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Review of the implementation of the recommendations and decisions adopted by the General Assembly at its tenth special session: Advisory Board on Disarmament Matters

Work of the Advisory Board on Disarmament Matters

Report of the Secretary-General

Summary

The Advisory Board on Disarmament Matters held its forty-second and forty-third sessions, respectively, in New York from 4 to 6 February 2004 and in Geneva from 30 June to 2 July 2004.

The Board focused its deliberations on: (i) terrorism and weapons of mass destruction and their delivery systems; (ii) disarmament and reconciliation in conflict prevention; (iii) export controls; and (iv) the contribution of the Board to the work of the High-level Panel on Threats, Challenges and Change.

The Board recommended that the proliferation of weapons of mass destruction be rendered punishable under international law and perpetrators, whether in State service or private, must be made personally accountable. It also recommended that State action to combat weapons of mass destruction terrorism, including preventive action, be embedded in a multilateral legal framework and within the ambit of the United Nations.

The Board recommended that in all its future resolutions setting out peacekeeping operations, the Security Council consider widening the mandate to include disarmament and reconciliation aspects of conflict resolution.

On the issue of export control, the Board recommended that the role of the United Nations be strengthened in fostering cooperation and coordination among its Member States on export controls. It also recommended the establishment of open-ended working groups on the implementation of States' export control obligations

* A/59/150.

under various disarmament and non-proliferation treaties, and to invite the Nuclear Suppliers Group, the Australia Group and the Missile Technology Control Regime to give input with regard to possible items to be listed and experiences and models for export control structures and licensing criteria. Other United Nations Members could draw on such advice on a voluntary basis.

On its contribution to the High-level Panel, the Board elaborated recommendations covering issues related to weapons of mass destruction, missiles, small arms and light weapons, landmines and export controls, as well as on the role of the United Nations in strengthening multilateral regimes on disarmament, arms control and non-proliferation. The paper will be issued separately.

In its capacity as Board of Trustees of the United Nations Institute for Disarmament Research (UNIDIR), the Board approved for submission to the Assembly the report of the Director of the Institute on its activities from August 2003 to July 2004 and the programme of work and budget for 2005, including a recommendation for the continuation of the subvention for UNIDIR from the regular budget.

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I. Introduction

1. The Advisory Board on Disarmament Matters held its forty-second and forty-third sessions, respectively, in New York from 4 to 6 February 2004 and in Geneva from 30 June to 2 July 2004. The present report is submitted pursuant to General Assembly resolution 38/183 O of 20 December 1983. The report of the Board on its work as Board of Trustees of the United Nations Institute for Disarmament Research (UNIDIR) has been issued in a separate document (A/59/168).

2. Harald Müller, Director of the Peace Research Institute Frankfurt, chaired the two sessions of the Board in 2004. The Board met with the Secretary-General on 4 February 2004.

3. The present report summarizes the Board's deliberations during the two sessions and the specific recommendations it conveyed to the Secretary-General.

II. Substantive items

A. Terrorism and weapons of mass destruction and their delivery systems

4. At its forty-second session, three members, Vicente Berasategui, Boris Pyadyshev and Tibor Tóth presented discussion papers on the topic. The Board also heard a briefing by Charles D. Ferguson of the Center for Nonproliferation Studies, Monterey Institute of International Studies, on the subject of radiological terrorism.

5. In the nuclear field, the Board underlined the importance of continuing further national and international efforts to secure more safely nuclear materials and sources. It was noted that a reduction in the level of nuclear forces, tactical nuclear weapons in particular, was fundamental to that effort.

6. The Board recognized the urgency of universalizing and fully implementing the Convention on the Physical Protection of Nuclear Material (covering fissile material within States and when it was being transported internationally), as well as the new Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management. In that connection, support was expressed during the discussion for considering arrangements to guarantee internationally the provision of fuel for nuclear power reactors in States so as to prevent the further spread of sensitive fuel cycle facilities and thereby reduce the risk of diversion of nuclear fuel to non-peaceful purposes.

7. The Board noted that due attention should be given to safeguarding against the danger of terrorist infiltration of facilities that handle dual-use nuclear material or chemical or biological agents, as well as of warships loaded with nuclear weapons.

