

**Brazilian non-paper on a UNSC Draft Resolution
on Weapons of Mass Destruction and non-State actors**

The concept of 'non-proliferation', as used in the draft resolution dated March 24 last, has been consistently applied to relations among States, as provided in international instruments in this area. By expanding the application of the legal and political category 'non-proliferation' to relations between a State and 'non-State actors' under its jurisdiction, while at the same time referring to existent treaties, conventions and arrangements, the draft resolution risks cutting across consolidated International Law and opening the possibility of a conceptual misapprehension of the rights and obligations to which States have voluntarily adhered.

Acknowledging the existence of a 'gap' in International Law regarding the potential threat posed by non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, we suggest the adoption of the categories 'availability, access to and transfer of WMDs to non-State actors' to characterize the threat posed by non-state actors as described above. We would avoid possible problems regarding the alteration of existing commitments under International Law by a UNSC Resolution.

To solve these specific problems, the Brazilian delegation introduces this non-paper on a UNSC Draft Resolution that could serve as a basis for further negotiations.

Suggested modifications are limited: all references to 'non-proliferation' were replaced by 'non-availability, non-access to and non-transfer of WMDs to non-State actors' and all references to existing treaties, conventions and arrangements were omitted. As a result, amendments concerning the link between disarmament and non-proliferation, among others, would no longer be necessary.

By adopting this resolution the Council would be filling a gap that no international instrument has addressed to date.

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April , 2004

The Security Council,

- Preamble Paragraphs 1, 2, 3, 4 and 9 are deleted

Gravely concerned by the threat of illicit trafficking in nuclear, chemical, or biological weapons and their means of delivery, and related materials, which poses a threat to international peace and security (former pp.7),

Reaffirming the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts (former pp.11),

Gravely concerned by the threat of the nexus between international terrorism and efforts to acquire, traffic in or use nuclear, chemical or biological weapons and by the involvement in such actions of non-state actors such as those identified in the UN list established and maintained by the Committee established under Security Council Resolution 1267 and those to whom Resolution 1373 applies (former pp.6),

Recognizing the need to enhance coordination of efforts on national, sub-regional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security (former pp.8),

Recognizing further the urgent need for all States to take additional effective measures to prevent the availability, access to and transfer of nuclear, chemical or biological weapons and their means of delivery to non-State actors (former pp.10 altered),

Affirming that prevention of availability, access to and transfer of nuclear, chemical and biological weapons to non-State actors should not hamper international cooperation in materials, equipment and technology for peaceful purposes while goals of peaceful utilization should not be used as a cover for availability, access to and transfer of those weapons and means of delivery (former pp. 5 altered),

Determined to facilitate an effective response to global threats in the area of non-availability, non-access to and non-transfer of weapons of mass destruction to non-State actors (former pp. 12 altered),

Acting under Chapter VII (former pp. 13),

- Operative Paragraphs 6(a,b,c) and 11 are deleted

1. Calls upon all States to refrain from providing any form of support to non-state actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery (former op.1);
2. Decides that all States shall adopt and enforce appropriate effective laws which prohibit any non-state actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and missiles, rockets and other unmanned aerial systems designed for the delivery of such weapons, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them (former op.2);
3. Decides also that all States shall take and enforce effective measures to establish domestic controls to prevent the availability, access to and transfer of nuclear, chemical, or biological weapons and their means of delivery to non-State actors, including by establishing appropriate controls over related materials and to this end shall (former op.3 altered):
 - (a) develop and maintain appropriate effective measures to account for and secure such items or in production, use, storage and transport;
 - (b) develop and maintain appropriate effective physical protection measures;
 - (c) develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the unlawful trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law;
 - (d) establish, develop, review and maintain appropriate effective national export and transshipment controls over such items, including appropriate laws and regulations to control export, transit, transshipment and re-export and controls on providing funds and services related to such export and transshipment such as financing and transporting that would contribute to availability, access to and transfer of weapons of mass destruction and means of delivery to non-State actors, as well as establishing end-use(r) controls; and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations;
4. Recognizes the utility in implementing this resolution of effective national control lists and calls upon all Member States, when necessary, to pursue at the earliest opportunity the development of such lists (former op.4);
5. Recognizes that some States may require assistance in implementing the provisions of this resolution within their territories and invites States in a position to do so to offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions (former op.5);

6. Calls on all States to develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws (former op.6d);

7. Calls upon all states to promote dialogue and cooperation on non-availability, non-access to and non-transfer of weapons of mass destruction to non-State actors so as to counter the threat posed by availability, access to and transfer of nuclear, chemical, or biological weapons, their means of delivery to non-State actors (former op.7 altered);

8. Further to counter that threat, calls upon all states, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials (former op.8);

9. Decides to establish, in accordance with rule 28 of its provisional rules of procedure, for a period of no more than six months, a committee of the Security Council and calling on other expertise, as appropriate, to report on implementation of this resolution, and calls upon States to report to the Committee, no later than 90 days from the date of adoption of this resolution, on their implementation of this resolution (former op.9);

10. Expresses its intention to monitor closely the implementation of this resolution and, at the appropriate level, to take further decisions which may be required to this end (former op.10);

11. Decides to remain seized of the matter (former op.12).

*Definitions for the purpose of this resolution only (not altered):

Means of delivery: missiles, rockets and unmanned systems capable of delivering nuclear, chemical or biological weapons, that are specially designed or modified for such use.

Non-state actor: individual or entity, not acting under the lawful authority of any State in conducting activities which come within the scope of this resolution.

Related materials: materials, equipment and technology covered by relevant multilateral treaties and arrangements, or included on national control lists, which could be used for the design, development, production or use of nuclear, chemical and biological weapons and their means of delivery.