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# THE USE OF THE EXISTING WMD FREE ZONES AS AN EXAMPLE AND A POTENTIAL FRAMEWORK FOR FURTHER INITIATIVES BANNING BALLISTIC MISSILES

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## **Abstract**

Taken as a wide-ranging notion, weapons of mass destruction (WMD) have not produced significant instruments in international security over time, UNSCR1540 being an exception. As such, there are no existing WMD free zones (WMDFZ) which can be used as examples and as potential frameworks for further initiatives banning ballistic missiles.

The MTCR has been the only multilateral effort and instrument to curb missile proliferation until the adoption of the International Code of Conduct against Ballistic Missile Proliferation (HCOB). There is no multilateral legally binding instrument against the spread of ballistic missiles either in force or under negotiation.

The purpose of this study is twofold: first, it is to assess the potentiality of the WMDFZ approach to curb the proliferation of ballistic missiles; second, it is to draw lessons from the implementation of the seven nuclear weapon-free zones (NWFZ) being in force as potential frameworks for new initiatives against the proliferation of ballistic missiles.

If the notion of a NWFZ is by no means new, the notion of a WMDFZ is more recent. It was diplomatically mooted by Egypt in 1990 in the form of the “Mubarak proposal”, concerning the Middle East. The two notions have subsequently formally coexisted and taken shape, if not as a political project at least as a diplomatic reality in various arenas.

Since its diplomatic formulation by General Assembly Resolution 4630 in 1991, the goal of a WMDFZ in the Middle East continued to be addressed during the annual sessions of the UN General Assembly. It resurfaced in a regional framework: the “Madrid process” and in the NPT Review Process. This double dynamic has not made any quantifiable progress so far. It must be added, however, that whereas the regional approaches to address WMD generally do not imply delivery vehicles, the zonal approach in the Middle East has been an exception: the issue of delivery vehicles has become part of the scope of such a future zone over time.

As to the NWFZs, a general assessment can be proposed for the Latin American, South Pacific, South-East Asian and African NWFZs and several lessons can be drawn: NWFZs were designed to fit the particular needs and constraints of a region. All NWFZs were built on an existing regional architecture for cooperation and security. Each NWFZ was negotiated among a limited number of parties. CBMs preceded the establishment of the zone. Peace was a condition. Once it

prevailed, agreeing to establish a zone was not an issue. Last, regional initiatives, whatever their success or their failure, provide a solid basis and background materials for future global negotiations.

These lessons could prove useful for further initiatives banning ballistic missiles worldwide.

Given the particular dynamics indicating that the Middle Eastern region may face a conventional missile race in the near future, this paper insists on two specific initiatives:

- First, Iran might be willing to abide by missile limits as part of a region-wide effort to ban longer-range ballistic missile systems. The EU could encourage regional track 2 dialogues on this issue as a first step.
- Second, the co-conveners of the so called “2012 Helsinki conference” could encourage, and support, a region-wide effort to negotiate a ban on missiles capable of carrying WMD. Such effort could be proposed and supported by the EU during the current NPT review process towards 2020.

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# INTRODUCTION

## DEFINING A WMD

Weapons of mass destruction (WMD) constitute a familiar notion and a poorly defined one at the same time. According to W. Seth Carus who conducted a study on the definition of WMDs<sup>1</sup> in 2005, more than fifty various definitions could be found at that time in American literature only. All of them, however, belonged to one of the following categories:

1. Nuclear, biological, and chemical weapons (NBC)
2. Chemical, biological, radiological, and nuclear weapons (CBRN)
3. CBRN and high explosive weapons (CBRNE)
4. CBRN weapons capable of causing mass destruction or mass casualties
5. Weapons, including some CBRN weapons but not limited to CBRN, capable of causing mass destruction or mass casualties
6. WMD as weapons of mass effect capable of causing mass destruction or mass casualties or that cause mass disruption.

It is worth noting that none of these six categories mentions delivery vehicles as part of a definition.

