incapable states. However, the CTED is not an assistance provider, rather it seeks to facilitate bilateral assistance efforts, as an intermediary for contacts between potential donors and weak but well-intentioned States. The CTC has never referred non-compliant States to the attention of the Security Council: therefore, sanctions have never been approved against them.

Nevertheless, sanctions still play an important role in the counter-terrorism strategy of the UN Security Council. Since 9/11, the Security Council began to approve 'targeted sanctions' against individuals and terrorist groups in order to improve the effectiveness of the sanctioning mechanism and to reduce the humanitarian impact on civilians. The series of resolutions related to the Taliban and Al-Qaeda represented a clear evolution

of the sanctions regime: while the sanctioning measures were at first directed to the international unrecognised government in Afghanistan and the terrorists there, the adoption of resolution 1390 subsequently changed the target as they directly affected persons and entities with no connections to a specific territory or State. Most important was the request for a Sanctions Committee to maintain an updated list, based on information provided by the States and regional organizations, of individuals and entities designated as associated with Osama bin Laden, including those in the Al-Qaeda.

3.3 Security Council resolution 1540 (2004)

As early as resolution 1373, the Security Council called upon all States “to find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups”. However, after a long negotiation process in formal and informal settings, the Security Council decided to adopt a specific resolution in April 2004 aimed at combating WMD terrorism.

Resolution 1540 affirmed that proliferation of WMD constituted a threat to international peace and security and required all UN member states to undertake a series of measures to prevent the proliferation and transfer to terrorist and other non-state actors of biological, chemical, and nuclear weapons; their delivery systems; and related materials. On the nuclear non-proliferation front, several participants mentioned the continuous relevance of the more classical Security Council resolutions against specific countries, such as North Korea and Iran. The point was made that the case of this latter country showed that an NPT party can prepare for the development of nuclear weapons without violating international law. The Security Council approved a series of resolutions [1696 (2006); 1737 (2006); 1747 (2007) and 1803 (2008)] on Iran’s suspension of all enrichment-related and reprocessing activities, as well as work on all heavy water-related projects, as well as on the adoption of economic sanction measures.

By approving resolution 1540, the Security Council intended to fill the gaps in the non-proliferation treaty and export control regimes. One of the presentations at the workshop identified some of them as follows: the focus of the existing regimes on horizontal proliferation, in other words on States rather than on non-state actors; the lack of universal participation in the existing regimes; the lack of an organization tasked with addressing the proliferation of biological weapons and agents; and the difficulties under the current regimes in taking enforcement measures against non-compliant countries.

Much criticism was levelled against the controversial nature of the resolution and in particular the alleged law-making power of the Security Council. Some experts argued that the measures adopted by resolution did not fall within the scope of the competencies conferred on the Council by the United Nations Charter. Non-Council members, in particular those from the Non-Aligned Movement, expressed their concern about the risk that the Security Council, acting as world legislator, would circumvent the traditional principle of State consent. Many States continue to consider the resolution as part of a Western-imposed agenda.

One of the main challenges is the relationship with the pre-existing non-proliferation legal regime based on the three key treaties. The resolution states that “none of the obligations set forth in this resolution shall be interpreted so as to conflict with or alter the rights and obligations of State Parties to the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention or alter the responsibilities of the International Atomic Energy Agency or the Organization for the Prohibition of Chemical Weapons”.

The resolution established a Committee to monitor the implementation for a period of no longer than two years. Its mandate was then renewed by resolutions 1673 (2006) and 1810 (2008). Interestingly, the latter resolution extended the mandate for a period of three years – the result of a compromise between the proposals submitted by the US (5 years) and China (2 years).

Like the Counterterrorism Committee, the 1540 Committee was mandated to receive and evaluate States’ reports on the implementation of the resolution. The total number of States that have submitted at least one report since 2004 is 158. That means that 40 countries, mainly from the African continent, have not yet submitted a report. The Committee has developed a matrix to evaluate the status of national implementation: a standard examination sheet made up of over 300 questions. It was noted that the rate of implementation ranged from about 50 percent to over 80 percent in individual cases. The Committee also convened outreach workshops at the regional level; promoted dialogue with individual States and cooperation with relevant organisations; facilitated the identification of States donors and recipients of assistance.