8. It appeared to the members of the Board that terrorist use of radiological weapons and biological weapons posed a more immediate and realistic threat that needed to be addressed in various ways.

9. It was stressed that in order to prevent the possible acquisition and use of weapons of mass destruction by terrorist groups, there was more urgency than ever for action to consolidate and reinforce existing multilateral regimes on weapons of mass destruction and ensure their full implementation.

10. It should be re-emphasized that States must fulfil their obligations under various legal instruments that extend to the security of weapons of mass destruction-related material and technology in their territories. National rules for the handling of such items as well as national export control systems needed to be strengthened and enforced in order to enhance physical security and use control of materials and technology related to weapons of mass destruction. In that regard, States also needed mechanisms to assist them in national capacity-building since the technologies concerned were complex and national capabilities to control them varied considerably.

11. To prevent weapons of mass destruction terrorism, international cooperation, in particular information exchange and cooperation between law enforcement, border control, customs and other relevant agencies among States, was essential.

12. The verification mechanisms provided for in existing multilateral regimes established and maintained by the International Atomic Energy Agency (IAEA) and the Organization for the Prohibition of Chemical Weapons (OPCW) must be fully utilized and, where needed, strengthened. The gaps in verification that existed in the biological and radiological weapon fields should be filled. Since the Security Council could be called upon by all weapons of mass destruction regimes to ensure compliance, the idea of creating a compliance and verification mechanism under the Security Council to complement those provided by the regimes was supported by members of the Board.

13. Other than weapons of mass destruction, terrorists had used and would continue to use other means of “mass destruction” or “mass disruption” to cause massive casualties, damage and panic. Terrorists might also employ cyber-terrorism or corrupt or disrupt vital public utility supply, such as electricity or water. Other weapons with a large potential for terrorist use for destruction or causing panic included Man-Portable Air-Defence systems (MANPADs), fuel air explosives, stand-off weapons with powerful anti-armour warheads and unmanned air vehicles. Thus far, none of those weapons had been covered by any legal arms control instruments.

14. In the context of terrorism, the “means of delivery” of weapons of mass destruction were not yet an area of primary concern but could become so. All delivery means that were highly precise and put distance between the perpetrator and the target were dangerous. The more accessible, the less guarded, the smaller and lighter those means of delivery were, the more concern they might evoke.

Recommendations

15. **The Board submitted the following recommendations:**

(a) **That the proliferation of weapons of mass destruction be rendered punishable under international law and that perpetrators, whether in State service or private, be made personally accountable;**

(b) **That State action to combat weapons of mass destruction terrorism, including preventive action, be embedded in a multilateral legal framework and**

within the ambit of the United Nations, and that the Secretary-General initiate an annual consultative meeting with heads of international organizations working on weapons of mass destruction issues with a view to sharing information and creating synergies;

(c) That a global partnership be established to assist States in fulfilling their obligations under treaties related to weapons of mass destruction, including treaty compliance;

(d) That an electronic hub be set up for assistance and training on weapons of mass destruction non-proliferation, addressing the needs of Governments, parliaments, industry and the public in general for exchange of information on and enhancing implementation of existing multilateral legal instruments in this field;

(e) That negotiations be revived on a mechanism to monitor and verify compliance under the Biological Weapons Convention;

(f) That the Conference on Disarmament begin, as a priority, negotiations on a fissile material cut-off treaty, which will contribute to the prevention of weapons of mass destruction terrorism by limiting the amounts of, and points of access to, weapons-usable material;

(g) That the Conference on Disarmament also consider reconvening negotiations on a convention banning radiological weapons.

B. Disarmament and reconciliation in conflict prevention

16. The Board had before it discussion papers prepared by two members, U. Joy Ogwu and Kuniko Inoguchi. It also heard a briefing by Matt Scott of World Vision International on efforts made by non-governmental organizations (NGOs) in that field, including the process leading to the 2005 non-governmental organization international conference on conflict prevention.