Even if historians usually date the first known use of the term WMD to 1937<sup>2</sup>, its modern usage appeared in November 1945 in a joint declaration by the President of the United States, the prime minister of the United Kingdom, and the prime minister of Canada. They asked for a United Nations (UN) Commission to make proposals “*for the elimination from national armaments of atomic weapons and of all other major weapons adaptable to mass destruction.*”<sup>3</sup> In legal terms, the notion of weapons of mass destruction (WMD) came as a follow up within the United Nations system in 1948. Indeed, the first definition of WMDs was presented by the UN Commission on Conventional Armaments (CCM) in August 1948: “*The Commission for Conventional Armaments resolves to advise the Security Council: 1. that it considers that all armaments and armed forces, except atomic weapons and weapons of mass destruction, fall within its jurisdiction, and that weapons of mass destruction should be defined to include atomic explosive weapons, radioactive material weapons, lethal chemical and biological weapons, and any weapons developed in the future which have characteristics comparable in destructive effect to those of the atomic bomb or other weapons mentioned above.*”<sup>4</sup>

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<sup>1</sup> W. Seth Carus, *Defining “Weapons of Mass Destruction”*, Occasional paper 8, Center for the Study of Weapons of Mass Destruction National Defense University, National Defense University Press Washington, D.C. January 2012 (edition revised), 91 p.

<sup>2</sup> Christmas address, Archbishop of Canterbury, William Cosmo Gordon Lang: “*Take, for example, the question of peace. Who can think without dismay of the fears, jealousies, and suspicions which have compelled nations, our own among them, to pile up their armaments? Who can think at this present time without a sickening of the heart of the appalling slaughter, the suffering, the manifold misery brought by war to Spain and to China? Who can think without horror of what another widespread war would mean, waged as it would be with all the new weapons of mass destruction?*”, “Archbishop’s Appeal: Individual Will and Action; Guarding Personality,” *The Times* (London), December 28, 1937.

<sup>3</sup> Department of State, Historical Office, Documents on Disarmament, 1945–1969, Volume I: 1945–1956, pub. 7008, August 1960.

<sup>4</sup> CCA, UN document S/C.3/32/Rev.1, August 1948.

Hence, the very first legal definition of WMDs does not mention delivery vehicles either, even as part of a sub-definition of what a “weapon” is. It must be added that the 1948 definition was not endorsed by the USSR. Only in 1977 did the UN could collectively endorse the 1948 WMD definition when the USSR’s position evolved. The UN General Assembly then adopted Resolution 32/84, which contained the language accepting the 1948 CCA definition for use in disarmament diplomacy.<sup>5</sup> Delivery vehicles were not either clarified or even mentioned by the 1977 UNGA Resolution.

In the common language of contemporary arms control experts and observers and within the various national security communities, WMDs usually concern nuclear, biological and chemical weapons including their means of delivery<sup>6</sup>.

## BANNING BALLISTIC MISSILES

Delivery vehicles have for a long time been the poor relation of the arms control thinking and the term “delivery vehicle” has never been defined properly. As pointed out by Mark Smith, “*Means of delivery*’ is a loose term, and strictly speaking can refer to anything used to transport WMD to their target, but it can be principally understood as a tacit reference to missiles”.<sup>7</sup> The MTCR was the only multilateral effort and instrument to curb missile proliferation until the adoption of the International Code of Conduct against Ballistic Missile Proliferation (HCOC). There is no multilateral legally binding instrument against the spread of ballistic missiles either in force or in negotiation.

## PURPOSE

Taken as a wide-ranging concept, WMDs have not produced significant instruments in international security over time. As such, there are no existing WMD free zones which can be used as examples and as potential frameworks for further initiatives banning ballistic missiles.

The purpose of this study is twofold: first it is to assess the potentiality of the WMD Free Zone approach to curb the proliferation of ballistic missiles, second it is to draw lessons from the implementation of the seven nuclear weapons free zones (NWFZ) being in force as potential frameworks for further initiatives against the proliferation of ballistic missiles.

## 1. THE DEFICIENCIES OF THE CURRENT INTERNATIONAL FRAMEWORK AGAINST THE SPREAD OF BALLISTIC MISSILES

As stated simply by Mark Smith, “*strategies for control of delivery systems have tended to concentrate on ballistic missiles, which in turn are principally associated with nuclear weapons.*”<sup>8</sup> This chapter will not address

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<sup>5</sup> “Reaffirms the definition of weapons of mass destruction, contained in the resolution of the Commission for Conventional Armaments of 12 August 1948, which defined weapons of mass destruction as atomic explosive weapons, radioactive material weapons, lethal chemical and biological weapons and any weapons developed in the future which might have characteristics comparable in destructive effect to those of the atomic bomb or other weapons mentioned above.”

<sup>6</sup> Radiological weapons are rarely included in the notion since they are rather considered as weapons of mass disruption.

<sup>7</sup> Mark Smith, The HCOC: Current challenges and future possibilities, FRS, 2013.

<sup>8</sup> Ibid.

the fragmented nature of whatever international regime against delivery vehicles. Such a regime does not exist *per se*. This chapter aims at describing briefly the main existing instruments of arms control concerning ballistic missiles and analysing their limits as emphasized so far.