It was argued that the contribution of the 1540 Committee and its group of experts to implementing the resolution has been rather modest. The question posed by one of the participants was about the goal States wanted to achieve with the adoption of resolution 1540. It was observed that too much emphasis was put on the reporting obligation, rather than on building States’ capacity: this has been confirmed by the poor quality of some national reports.

Another expert pointed to the slow-moving pace at which the Committee operates. Because of the consensus approach within the Committee, it took the Committee a long time to negotiate its rules of procedure and decide on its programme of work, the working methods of its experts and the content of its report to the Security Council.

A problem of human resources was also recognised. It was noted that the Committee authorised the hiring of only eight experts to support its work: in this way, several member States tried to limit the resolution’s impact. For full implementation of resolution 1540, it was deemed crucial that the Committee enlarge its group of experts and improve the delivery of capacity-building assistance. The point was made that what was lacking was sustained engagement by the Committee’s group of experts with national officials of member States. To enhance its credibility, the Committee should eventually allow its experts to provide independent analysis of the threat posed by WMD terrorism.

Finally, it was observed that effective coordination and cooperation with intergovernmental organisations and NGOs should be promoted: several workshop participants stressed that the Security Council’s open debate on cooperation between the 1540 Committee and international organizations held on 23 February 2007 was an important development.

3.4 The G8 Global Partnership Against the Spread of Weapons and Materials of Mass Destruction

The G8 leaders launched the Global Partnership Against the Spread of Weapons and Materials of Mass Destruction at the 2002 summit in Kananaskis, Canada.

Under this initiative, the G8 countries intended to support projects for more effective control over chemical, biological, radiological and nuclear weapons and materials, initially in Russia, and in particular to prevent terrorists from acquiring them. The G8 leaders defined the following as "priority concerns": the destruction of chemical weapons; the dismantlement of decommissioned nuclear submarines; the disposal of fissile materials; alternative employment for former weapons scientists. They also agreed on six principles to prevent terrorists or those that harbour them from acquiring or developing WMD: promote multilateral treaties that help prevent the spread of weapons, materials, and know-how; account for and secure those items; promote physical protection of facilities; help detect, deter, and interdict illicit trafficking; promote national export and transshipment controls; and manage and dispose of nuclear, biological and chemical weapons materials.

The United States agreed to commit 10 billion dollars, with a further 10 billion to be raised among other donors (including Russia) for disarmament projects over a ten-year period. Since 2002, the Global Partnership has been expanded to the European Union and 13 other donor States (Finland, Norway, Poland, Sweden, Switzerland, the Netherlands, Australia, Belgium, the Czech Republic, Denmark, Ireland, New Zealand and the Republic of Korea).

At the workshop, one of the speakers drew attention to the achievements and shortcomings of the Global Partnership: first of all, it has definitely been successful in involving other non-G8 donors, thus enhancing its reputation; its working group (GPWG), responsible for expert-level implementation of the initiative, has provided coherence and continuity during the rotating G8 presidency. A further quality is its transparency. The GPWG produces a comprehensive report each year, which helps increase public awareness of its work.

Among the shortcomings, it was observed that much of the money pledged had yet to be used to implement projects; in addition, the Global Partnership continues to suffer poor coordination among the countries involved. But the most serious problem was deemed to be that the initiative has not been very active in those priority areas which are specifically aimed at reducing the WMD terrorism threat. It was nevertheless held that the G8 Hokkaido Summit Leaders Declaration was a positive step with regard to control of nuclear materials.

On a more general level, various participants put forward the issue of the future of G8 summits. As is well known, various proposals have been submitted to enlarge its membership to include the fast growing economies, such as China and India, both of which are expected to become major world players in the years ahead.

3.5 'Coalition of willing' responses: PSI and other initiatives

After 9/11, the Bush administration's strategy against WMD proliferation was characterised by constant activism in proposing and leading new forms of *à la carte* multilateralism to address the gaps in the non-proliferation regime. The US approach prioritised political cooperation in the context of informal initiatives, which do not imply the elaboration of new, binding legal obligations. Those efforts could be seen as the implementation of the 'coalition of the willing' concept first formulated in the 2002 US National Security Strategy.

Among the initiatives and partnerships to fight WMD terrorism, one has to mention the Proliferation Security Initiative; Global Initiative to Combat Nuclear Terrorism; the Global Nuclear Energy Partnership; the Global Threat Reduction Initiative and a number of detection programmes aimed at preventing illicit trafficking and unauthorised activities with sensitive materials worldwide, which includes the Second Line of Defense, the Container Security Initiative and the Secure Freight Initiative.