17. The Board noted that armed conflicts in the post-cold war period had continued the trend from traditional inter-State conflicts to deep-rooted intra-State conflicts. Thus, peace-building and socio-economic reconstruction in post-conflict situations required not only political reconciliation, but, more importantly, social reconciliation at the grass-roots level within different communities. Bearing in mind that the fundamental roots of conflicts should be addressed in a comprehensive way, concurrent and mutually supportive disarmament and reconciliation programmes were key to putting an end to violent conflict and reconstructing war-torn societies.

18. It was proposed that when disarmament, demobilization and reintegration strategies were formulated, reconciliation measures should be part and parcel of such strategies. Post-conflict peace-building must be seen as more than a technical task. Rather than a mechanistic sequence of actions, it must integrate various elements and strategies which address motivations as well as capabilities and aim at establishing a culture of peace in place of a culture of violence.

19. The Board further noted that each disarmament and reconciliation programme should be designed for the specific individual conflict situation. More emphasis should be given to involving people in the local communities in designing those programmes in order to create a sense of ownership, which was key to ensuring the

success of such programmes. One important step was to replace weapons buy-back schemes, which tended to enhance the influx of weapons, by weapons for development programmes, which gave incentives to communities rather than to individuals.

20. The Board called on the international community to enhance its efforts to curb the illicit flow of small arms and light weapons and to address both the demand and supply sides of the problem. It noted that new streams of weapons in conflict situations were still being financed by the illicit exploitation of natural resources, such as “blood diamonds”. It stressed that the legal flow of such weapons must not contribute to exacerbating local and regional conflicts.

21. An idea was put forward that the Proliferation Security Initiative (PSI) should be extended to apply to small arms and light weapons. However, reservations were expressed on the grounds that PSI was an initiative taken by a limited number of countries and many aspects of it still required clarification. There was a general feeling that that clarification, notably of the open legal questions, should be completed expeditiously.

22. The Board emphasized the importance of addressing economic aspects of conflicts. For example, to consolidate and sustain peace, it was essential to reintegrate combatants into economic life and eliminate their dependence on weapons for a livelihood or security. In that regard, the provision of economic and social incentives by the international community on a collective basis to war-affected communities and populations played a key role.

Recommendations

23. **The Board made several recommendations:**

(a) **That the Security Council consider, in all its future resolutions setting out peacekeeping operations, widening the mandate to include disarmament and reconciliation aspects of conflict resolution;**

(b) **That the successful “weapons for development” model, used, inter alia, in Albania, Cambodia and the Niger, should be adapted to other countries emerging from armed conflict;**

(c) **That paramount consideration should be given, when designing disarmament and reconciliation programmes, to improving security, in particular the human security situation; and that security sector reform be included as a key element in those programmes;**

(d) **That a community-based and people-centred approach in post-conflict disarmament and reconciliation, including design and implementation of disarmament programmes, be adopted;**

(e) **That disarmament and reconciliation programmes have secure funding to ensure their effective implementation;**

(f) **That urgent action be taken by the international community to curb the flow of small arms and light weapons to regions of conflict or with potential for conflict and to ban the supply of such weapons to non-State actors; and that legal sanctions against perpetrators should be set out;**

(g) **That the risks that the legal supply of small arms and light weapons could contribute to exacerbating violence in local and regional conflict be addressed.**

C. Export controls

24. The Board received discussion papers by Maleeha Lodhi, Jieyi Liu and Stephen Rademaker on the subject. The Board also heard briefings on the topic by Brian Wood of Amnesty International and Jean-Pascal Zanders of the Biological Weapons Prevention Project.

25. It was noted that export controls had long been a key non-proliferation tool. The international control system, based on the Non-Proliferation Treaty (NPT), the Chemical Weapons Convention and the Biological Weapons Convention, and supported by IAEA and OPCW, had provided a globally recognized legal framework for international non-proliferation. Those treaties contained obligations of their parties to prevent the unauthorized export of materials, equipment and technology that could be used in weapons programmes. Other mechanisms, such as the Zangger Committee, the Nuclear Suppliers Group (NSG), the Australia Group (for chemical and biological weapons), the Missile Technology Control Regime (MTCR) and the Wassenaar Arrangement (for conventional weapons) set up criteria for export licensing, lists of items to be controlled and procedures for information exchange.