## 1.1. THE MTCR

### 1.1.1. Description

The Missile Technology Control Regime (MTCR) is a multilateral export control regime established in 1987 between the US and the other G7 Member States. Its origins date back to the end of the 1970s when the US became aware of dangers posed by various missile programmes in developing States: Republic of Korea, Iraq, India, and Libya in particular.<sup>9</sup> At its inception, the MTCR's main purpose was to prevent the proliferation of nuclear weapons through the control of transfers of necessary nuclear-weapon delivery systems. The regime was progressively extended to cover all types of WMDs.

The MTCR now brings together 35 countries.<sup>10</sup> It aims at limiting the proliferation of delivery systems by restricting the export of missiles capable of carrying a 500 kg payload on at least 300 km, as well as of missiles capable of delivering biological, chemical, nuclear warheads, and the export of related technologies. The regime covers all unmanned delivery systems, including cruise missiles and unmanned aerial vehicles (UAVs). Like other multilateral export control regimes, the MTCR's guidelines provide a basis for coordination of export control policies between participating States and relevant procedures for transfers. It is generally agreed that in the absence of a missile non-proliferation treaty, the MTCR has been a useful tool in countering the proliferation of missile components, technologies, and materials to date.

### 1.1.2. Limits

As a consequence of the MTCR, proliferators have had to overcome export control barriers established by the main suppliers States or to launch indigenous ballistic missile programmes. Even though the regime has been an effective means to slow down the rate of missile technology diffusion, it cannot totally prevent a State from developing a ballistic missile programme.

Besides, the regime suffers from leakage of technology, inconsistent interpretations of the guidelines, and from the growing problem of secondary and tertiary proliferation.

Naturally, as is the case for all multilateral regimes of export controls, the MTCR is a non-legally binding tool. As it describes itself, "the MTCR is not a treaty and does not impose any legally binding obligations on Partners". It is an "informal political understanding among states that seek

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<sup>9</sup> Deborah A. Ozga, "A Chronology of the Missile Technology Control Regime", *The Nonproliferation Review*, winter 1994, p1.

<sup>10</sup> Argentina (1993); Australia (1990); Austria (1991); Belgium (1990); Brazil (1995); Bulgaria (2004); Canada (1987); Czech Republic (1998); Denmark (1990); Finland (1991); France (1987); Germany (1987); Greece (1992); Hungary (1993); Iceland (1993); India (2016); Ireland (1992); Italy (1987); Japan (1987); Luxembourg (1990); Netherlands (1990); New Zealand (1991); Norway (1990); Poland (1998); Portugal (1992); Republic of Korea (2001); Russian Federation (1995); South Africa (1995); Spain (1990); Sweden (1991); Switzerland (1992); Turkey (1997); Ukraine (1998); United Kingdom (1987); United States of America (1987).

to limit the proliferation of missiles and missile technology”.<sup>11</sup> Consequently, it is not enforced by any verification mechanism.

## 1.2. THE HCoC

### 1.2.1. *Description*

The International Code of Conduct against Ballistic Missile Proliferation (hereinafter referred to as the Code or the HCoC)<sup>12</sup> was signed by 93 States and immediately came into effect on November 2002<sup>13</sup>. Since then, the number of subscribing States to the Code has increased from 93 to 138.

The Code states that ballistic missiles are possible means of delivery for WMDs. Their development is considered contrary to regional stability. Against that background, the Code encourages adherents to show restraint in their development. It makes it compulsory for subscribers to make an annual declaration on their ballistic missile policy and programmes and to provide advance notifications to other member States of launches of ballistic missiles and space launch vehicles. As such, the HCoC is meant to be both a regional transparency mechanism and a confidence building measure, more than an arms control agreement as traditionally understood.

### 1.2.2. *Limits*

The very first limit of the HCoC is the nature of the instrument itself: being an instrument of soft diplomacy, a code of conduct implies non-legally binding commitments and participation in the Code is voluntary. Consequently, compliance of the subscribing States with the principles of the Code cannot be monitored.

Other limits of the HCoC deal with the scope of the instrument: Cruise missiles are not concerned by the Code. Ballistic missiles targeted by the Code are restricted to “systems capable of delivering weapons of mass destruction”.

## 1.3. ASSESSMENT

There is no international norm against missiles. The MTCR is an export control regime and the HCoC is not mandatory. In the absence of a political and a legal norm, arms control has always been weak.