The initiatives are usually open to all countries willing to combat WMD terrorism and the number of participating states has been increasing steadily since their inception. A common feature is that participating states organise frequent exercises and this increases their deterrent capacity and the readiness to intervene in case of terrorist catastrophe.

Several participants agreed that all these initiatives proved the Bush Administration's ability to advance its global agenda in the field of non-proliferation by non-state actors. It was argued that they might be regarded as positive elements of the Administration's otherwise controversial legacy. They were however criticised for their legal ambiguity which could fuel prejudices and mistrust. Another problem was seen to be the difficulty in measuring their results and success, due to a lack of transparency. Finally, their informal coordinating structures were deemed insufficient to control the cooperative endeavours of the participating States.

(a) *The Proliferation Security Initiative*

The Proliferation Security Initiative (PSI) is the most innovative, but also the most controversial of these initiatives, from the point of view of its unclear legal implications. Launched in Krakow on 31 May 2003 by US President Bush, it is aimed at countering the illegal trafficking of WMD and WMD materials and technologies. Currently some 90 States are members of or support the PSI, including all permanent members of the Security Council, with the exception of China. The PSI is not an intergovernmental organization: it lacks a charter, a bureaucratic structure (for instance, there is no permanent secretariat), and established funding. There is no reporting mechanism: recent activities and achievements are simply announced by the US or other participating governments.

The gap that the PSI seeks to address is highlighted by the *So San* incident, which occurred in December 2002. Two Spanish warships, acting on the request of the United States, stopped *So San*, a North Korean cargo ship, en route to Yemen, in the Arabian Sea: the cargo included fifteen scud missiles armed with conventional warheads. The ship was stopped on the high seas but no treaty forbids the transfer of missiles. The Yemen protested and the ship was then released.

The 11 founding States (Australia, France, Germany, Italy, Japan, the Netherlands, Poland, Portugal, Spain, the United Kingdom, and the United States) met in Paris on 4 September 2003 and adopted the “Statement of Interdiction Principles”. The document should be regarded as soft law: in other words, it is not legally binding but is a political commitment by which the participating States should abide. Though the PSI Statement explicitly affirms its consistency with international law, a number of countries expressed their concern that its implementation would violate international obligations relating to the freedom of the seas and of the international air space.

One of the presentations at the workshop focused on the legal implications of the PSI. Participants are to “undertake effective measures for interdicting the transfer or transport of WMD, their delivery systems, and related materials to and from State and non-state actors of proliferation concern”. The key concept is ‘interdiction’. For vessels, interdiction includes stopping, searching and seizing cargo. For aircraft, interdiction involves forced landing and seizure of prohibited cargo as well as denial of the right of transit if a foreign aircraft is suspected of having prohibited cargo on board.

As for maritime interdiction, the main question relates to the measures that States are allowed to take in high seas. The rules to be applied are those embodied in the United Nations Convention on the Law of the Sea (UNCLOS): WMD terrorism does not constitute an exception to the general rule included in Article 110 UNCLOS, which provides that a warship which encounters a foreign ship on the high seas is not justified in boarding it. Therefore, consent remains the mechanism on which to ground a counter-proliferation policy on the high seas. The PSI principles refer to this customary rule, asking states “to seriously consider providing consent under the appropriate circumstances to the boarding and searching of its own flag vessels by other states...”. It was noted that consent might be given on an *ad hoc* basis or that it could be the result of a formal agreement between two or more states. The first multilateral agreement of this kind is the London Protocol of 14 October 2005, additional to the 1988 SUA (Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation): it establishes a mechanism based on the flag State’s consent, to allow the boarding of a vessel on the high seas suspected of transporting WMD or radioactive or fissile material. In addition, the United States has concluded several bilateral treaties with States that have huge merchant marines: Liberia, Panama, the Marshall Islands, Cyprus, Croatia and Belize. The agreements confer reciprocal rights and duties, even though only the United States has the power to arrest and inspect suspected vessels on the high seas.