26. Those efforts had worked to a large extent in terms of both forging international consensus against proliferation and stemming proliferation on the ground. Non-proliferation commanded near universal consensus and had gradually become an undertaking of the international community as a whole. However, the more exclusive regimes had been criticized by some non-members as exclusive and hampering transfer of technology, equipment and material to developing countries for peaceful purposes. Suspicion had been articulated that they served the defence of economic privileges by their predominantly more wealthy, industrialized members.

27. The Board noted that new challenges, such as non-State actors, globalization and the rapid advance of information technology, added new dimensions to export controls. The smuggling of weapons of mass destruction-related items and technologies became extremely disturbing when coupled with terrorism. The weapons of mass destruction threat from terrorists should be realistically assessed and addressed. In the Board's view, the greater threat was the danger of terrorists acquiring and using chemical and biological weapons and a "dirty bomb" (radiological weapon). The recent revelation of a clandestine transnational smuggling network of nuclear technology, based on non-State actors in several States, including States possessing nuclear weapons, demonstrated the loopholes in the international and national export control system. It also indicated that the exchange of information and cooperation beyond the membership of the present export control regimes was crucial for curbing the flow of weapons of mass destruction-related material, equipment and technology.

28. It was noted that in the light of the new situation and challenges, a number of initiatives had been put forward or were already in place:

(a) The international non-proliferation legal system and export control framework. Recent proposals in the nuclear field included redefining the effect of withdrawal from NPT, creating a special committee of the IAEA Board of

Governors on safeguards and verification, suspension of Board membership under certain conditions, signing the Additional Protocol as a condition of supply, strict controls on the transfer of reprocessing and enrichment equipment and technology and setting up international reprocessing centres. NSG, MTCR and the Australia Group had updated guidelines and expanded control lists in the light of the new situation. At the national level, many countries were taking steps to strengthen export controls. Measures taken so far included the adoption of the “catch-all” principle, additional licensing requirements, end-use and end-user visits, intangible transfer controls, development of watch lists and enhancing law enforcement;

(b) Security Council resolution 1540 (2004). Resolution 1540 (2004) focused on addressing proliferation by non-State actors through mandatory measures and international cooperation. It also sought to contribute to the global infrastructure of non-proliferation and export controls by outlining specific steps on the basis of existing international law to strengthen international regimes, facilitate multilateral cooperation and enhance national endeavours. The resolution made universal the obligations that were contained in general form in the treaties on nuclear, biological and chemical weapons and that were partially elaborated by the review conferences of those regimes. At the same time, the resolution spelled out the operative meaning of those obligations;

(c) Proliferation Security Initiative (PSI). PSI consisted of two broad categories of activities in operational terms: an exchange of information and law enforcement cooperation among participating countries within the scope of their jurisdiction; and interdiction activities, that was, the interception of suspected international transport of weapons of mass destruction-related materials, equipment and technologies, after export controls had failed. Questions had been raised regarding PSI: (i) the legal basis of interdiction; (ii) the possibility of using or misusing force; (iii) consequences of action based on wrong information; (iv) possible human and material loss; and (v) end-use determination of dual-use items. Unless interdiction was clearly defined by all participating countries and in conformity with international law, the question concerning its legitimacy would remain. So would the question of whether the means was proportional to the end in case of using force.

29. The Board stressed that new approaches were needed to address new challenges. However, it would be a mistake to unravel the existing multilateral non-proliferation and disarmament arrangements, which continued to play an important role in non-proliferation endeavours. The international community should build on and further strengthen the existing international non-proliferation legal system and the relevant export control regimes through credible and inclusive multilateral approaches. It was also stressed that non-proliferation and disarmament should be pursued simultaneously for any effective export control.

30. It was pointed out that non-proliferation efforts needed to address both the symptom and the cause to be effective and have lasting results. It was vital to expand the participation in and a support base of export control arrangements. That made it necessary to move from the supplier-based export controls model to an inclusive approach based on coordination and cooperation of the entire international community. Given the challenge posed by non-State actors, export controls, in order to be effective, should be as much international as national and more inclusive than exclusive.