Iran comes as an illustration of the intrinsic deficiencies of the supply-side restrictions approach along with its strengthening through the HCoC and through an international sanctions regime focused on ballistic missiles. While the international framework against Iran’s ballistic missile programme has resulted in increased costs and slower progress so far, it has failed to halt Tehran’s programme, which has remained on track. Regardless of the outcome of the Joint Comprehensive

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<sup>11</sup> MTCR website, Frequently Asked Questions (FAQS), < <http://mtcr.info/frequently-asked-questions-faqs/> >

<sup>12</sup> Text of the Code on its official website, <[http://www.hcoc.at/?tab=what\\_is\\_hcoc&page=text\\_of\\_the\\_hcoc](http://www.hcoc.at/?tab=what_is_hcoc&page=text_of_the_hcoc)>

<sup>13</sup> Signature in The Hague, The Netherlands, 25 November 2002.



Plan of Action (JCPOA, 14 July 2015) in the future, Iran is improving the number, the range, and the accuracy of its missiles.

## 2. THE WMD FREE ZONE APPROACH

### 2.1. TREATIES THAT PLACE GENERAL LIMITATIONS ON WMDs

Several arms control treaties place limitations on WMDs without any distinction.

The 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies<sup>14</sup> bans the placement of WMD in outer space.<sup>15</sup> It appears that the definition of WMD was not an issue between the United States and the Soviet Union.

The 1971 Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-bed and the Ocean Floor and in the Subsoil Thereof,<sup>16</sup> also imposed restrictions on the placement of WMD as a whole.<sup>17</sup>

The Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (“the Moon Agreement”) was opened for signature by the UN general Assembly in 1979. Its provisions also applied to other celestial bodies in the solar system.<sup>18</sup> It entered into force on 11 July, 1984 for the signatory states only.

A USSR initiative, the proposed WMD Treaty of 1975 is also an illustration of the comprehensive approach even if it has never entered into force. The international community was asked to consider negotiation of a treaty banning new types of WMD. The deliberations eventually resulted in General Assembly Resolution 32/84 (GA R 32/84, 12 December 1977) “request[ing] the Conference of the Committee on Disarmament to continue negotiations (...)” According to GA R 32/84, “new types” of WMD would have to originate from “new scientific principles.” Even if the wording of the resolution indicates that new types of WMD would not be limited to chemical, biological, radiological and nuclear weapons if the new weapons types relied on technologies unknown when the CCA definition of WMD was adopted in 1948, ballistic missiles were not the target of the Soviet initiative.

### 2.2. OTHER DIPLOMATIC TOOLS

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<sup>14</sup> The “Outer Space Treaty”, open for signature on 27 January 1967  
<<https://treaties.un.org/doc/Publication/UNTS/Volume%20610/volume-610-I-8843-English.pdf>>

<sup>15</sup> Article 4 of the Treaty: « *States Parties to the Treaty undertake not to place in orbit around the earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, install such weapons on celestial bodies, or station such weapons in outer space in any other manner.* »

<sup>16</sup> The “Seabed Treaty”, open for signature on 11 February 1971 <<https://www.state.gov/t/isn/5187.htm#treaty>>

<sup>17</sup> Article 1.1. “*The States Parties to this Treaty undertake not to emplant or emplace on the seabed and the ocean floor and in the subsoil thereof beyond the outer limit of a seabed zone, as defined in article II, any nuclear weapons or any other types of weapons of mass destruction as well as structures, launching installations or any other facilities specifically designed for storing, testing or using such weapons.*”

<sup>18</sup> Article 3 of the Moon Agreement: “*States Parties shall not place in orbit around or other trajectory to or around the Moon objects carrying nuclear weapons or any other kinds of weapons of mass destruction or place or use such weapons on or in the Moon.*”

The proliferation of WMDs and their means of delivery was called a “threat against international peace and security” by the Security Council in January 1992.<sup>19</sup> By doing so, the UNSC did open a new path in the multilateral fight against proliferation and against emerging threats involving nuclear, radiological, biological, and chemical weapons.

Twelve years later, the Security Council could unanimously adopt Resolution 1540 (2004).<sup>20</sup> For the first time in history, a comprehensive tool of general scope against proliferation was given to the international community. This is what UNSC Resolution 1540 was and still is even if the historic scope of the instrument was not perceived as such by all States at the time of its adoption. UNSC Resolution 1540 is unique: A unilateral act by the Security Council adopted under Article VII of the UN Charter, it is mandatory in such a way that it was agreeable by everyone: Compliance means that all States would report to an agreed committee about actions “taken or intended to be taken” in order to implement the dispositions of the resolution.