As for air interdiction, the point was made that the treatment of foreign aircraft overflying a PSI State is more difficult to regulate. The main question addressed at the workshop was what would happen if an aircraft entered the air space of the territorial state without its consent and the local state intended to inspect the aircraft, in particular when the aircraft did not abide by the order to land. It was argued that interception should be implemented in accordance with Article 3-bis of the 1944 Chicago Convention on International Civil Aviation, which however applies only to civil aircraft and does not encompass the case of foreign military aircraft intruding another state’s national space. That provision clearly forbids the use of weapons against an aircraft in flight. However, in recent years new legislation has been enacted both in Russia and in Germany. In particular, paragraph 14 of the German *Luftverkehrsgesetz* allowed the

Minister of Defence to order the downing of the aircraft, if it was not possible to meet the danger with other means; but then the Constitutional Court demanded its abrogation. Finally, it was suggested that the PSI should adopt guidelines on compensation for the damage sustained by a vessel once a suspicion has been revealed unfounded. In any case, the absence of any provision on compensation in the ‘PSI Statement of Principles’ does not do prejudice to any claim which may be based on general international law or on relevant conventions.

(b) The Global Initiative to Combat Nuclear Terrorism

The Global Initiative to Combat Nuclear Terrorism (GICNT) was announced by US President George W. Bush and Russian President Vladimir Putin on the eve of the G8 summit of St. Petersburg, held in July 2006. The initiative is aimed at establishing effective cooperation mechanisms in the field of nuclear counter-terrorism.

A ‘Statement of Principles’ defining the objectives and scope of the initiative was adopted by 13 countries in Rabat, six months after its launching. Eight principles guide the action of GICNT participants in the following areas: control and physical protection of nuclear materials; detection and proper handling of illicitly held nuclear materials; prosecution of terrorists seeking to acquire or use nuclear or radioactive materials, and response to terrorist attacks involving such materials. Military-related nuclear materials and facilities are excluded from the initiative’s scope: that was identified by participants as one of the main structural flaws. Again the Statement is to be considered a soft law instrument, consistent with international law: there is explicit reference in the document to the relevant international conventions and Security Council resolutions.

The initiative has no institutional structure. An Implementation and Assessment Group has been set up as part of the Initiative, which comprises a dozen countries: its task is to contribute to developing a ‘Plan of Work’, to give advice to countries that might require it, and to keep GICNT participants informed of progress made within the initiative’s framework.

One of the speakers argued that the exercise and workshop activities were the cornerstones of the Global Initiative. A positive assessment was made of these activities, as they are instrumental in framing a common nuclear counter-terrorism ‘culture’: they help reproduce credible scenarios, test capabilities, develop new operational concepts, spread best practices, and accelerate exchange of information.

As for the response mechanisms, the development of emergency plans at national and local level was deemed particularly important. In the case of a nuclear or radiological terrorist attack, local actors (municipalities, police, fire-fighters, etc.), including the private sector (key infrastructure administrations, private health service providers, etc.), would be required to provide a first response.

It was observed that strong emphasis on the domestic dimension was key to winning the support of China, India, Pakistan, and Israel, which are usually wary of committing to international arrangements potentially infringing on their internal affairs. As of June 2008, the GICNT counted 73 countries, including all EU members. In the view of one speaker, assessing their impact remains very difficult, not least due to the absence of generally accepted evaluation standards in key priority areas.

4. Regional Responses

4.1 EU initiatives to counter WMD terrorism

The European Security Strategy, adopted in December 2003, identified five major threats to international peace and security: failed states, regional conflicts, organized crime, terrorism and the proliferation of WMD. The strategy emphasized that ‘the most frightening scenario is one in which terrorist groups acquire weapons of mass destruction’. In fact, it recognized that Europe represented at the same time ‘a target and a base for such terrorism’ because of the persistence of the new global terror networks and their small but determined presence in major EU countries. That is why the uncontrolled spread of WMD, their means of delivery, and related material to non-state actors for terrorist purposes, is perceived as the worst possible danger.

The European Union has addressed the new major threats to peace and security in a number of other key documents, including the EU Strategy Against Proliferation of Weapons of Mass Destruction in 2003 and the EU Counter-Terrorism Strategy in 2005. The cornerstones of the European approach are the principles of prevention, protection, cooperation between Member States, international cooperation and effective multilateralism.

It was suggested that the EU policies in the field of WMD terrorism need to be assessed in a historical perspective.

Several participants in the workshop in Rome underlined the holistic approach of the EU’s action against terrorism. The cross-pillar dimension is confirmed by the over 100 activities which have been launched. They are listed under the four strands of the EU Counter-Terrorism Strategy endorsed by the European Council in December 2005: prevent, protect, pursue, and respond.

