

ABOLITION 2000



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Dear members of the Security Council and other interested states,

On behalf of the Global Council of the Abolition 2000 Global Network to Eliminate Nuclear Weapons, ***we write to express our opposition to the current form of the proposed resolution on "non-proliferation" released to the elected members of the Security Council on March 24, 2004 by the United States on behalf of the permanent five members.*** * Abolition 2000 was founded in 1995 at the Nuclear Non-Proliferation Treaty (NPT) Review and Extension Conference and the nuclear weapons hearings before the International Court of Justice and now comprises more than 2000 civil society groups and municipalities in 95 countries.

The draft resolution mandates that all states bolster efforts to prevent terrorist and other non-state actor trafficking in and acquisition of nuclear, biological, and chemical (NBC) weapons, related materials, and missiles and other unmanned systems of delivery. We affirm the need for collective action to eliminate all NBC weapons and weapons programs including measures to prevent their spread. However, we believe the resolution is deeply flawed due to the failure to address the disarmament of existing arsenals and programs. We also oppose the assumption of a political or legal basis for the Security Council to act as a global legislature. We additionally are concerned about the potential for abuse of cooperation in prevention of NBC weapon-related trafficking recommended by the resolution. ***We urge that the Security Council engage in comprehensive consultations with all interested states and with civil society concerning the resolution, notably by holding an open session at which all member states can speak and by holding an informal session for a briefing by civil society representatives. The resolution must not be fast tracked; the issues are too complex and important.***

Disarmament: While the proposed resolution affirms support for multilateral treaties on NBC weapons, ***it refers only to prevention of proliferation, and is silent, rhetorically or substantively, on ending deployment of existing weapons and on the imperative of disarmament*** - the aim of the NPT, Chemical Weapons Convention (CWC), and the Biological and Toxin Weapons Convention (BWC). The resolution thus ignores that the problem of the spread of NBC weapons, and their potential acquisition by terrorists, will never be effectively addressed absent effective compliance with disarmament obligations.

It will not suffice simply to add a reference to disarmament in the preamble. Measures the resolution calls for, e.g. to account for and physically secure NBC weapons and related materials, should be identified as implementing disarmament as well as non-proliferation obligations. Beyond that, the resolution should make clear that states should prohibit both non-state ***and state*** actors from acquiring and trafficking in NBC weapons, related materials, and means of delivery. The resolution should also make clear that nuclear-armed states, both within and without the NPT,

should take effective measures – including the 2000 NPT 13 steps - to comply with the general obligation, unanimously set forth by the International Court of Justice in its 1996 advisory opinion, to pursue in good faith and bring to a conclusion negotiations on nuclear disarmament in all its aspects under strict and effective international control, and to fulfill the NPT unequivocal undertaking to eliminate nuclear arsenals. It is positive that the draft calls upon states not yet party to the BWC and CWC should join those regimes.

Security Council "lawmaking": The proposed resolution purports to *require* states to prohibit non-state actors from acquiring NBC weapons and their means of delivery and to take measures to account for, secure, and prevent unlawful trafficking in the weapons, related materials, and means of delivery. If adopted, this would represent a far-reaching assumption of authority by the Security Council to enact global legislation requiring each state to modify its national legal system and policies. Such legislation is usually the subject of painstakingly negotiated multilateral treaties, like the NPT, CWC, and BWC. *There is nothing in the UN Charter that confers such authority on the Security Council. Rather the Charter contemplates multilateral agreements entered into by states as the primary mode of global lawmaking, with the General Assembly promoting this process by making recommendations (Art. 13).*

It is true that Security Council resolution 1373 requires all states to take measures to suppress terrorism. But it was adopted in the special circumstance of responding to the September 11 attacks, and deals with simpler and less controversial topics than the present resolution, which strongly impinges upon state to state relations and issues of security. For example, the resolution would impose obligations upon states with regard to NBC-weapon "related materials", missiles and other "unmanned systems" of delivery, and "non-state actors," yet provides no full and precise definition of those terms. In this and other respects, a rational and legitimate lawmaking process would require in-depth negotiation with the participation of affected states.

A resolution also requires political acceptance if it is to be effectively implemented. The highly unrepresentative Security Council, dominated by the nuclear-armed P5, is not the best institution to elicit such acceptance, especially with respect to NBC-weapon measures as to which hypocrisy and double standards will rightly be charged.

The proposed resolution does address real dangers, illustrated by the recent public revelations regarding the Pakistan-based nuclear proliferation network. Moreover, negotiation of multilateral agreements is inevitably difficult and time-consuming and does not reach (in the near term) non-participating states.

Rather than a Chapter VII mandatory resolution, the best approach would be for the Security Council to adopt a resolution that sets forth guidelines and requests. That would lay the foundation for later Security Council mandatory action as needed with respect to particular acts or practices involving particular states. It could also spur the negotiation of needed additional multilateral agreements, which the resolution should recommend. It further, importantly, would remove the basis for any claim of

“enforcement” not explicitly approved by the Security Council of the kind made by the United States and Britain with respect to the invasion of Iraq. ***In Security Council deliberations, any open session, and consultations, states should make absolutely clear that the resolution does not in any way support “enforcement” not explicitly approved by the Security Council.***

Other steps that would contribute to more acceptable Security Council intervention would be ***1) full consultation with all interested states, and with civil society, including through an open session and an informal (“Arria formula”) civil society briefing; and 2) establishment of a implementation body that involves the Secretary-General, the Department for Disarmament Affairs, IAEA, OPCW, UNMOVIC, representatives of the governing bodies of the NPT, CWC, and BWC, and civil society,*** to ensure among other things a common and sound understanding of what states should do to implement the resolution. States’ reports on implementation should go to the Secretary-General and the implementation body.

By contrast, the present draft makes a mockery of follow-up. It establishes a Security Council committee on implementation to last only six months, while requiring states to adopt complex national legislation and measures that will clearly take longer than six months fully to put in place. ***It is crucial to avoid leaving follow-up on the resolution to individual states, above all the United States.*** However, that is the course President Bush signaled the United States intends, stating in his February 11, 2004 speech that after the resolution is adopted, the United States “stands ready to help other governments to draft and enforce the new laws that will help us deal with proliferation.”

Prevention of “trafficking”: The proposed resolution calls upon states, “consistent with international law,” to cooperate in the prevention of “illicit trafficking” in NBC weapons, means of delivery, and related materials (para. 8). Especially given the extremely elastic understanding of international law displayed by the United States and Britain with respect to the invasion of Iraq, as well as the national “intelligence failures”/deceptions regarding NBC-weapon programs in Iraq, the mere invocation of international law is not enough. Clarity and international consensus needs to be developed on the types of shipments prohibited and the nature of interdictions permissible under international law. ***There should be provision for Security Council or other multilateral, treaty-based decision-making and dispute resolution (as by the International Law of the Sea Tribunal) as to interdiction of specific shipments that otherwise would appear to be protected by the customary freedom of navigation on the high seas, the right of innocent passage, and other existing international law.*** Alternatively, the provision should be dropped.

Please do not hesitate to contact us. We have suggestions for alternative language, as well as more in-depth analysis of the issues outlined above. We also would assist with an Arria formula meeting. We aim to promote global civil society participation in decision-making about the resolution as well as media coverage. The resolution will affect all of our futures, not only regarding the dangers posed by NBC weapons, but also the shape of international law and institutions.

Sincerely,

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