Various resolutions of the UNGA devoted to WMDs as a whole have been taken over time without significant effect on the ground.

Lastly, mention has to be made of a regional initiative concluded in 1991 in Latin America when Bolivia, Colombia, Ecuador, Peru and Venezuela negotiated and adopted the Cartagena Declaration. It came as a complement the existing regional NWFZ in Latin America<sup>21</sup> in order to ban nuclear, biological, toxin and chemical weapons. This initiative can be said the first attempt to free a region from WMDs even if the Cartagena Declaration is not a legally binding instrument. But it came at a time when the concept of regional WMDFZ gained significant traction in the Middle East as well.

### 2.3. THE WMD FREE ZONE PROJECT IN THE MIDDLE EAST

If the notion of a NWFZ is by no means new, the notion of a WMDFZ is more recent. It was diplomatically mooted by Egypt in 1990 in the form of the “Mubarak proposal”, concerning the Middle East. The two notions have subsequently formally coexisted and taken shape in a series of different frameworks. Since its diplomatic formulation by General Assembly Resolution 4630 in 1991, the goal of a WMDFZ in the Middle East continued to be addressed during the annual sessions of the UN General Assembly. It resurfaced in a regional framework: the “Madrid process” and in the NPT Review Process. This double dynamic did not produce any quantifiable progress.

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<sup>19</sup> Decision of 31 January 1992 (3046<sup>th</sup> meeting), Statement by the President “*The proliferation of all weapons of mass destruction constitutes a threat to international peace and security. The members of the Council commit themselves to working to prevent the spread of technology related to the research for or production of such weapons and to take appropriate action to that end.*”

<[http://www.un.org/en/sc/repertoire/89-92/Chapter%208/GENERAL%20ISSUES/Item%2028\\_SC%20respons%20in%20maint%20IPS.pdf](http://www.un.org/en/sc/repertoire/89-92/Chapter%208/GENERAL%20ISSUES/Item%2028_SC%20respons%20in%20maint%20IPS.pdf)>

<sup>20</sup> Resolution 1540 (2004), <<http://www.un.org/en/sc/1540/>>

<sup>21</sup> Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco), 1968.

### 2.3.1. *The diplomatic process*

As to the lessons which can be learned from the diplomatic process over the WMDFZ in the Middle East project so far, three main ideas can be retained:<sup>22</sup>

- Firstly, the various instances of progress and regression are directly linked to the developments in the regional strategic and diplomatic climate. From this point of view, the argument according to which a weapon-free zone is not a prerequisite for the improvement of the regional security situation but rather the culmination of such an improvement seems to be suitably borne out by the twists and turns of the multilateral diplomatic process since the 1970s.
- Secondly, it is worth noting that the unwavering nature of States' positions does not necessarily suggest that the process has reached the point of a deadlock. Indeed, the process has evolved and expanded in spite of the different actors' intransigent redlines. The apparent inflexibility of such positions is a reality of multilateral diplomacy that by no means precludes political dialogue among the respective parties. Moreover, despite the multiple failed attempts to establish a MEWMDFZ to date, the inception of an ultimately unsuccessful initiative will not necessarily prove entirely counter-productive in the long run.
- Lastly, the goal of a WMDFZ furthers itself through its longevity and its expansion over time (in terms of the multiplication of the actors involved, the broadening of the project's field of application and the increasing precision of its terms). The resulting increasing complexity promises, without a doubt, to engender more gains than losses in terms of reinforcing the norm of non-proliferation.

### 2.3.2. *Main obstacles*

Despite the events that perturbed or intensified this process, the official positions of states in the region have remained largely unchanged: the Arab States have always entertained the idea of a WMDFZ on the condition that Israel adheres to the NPT as a non-nuclear weapons state. Israel still maintains that the creation of a WMDFZ should take into account the WMD capabilities of all states in the region and can only represent the culmination of a peace process.

## 2.4. *The case of ballistic missiles*

As of today, ballistic missiles have never been part of negotiations on WMD limitations or prohibitions.

Negotiations of the Seabed Treaty offer an interesting state of this question at the turn of the 1960s: the definition of WMD was a point of concern for the US administration. It appears that according to the US position during the negotiations, the definition would eventually have to exclude delivery vehicles: "*As used by the U.S. 'weapons of mass destruction' are those weapons that are ['] capable of a high order of destruction and/or of being used in such a manner as to destroy large numbers of people. They can be nuclear, chemical, biological, and radiological weapons, but excluding the means of transporting or*

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<sup>22</sup> See Benjamin Hauteouverture, Raphaëlle Mathiot, "A Zone free of WMD and means of delivery in the Middle East: an assessment of the multilateral diplomatic process, 1974–2010," *Background paper*, EU Seminar to promote confidence building and in support of a process aimed at establishing a zone free of WMD and means of delivery in the Middle East, Brussels, 6–7 July 2011, EUNPC, 21p.