31. The Board underscored the important role of the United Nations and the necessity to strengthen multilateral approaches in that regard. Multilateral approaches within the United Nations framework could go a long way to help generate political support and consolidate international consensus on non-proliferation and export controls. Security Council resolution 1540 (2004) and the establishment of the Security Council Committee on non-proliferation had provided a good basis for further United Nations efforts in that regard.

Recommendations

32. **The Board submitted the following recommendations:**

(a) **It might be appropriate to set up open-ended working groups on the implementation of these export control obligations and to invite NSG, the Australia Group and MTCR to give input with regard to possible items to be listed and experiences and models for export control structures and licensing criteria. Other United Nations Members could draw on such advice on a voluntary basis;**

(b) **Export control systems should include agreed lists of items to be subjected to export licensing, a catch-all clause dealing with non-listed items destined for weapons programmes, measures to cover the activities of intermediaries, such as brokers, measures to ascertain the end use of transferred items, the intangible transfer of technology, a standard for enforcement measures and an understanding not to undercut negative licensing decisions taken by another State;**

(c) **At the same time, the members of the export control regimes should consider offers of systematic legal, technical, organizational and financial assistance for the creation of effective export control systems on which those States Members of the United Nations lacking the respective resources could draw. While the gap between members and non-members would not be completely closed, it would be narrowed considerably through such practical cooperation;**

(d) **Open seminars should be offered to enhance the information on export control issues and help to develop the skills of both civil society and officials in understanding and implementing export control law and regulation;**

(e) **The role of the United Nations should be strengthened in fostering cooperation and coordination among Member States on export controls;**

(f) **There should be a universal information system on illegal procurement and trafficking activities going beyond the present IAEA database and integrating the insights from the various weapons of mass destruction fields to permit a more comprehensive picture; such a broader exchange would not prevent States from committing to more in-depth intelligence-sharing in smaller settings if they so chose;**

(g) **Efforts should be made to develop broad-based, universal norms and rules for export controls;**

(h) **PSI should continue to be implemented in a manner consistent with international law;**

(i) **Intercepts on the high seas where present legal authority was not sufficient should be based on specific United Nations Security Council authorization. The acting State should be obliged to report to the Council the evidence forcing interception and the results of the search;**

(j) **Participants in PSI operations should have in place arrangements to cover any damages that result from intercept and search of transports that prove innocent;**

(k) **It is advisable to initiate negotiations on ways and means to complement the Law of the Sea in order to cover cases where presently legal authority for intercept is lacking;**

(l) **All States should be encouraged to become supporters of PSI to make the initiative into a universal, multilateral arrangement.**

D. Contribution to the work of the High-level Panel on Threats, Challenges and Change

33. As requested by the Secretary-General, the Board held discussions at both sessions during the year on its contribution to the work of the High-level Panel.

34. At its forty-second session, the Board began its consideration of recommendations on the issues of weapons of mass destruction, missiles, small arms and light weapons and landmines, as well as on ways and means to strengthen multilateral regimes on disarmament, arms control and non-proliferation. The Board had before it discussion papers prepared by the Under-Secretary-General for Disarmament Affairs and by the Deputy Director of UNIDIR. In an initial round of deliberations, the issue was raised of how to strengthen the role of the United Nations, including that of the Security Council, in dealing with weapons of mass destruction issues. There was general agreement among the members of the Board that multilateral regimes were the first line of defence against emerging security threats and therefore must be maintained and strengthened. The Board considered the Security Council as the ultimate guarantor of the regimes, as foreseen in the regimes themselves. Members of the Board put forward a number of ideas, including the adoption of a new resolution by the Security Council reaffirming weapons of mass destruction proliferation as a threat to international peace and security and the establishment of a mechanism under the Security Council on compliance and verification of measures against weapons of mass destruction proliferation. The Board also suggested that existing verification assets that were built to deal with the specific Iraqi situation be preserved as a core capacity. The Board further considered ways and means to reinforce the IAEA safeguard system and the need to depoliticize verification issues to facilitate access to suspect sites.

35. At its forty-third session, the Board continued its consideration of its contribution to the High-level Panel. For each topic, the Board analysed existing regimes, identified challenges faced by the international community and made corresponding recommendations. The contribution will be forwarded in September 2004 to the Secretary-General and, through him, to the High-level Panel for their consideration.