It was observed that the main challenge in the European context is the possible lack of coherence among the Member States in implementation efforts. However, one of the speakers noted that, in negotiating and adopting common positions, the EU represented a ‘microcosm’. The approval of a compromise formula within the Council might serve as a useful starting point for negotiations in other multinational forums.

One of the presentations focused on “effective multilateralism” as the key element of the EU’s external action for the promotion of international security in the 21st century. The development of a stronger international society, well functioning international institutions and a rule-based international order are the main objectives. In fact, EU action in implementing the Strategy against the proliferation of WMD is based on the following guidelines: strengthening the international treaties addressing the proliferation of biological, chemical and nuclear weapons; redressing the shortcomings of the existing regimes, and thus strengthening their effectiveness; combating WMD terrorism within the constraints of international law: respecting human rights in the fight against terrorism and leading by example in the implementation of arms control agendas.

A comparative analysis of EU documents and the US National Security Strategy, made public a year earlier, shows the difference at that time between the two sides of the Atlantic in the approach towards security issues. Indeed, the first term of the Bush administration was characterised by a certain scepticism *vis-à-vis* international law as an effective tool in countering the new threat of terrorist networks. It was repeatedly

stressed during the workshop that the US approach, particularly in the period in which John Bolton was Under Secretary of State for Arms Control and International Security, oscillated between unilateralism and plurilateralism, with a strong emphasis on the creation of ‘coalitions of the willing’.

The EU’s implementation of the “effective multilateralism” principle was not considered unproblematic. Five major challenges were identified. The first was seen to be the tendency to question the effectiveness of the existing treaty regime as not suitable for tackling the “new WMD threats”. Second, the “hard cases”, like Iran, have revealed the limits of multilateralism when one of the essential parties does not intend to cooperate. Third, the lack of unity and coherence among member States on foreign policy issues, as the reaction to the war in Iraq demonstrated, risks undermining the EU’s role as a credible actor advocating strict adherence to international law. Fourth, the EU member States have sometimes taken quite divergent views on treaty compliance, especially in the field of nuclear disarmament. The 2005 NPT Review Conference constituted a clear example: suffice it to recall the rift within the EU between those supporting the 13 practical steps towards nuclear disarmament and those obstructing their implementation.

Finally, there was some speculation as to whether, by advocating a rule-based international order, the EU member States have raised the moral bar too high. It was argued that the EU might find itself under pressure, when pragmatic solutions turn out to be the only way to achieve a compromise deal with certain countries.

4.2 Transatlantic cooperation

The 2003 European Security Strategy stated that “one of the core elements of the international system is the transatlantic relationship. This is not only in our bilateral interest but strengthens the international community as a whole. NATO is an important expression of this relationship”.

The 2004 Dromoland Castle Declarations on Combating Terrorism and on the Non-Proliferation of Weapons of Mass Destruction provide the framework for cooperation between the US and the EU. The bilateral cooperation extends to developing comprehensive and efficient border security processes, more secure travel documents, contacts between the respective law enforcement agencies and improved information-sharing abilities. In the 2005 Declaration, the US and EU pledged to intensify collaboration and coordination in promoting strict implementation of and compliance with relevant treaties, agreements and commitments on non-proliferation. They expressed their intention to enhance the security of weapons-usable materials, facilities, and technology. The “EU-US Joint Programme of Work on the Non-proliferation of Weapons of Mass Destruction” reflects this commitment to addressing proliferation threats.

It was stressed that NATO has a crucial role to play in countering the WMD terrorist threat, in particular in training and response activities and developing the military means to detect, deter and restore.

The participants generally agreed on the importance of improving transatlantic cooperation. In that respect, several proposals were put forward during the workshop. The creation of a transatlantic research network on WMD terrorism was suggested in

order to develop a common understanding of the threat: think tanks could foster knowledge on the issue of radicalisation and root causes of terrorism. Furthermore, it was held that the two sides of the Atlantic should improve intelligence sharing; elaborate a common strategy for communication in the course of a terrorist crisis; and develop a more coherent outreach strategy, offering capacity-building assistance.

Finally, one of the speakers suggested the metaphor of tango dancing to describe the transatlantic relationship: to dance well – it was suggested – the partners have to train together for a long period, have the same level of knowledge and each one should grant the other the same consideration . But it was also noted that, when dancing the tango, someone has to take the lead.