*propelling the weapon where such means is a separable and divisible part of the weapon.*”<sup>23</sup> Accordingly, it seems that the definition did not become an issue between the US and the Soviet negotiators, which clearly means that both shared the view that ballistic missiles should not be part of strategic arms control at that time.

Twenty years later, it has to be noted that despite a detailed chapter on WMDs, the January 1992 UNSC presidential declaration does not address the delivery vehicle issue either.

Whereas the regional approaches to address WMDs generally do not imply delivery vehicles, the zonal approach in the Middle East has been an exception: the issue of delivery vehicles has become part of the scope of such a future zone over time without any success so far.

### 3. LESSONS LEARNED FROM EXISTING NUCLEAR FREE ZONES AND OTHER REGIONAL TOOLS

Generically, the idea of establishing geographical zones in which nuclear weapons would be prohibited was meant to strengthen regional security. It was first launched in the mid-1950s by the Rapacki Plan to denuclearize Central Europe as part of a European security system which was eventually abandoned. Depending of the agreed definition of a NWFZ, up to nine NWFZ have been implemented since 1969.

#### 3.1. NUCLEAR WEAPONS FREE ZONES: A REGIONAL APPROACH

The Treaty of Tlatelolco (Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean)<sup>24</sup>, which came into force in 1969, established the first ever NWFZ in an inhabited area whereas the NPT was not even in force.

As of 2017, five NWFZ have been in place on earth and four countries have declared themselves nuclear free<sup>25</sup>:

Region/country	Treaty	Entry into force	Parties	Non-signatories (within the zone)
Latin America and the Caribbean	Tlatelolco	1969	33	None
South Pacific	Rarotonga	1986	14	The Federated States of Micronesia,

<sup>23</sup> W. Seth Carus, *Defining “Weapons of Mass Destruction”*, Occasional paper 8, Center for the Study of Weapons of Mass Destruction National Defense University, National Defense University Press Washington, D.C. January 2012 (edition revised), pp.16-17.

<sup>24</sup> Treaty of Tlatelolco, <<http://disarmament.un.org/treaties/t/tlatelolco>>

<sup>25</sup> Source: UNODA. Besides, the Antarctic Treaty (1959), the Outer Space Treaty (1967), the Moon Agreement and the Seabed Treaty (1971) have to be added as NFZ treaties even if these treaties have not been agreed upon by a limited number of regional States.

				Marshall Islands, Palau
Southeast Asia	Bangkok	1997	10 (all ASEAN States)	None
Africa	Pelindaba	2009	54 signatories, 38 ratifications	South Sudan
Central Asia	Semipalatinsk	2009	5	None
Philippines	Unilateral	1987		
New Zealand	Unilateral	1987		
Mongolia	Unilateral	2000		
Austria	Unilateral	1999		

Generally speaking, all the parties to a NWFZ undertake not to develop, possess, and test nuclear weapons within their territory. Besides, nuclear weapons cannot be deployed from the outside. Compliance with the NWFZ Treaties is monitored by various means based on the safeguards system of the IAEA. Regional dedicated organs can be implemented even if no sophisticated verification mechanisms have been in place to date. Reports and specific information can be shared among the parties.

Although subject to divergent interpretations among countries, especially between nuclear weapon States and non-nuclear weapon States, NWFZs have been built on several internationally agreed criteria:

- NWFZs can be established among a small number of countries, even individual countries.
- Initiatives should come from countries within a region and participation is voluntary.
- A zone must have a monitoring and/or a verification system.
- The total absence of nuclear weapons is mandatory.
- The geographic zone of application must be clearly defined among the parties.
- A zone must be recognized as such by the UNGA.

### 3.2. OTHER REGIONAL TOOLS

In Europe, regional arms control instruments offer good illustrations since they were negotiated in a changing security environment: the CFE Treaty (1990), the Open Skies Treaty (1992), the CFE Agreement on adaptation (1999), and the Vienna documents (1990, 1994, 1999, 2011) were made possible because of the disappearance of an immediate threat of surprise attack and massive offensive action and because of a shared will of establishing a new cooperative security order in a “new Europe”.