III. Board of Trustees of UNIDIR

36. At its forty-second session, the Board heard an oral report of the Director of UNIDIR on the implementation of the Institute's programme and budget for 2004 since the Board's last meeting in July 2003. The Director also reported on the consideration of the programme and budget by the Advisory Committee on Administrative and Budgetary Questions and the Fifth Committee during the fifty-eighth session of the General Assembly. Subsequently, the Board formally adopted the 2004 programme budget for UNIDIR.

37. The Board expressed its satisfaction that the General Assembly had approved the UNIDIR subvention for 2004, which was essential to maintain the Institute's independence. The Board was pleased to note that UNIDIR continued to undertake a dynamic research programme covering a wide range of issues, both topical and emerging, in the area of disarmament and non-proliferation. The Board called for greater support of its useful work by Member States.

38. In accordance with the decision made at the fortieth session of the Board, the Chairman appointed an eight-member Subcommittee on UNIDIR. The Subcommittee met on 29 June prior to the forty-third session of the Board and heard detailed presentations by the Institute's staff on its key outputs in three major areas: global security and disarmament; regional security and disarmament; and human security and disarmament. Members were briefed on the Institute's networking and publication activities. The Subcommittee heard reports on the Institute's financial situation, management and staffing and on the strategic direction of the Institute. The Subcommittee presented a report to the plenary of the Board.

39. The Board noted with satisfaction that UNIDIR undertook a dynamic research programme covering a wide range of topical and emerging issues in the area of disarmament, arms control and non-proliferation and stimulated valuable debate on disarmament issues. The Board called for greater support of its valuable work by Member States.

40. The Board put forward ideas and thoughts for UNIDIR to consider in planning its future research activities. They included, among others, new issues, such as cyberwarfare and "force-enhancers" for terrorists, more stress on cooperative security, exploring possibilities of "track-two activities" for processes such as the six-party talks on nuclear issues concerning the Democratic People's Republic of Korea, a fresh look at political incentives for disarmament, more in-depth research in issues of export controls, further contributions to the interrelationship between disarmament, reconciliation, development and peace processes, formulating a media strategy, and looking into the possible utility of programme-budgeting.

Recommendation

41. The Board, pursuant to article III, paragraph 2 (b) of the Statute of the Institute, reviewed and approved for submission to the General Assembly the programme of work and budget of the Institute for 2005 (see note by the Secretary-General transmitting the report of the Director of UNIDIR (A/59/168)). It strongly appealed for the continuation of the United Nations subvention and annual cost-of-living increases for the Institute.

IV. Disarmament information programme

42. The Under-Secretary-General for Disarmament Affairs, Nobuyasu Abe, briefed the Board at both sessions on the activities of the United Nations Disarmament Information Programme.¹

43. The Board heard presentations from representatives of several NGOs during its 2004 sessions. At its forty-second session, the Board was briefed by representatives of the NGO community on the following issues: “The 10 most important moves to rescue the non-proliferation regime” (Jonathan Dean, Union of Concerned Scientists); “Combating and preparing for radiological terrorism: the international dimension” (Charles D. Ferguson, Center for Nonproliferation Studies, Monterey Institute of International Studies); and “Process leading to the 2005 NGO international conference on conflict prevention” (Matthew J. O. Scott, World Vision International).

44. At its forty-third session, the Board heard NGO presentations on the following topics: “Control arms: an international arms trade treaty” (Brian Wood, Amnesty International); and “Biotechnology transfers for peaceful purposes” (Jean-Pascal Zanders, Biological Weapons Prevention Project).

V. Future work

45. The Board decided to include the following two sets of issues on the agenda of its forty-fourth session, to be held in New York in February 2005:

- (a) Nuclear fuel cycle and fissile material control;
- (b) Regional security and global norms: small arms and light weapons.

Notes

¹ The Secretary-General issued a biennial report on the activities of the United Nations Disarmament Information Programme to the General Assembly at its fifty-ninth session (A/59/171).

Annex

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Notes

^a Participated in the forty-second session.

^b Participated in the forty-third session.