5. Challenges

5.1 Risk of diminished perception of the emergency

The present section of the report addresses the main challenges to the legal and operational framework for combating WMD. Seven year after the terrorist attacks against the Twin Towers and the Pentagon in September 2001, the first challenge is the risk of a diminished perception of the emergency. As a consequence, there is a danger of a loss of focus and of commitment and enthusiasm politically. The sense of urgency of the terrorist threat prompted swift action in the months after September 11. In 2008, the time has come to consolidate these efforts: therefore, it is important to reinforce the public's attention and the solidarity of the international community. This would sustain governments' willingness to cooperate against WMD terrorism. In the view of one speaker, European and American legislators should give themselves a deadline – summer 2009 – for ratifying the nuclear terrorism convention in their country, if only to counter the impression that WMD terrorism has faded as an issue.

5.2 An integrated approach against WMD terrorism

One of the crucial questions tackled by the workshop was how to coordinate the proliferation of initiatives taken in the last seven years to counter WMD terrorism. The concern shared by workshop participants was that the international community had done a lot but that the different activities are not coordinated enough and therefore are not effective enough. This lack of coordination is also attested to by the insufficient cooperation between the two communities of 'counterterrorism' and 'WMD' experts. The participants at the workshop agreed that the United Nations should take a leading role both in trying to keep States focused on the WMD terrorist threat and in coordinating the initiatives launched at various levels.

5.3 The Role of the United Nations

Since 2001, the United Nations has accomplished an extraordinary task in defining a global strategy to face the threat to international peace and security posed by terrorist

networks. The General Assembly and the Security Council have contributed enormously to the development of a legal system combating terrorism. The Terrorism Prevention Branch of the U.N. Office on Drugs and Crime operates a significant assistance programme. But the United Nations also faces a problem of lack of coordination among its different components. In particular, what should be avoided is competition between the General Assembly and the Security Council, and the duplication of roles among the various actors. In addition, it was noted that human and financial resources are insufficient to allow the organisation to fulfil its mandate effectively.

Finally, some participants hoped for a positive solution to the continuing impasse among UN member States in defining “terrorism” in international law. It was argued that the comprehensive Convention on terrorism would be adopted only if a new Israeli government and the US President could resume progress toward a final Israeli-Palestinian settlement.

5.4 Focus on Prevention

Prevention lies at the core of global efforts against WMD terrorism. First of all, several speakers stressed the importance of real intelligence sharing as the primary source of information to provide “early warning” of terrorist plots. The disclosure of sensitive information is undoubtedly a delicate issue: the point was made that intelligence sharing across the Atlantic essentially remains a “one-way” process and that the United States should do more.

Physical protection of biological, chemical and nuclear materials and physical security of weapons were considered crucial for preventing sabotage, attacks and thefts. It was pointed out that a good example of a global framework to upgrade safety and to prevent and respond to WMD emergencies is the work of the IAEA in the areas of nuclear safety, security, and safeguards. The framework it provides includes advisory international standards, codes, and guides; binding international conventions; international peer reviews to evaluate national operations, capabilities, and infrastructures; and an international system of emergency preparedness and response.

The preventive function of export controls was also emphasised during the workshop. An increasing number of States have joined the various informal, voluntary, non-treaty-based arrangements to coordinate their export controls on dual-use materials related to weapons of mass destruction: the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group (NSG), the Zangger Committee and the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.

It was felt that the five export controls regimes should improve their implementation efforts in view of the threat of non-state actors. However, one of the speakers showed how challenging the task can be by describing the difficulties encountered by the NSG in moving toward consensus on strengthening controls on transfers of enrichment and reprocessing equipment, facilities and technology.

Finally, several participants agreed that ‘prevention’ required recruiting reliable personnel in adequate number and having the necessary technical competence.

5.5 Respect for Human Rights while Countering Terrorism

In several resolutions, both the Security Council and the General Assembly reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law.

Some participants observed that much remains to be done. In that regard, the *Kadi* case, decided upon by the European Court of Justice on 3 September 2008, was mentioned: the Court found that the regulation giving effect to the SC resolutions adopted against Al-Qaeda infringed upon the appellants' fundamental rights under EC law, including the right to be heard before a court of law, the right of effective judicial review, and the right to property.

To conclude, one of the main challenges for counter-terrorism cooperation is that the development of more effective instruments has to be carried out within a legal framework that is respectful of human rights.