Two other regional tools deserve attention: The 1987 Intermediate-Range Nuclear Forces (INF) Treaty and the 2005 formal system for the advance notification of missile flight tests conducted by India and Pakistan:

- The INF Treaty was signed between the USSR and the USA on December 1987, and the treaty entered into force on June 1988. The two countries had to eliminate all of their nuclear and conventional ground-launched ballistic and cruise missiles with ranges of 500 to 5,500 kilometres by 1 June, 1991. It marked the first time the superpowers had agreed to reduce their nuclear arsenals, eliminate an entire category of nuclear weapons, and utilize extensive on-site inspections for verification. As a result, a total of 2,692 short-, medium-, and intermediate-range missiles were destroyed.
- Under the India-Pakistan agreement of 2005, the country's Defence Ministries must provide their counterparts with at least 72 hours' notice before conducting a ballistic missile flight test. The two countries agreed not to allow trajectories of tested missiles to approach or land close either to their accepted borders or the Line of Control (through the disputed region of Kashmir). Nevertheless, the bilateral agreement states that pre-notification applies only to tests conducted with surface-to-surface ballistic missiles launched from land or sea. The agreement does not apply to cruise missiles. Neither does it apply to surface-to-air missiles.

Lastly, mention has also to be made of regional attempts to ban chemical weapons (CW) and biological weapons (BW) in the past. A first initiative to ban CW in Latin America emerged in the 1930s after the so-called Chaco war.<sup>26</sup> Again, a group of Latin American States acceded together to the BTWC in the 1970s. But the most significant example is the attempt by some countries to ban CW from Central Europe in the 1980s because it fuelled and supported in many ways the negotiations of a global treaty banning CW, leading to the signature of the Chemical Weapons Convention (CWC) in 1993. As Harald Muller, Aviv Melamud, and Anna Peczeli (HFSK) put it, *"despite the fact that none of the CWFZ initiatives were implemented, the European proposal proved that regional initiatives can contribute to global efforts: it provided a solid basis and background materials for the global negotiations and enhanced regional cooperation in several parts of the world."*<sup>27</sup>

### 3.3. SUCCESSES

A general assessment can be proposed for the Latin American, South Pacific, South-East Asian and African NWFZ and several lessons can be drawn.

NWFZs were designed to fit the particular needs and constraints of a region. Besides, all NWFZs were built on an existing regional architecture for cooperation and security which means that disarmament cannot take place effectively in a political and diplomatic vacuum. On the contrary, a first level of predictability is required to go further as to create a bigger level of stability and predictability between States in a given region.

Each NWFZ was negotiated among a limited number of parties, which helped the negotiations to come to a success. On the contrary, the WMD-FZ in the Middle East project has always been

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<sup>26</sup> Paraguay vs Bolivia

<sup>27</sup> Harald Müller, Aviv Melamud, Anna Peczeli, From Nuclear Weapons to WMD: The Development and Added Value of the WMD-Free Zone Concept, Non-Proliferation paper No.31, September 2013, pp.8

addressed as an issue to be dealt with by all States of the region, one of the reasons why consensus on an agenda for negotiations has never been possible.

Conversely, NWFZ have consolidated the nuclear non-proliferation regime, bringing local support to the global normative structure in legal and political terms.

A NWFZ can be considered as a confidence and security-building measure (CSBM) between States of the zone. To that extent, the implementation of a NWFZ is both a regional non-proliferation and a security-building measure.

It is generally agreed that the Tlatelolco Treaty provided fora for promoting regional security discussions. Furthermore, it offered an impetus to further CBMs in the region.<sup>28</sup> Other benefits include the implementation of a sustained region-wide verification and compliance mechanism, and the fact that the Treaty provides a framework of constraints in the case of a potential crisis between States of the region.

Among the lessons that can be drawn from the Southeast Asian NWFZ<sup>29</sup>:

- CBMs preceded the establishment of the zone.
- Peace was a condition. Once it prevailed, agreeing to establish a zone was not an issue.
- Scope goes beyond nuclear weapons to other nuclear dangers.
- Can be faulted for giving priority to process over substance.

### 3.4. CHALLENGES

According to the Mexican diplomat Alfonso Garcia Robles in the 1960s, the zonal approach of nuclear disarmament and non-proliferation was to shrink gradually the areas where nuclear weapons were perceived necessary to national and/or regional security. Indeed, it can be argued that the Tlatelolco Treaty exerted a knock-on effect for other parts of the world being encouraged to follow. But even if the number of NWFZs has progressively increased over time, to a large extent this hope has proven to be wrong as fifty years have passed: the exemplarity of the zonal approach has been very limited in the main zones of conflict in the world so far.

The European landscape offers an interesting illustration since the increasing distrust between Russia and Western States has brought the regional arms control framework to a dead-end (CFE and INF being particular cause for concern) recently.

When agreed upon, the India-Pakistan 2005 agreement on pre-notification reflected mutual reservations but it had been made possible by previous agreements on stabilizing measures and CBMs, such as the April 1991 bilateral agreement on the Advance Notice on Military Exercises,

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<sup>28</sup> Landmines and small arm controls for instance (see Michael Hamel-Green, Regional Initiatives on Nuclear- and WMD-Free Zones - Cooperative Approaches to Arms Control and Non-proliferation, UNIDIR 2005/19.)

<sup>29</sup> For a more detailed analysis, see Mark Fitzpatrick, CBMs in Southeast Asia, Capacity-building Workshop for mid-level Diplomats in support of the Helsinki Conference on a Middle East WMD Free Zone, 18-19 June 2014, EUNPC, 4pp.

Manoeuvres and Troop movements or the Lahore Declaration and the MoU of February 1999 on the importance of missile launch notification.

## CONCLUSION

### ASSESSMENT

The WMDFZ approach, with different degrees of success, proves interesting to provide further initiatives banning ballistic missiles.

A weapon-free zone is not a prerequisite for the improvement of the regional security situation but rather the culmination of such an improvement. In any case it has to be understood as a long-term goal and a sum of small steps.

Several lessons drawn from the establishment of NWFZs can be of real interest from a methodological point of view.

The proliferation of missiles has been a particular cause for concern in the Middle East for many years. The strategic landscape in the Gulf shows that missile proliferation and missile uses on the battlefield have been a reality, even if no state has developed a national missile programme as has Iran. Iran is improving its missile programmes (number, range, and accuracy). In particular, Iran has developed cruise missiles with increased accuracy and ranges of up to 1,250 miles. It is trying to develop precision-guided conventional missiles.

If one looks in detail at the current situation in the Middle Eastern region, two dynamics can be observed as far as conventional missiles capabilities are concerned:

- First, Gulf Cooperation Council states are working to pair offensive and defensive missiles, to increase their precision strike capabilities to hit command and control centres, Iranian mobile launchers, and bunkers. In return, Iranians have been complaining that the United States is dangerously militarizing the region. But their only option is to have the capacity to saturate the GCC's missile defences with waves of ballistic missiles. This Iranian strategy leads the GCC states to purchase more missile defence equipment. These dynamics indicate that the region may face a conventional missile race in the near future.
- Second, one witnesses a competition between States in the Gulf as to their offensive and defensive capabilities, especially between the Saudis and the United Arab Emirates. So far all of the efforts to convince the GCC to cooperate closely on defence issues have failed.

### RECOMMENDATIONS

Combating proliferation networks must remain a priority.

Efforts to address the proliferation economy have started at the beginning of the 2000s. They need to be sustained.

As a general case, studies by regional experts on the relevance for a given region to apply proposals made in other regional contexts to limit the risks posed by WMD delivery vehicles could be produced. For instance, regional experts could meet to address the relevance of missile test



notification agreements for a given region such as the India-Pakistan agreement, or to address existing cases of delivery system dismantlement.<sup>30</sup>

Considering the absence of a robust global or regional framework against the proliferation of ballistic missiles, a WMDFZ approach *per se* seems too ambitious a goal at the moment. It would rather be more effective to support smaller initiatives in scope, such as bilateral agreements on delivery vehicles CBMs between States of concern.

As to the Middle East, the international community should focus its efforts on strengthening enforcement of the extensive ballistic missile sanctions on Iran to continue to slow Tehran's missile programme and pursue region wide restrictions on ballistic missiles in the region. Rather than focusing the efforts on a zone free of missiles in the region, attention should be given to long-range ballistic missiles. At the moment, there is no hope for Iran to stop developing its capabilities when Saudi Arabia and Israel field ballistic missiles capable of targeting Iran. Then two specific initiatives can be recommended for the near future:

- First, Iran might be willing to abide by missile limits as part of a region wide effort to ban longer-range ballistic missile systems. The EU could encourage regional track 2 dialogues on this issue as a first step.
- Second, the co-conveners of the so called “2012 Helsinki conference” could encourage, and support, a region wide effort to negotiate a ban on missiles capable of carrying WMDs. Such effort could be proposed and supported by the EU during the current NPT review process towards 2020.

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<sup>30</sup> Like the one under the INF Treaty.

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