

The Issue of ‘Delivery Systems’ in a Middle East Zone Free of Weapons of Mass Destruction

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Background paper

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2 EU NON-PROLIFERATION CONSORTIUM

About the Author

Ambassador Carlo Trezza is a member of the UN Secretary-General's Advisory Board for Disarmament Matters and former Italian Permanent Representative for Disarmament in Geneva. Ambassador Carlo Trezza has just been appointed as the Missile Technology Control Regime chairman for next year, when Italy will chair the MTCR and host its plenary conference.

Abbreviations

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| ACRS | Arms Control and Regional Security |
| HCoC | The Hague Code of Conduct |
| INF | Intermediate-Range Nuclear Forces Treaty |
| MTCR | Missile Technology Control Regime |
| NPT | Treaty on the Non-Proliferation of Nuclear Weapons |
| UAV | Unmanned Aerial Vehicle |
| UNMOVIC | UN Monitoring, Observation, Verification and Inspection Commission |
| UNODA | UN Office of Disarmament |
| UNSC | UN Security Council |
| UNSCOM | UN Special Commission |
| WMD | Weapons of Mass Destruction |
| WMDFZ | Weapons of Mass Destruction-Free Zone |

The Issue of 'Delivery Systems' in a Middle East Zone Free of Weapons of Mass Destruction

Negotiating a zone free of weapons of mass destruction in the Middle East is a complicated matter and there are no precedents: so far only zones free of nuclear weapons have been established. There is also no precedent for the establishment of such a zone in an area undergoing a permanent political and military crisis, where WMD have been used and, allegedly, still exist. The conference to negotiate a WMD-free zone in the Middle East was called by a forum, the NPT Review process, which only has jurisdiction over nuclear issues and only over states party to the NPT. It has no jurisdiction over the remaining WMD.

But there are further complications to creating such a zone: the founding document for the establishment of the zone, the 2010 NPT Review Conference declaration on the Middle East, requires maintaining a 'parallel progress, in substance and timing, in the process leading to achieving the total elimination of WMD in the region.' Negotiations on nuclear, chemical and biological weapons should therefore evolve simultaneously. A breakthrough on one single issue would not be permitted under the declaration.

Finally, both the 2010 declaration and the original founding document (the 1995 NPT Review and Extension Conference resolution on the Middle East) provide not only for the elimination of all WMD but also for the elimination of their 'delivery means.' Although this may initially seem an additional obstacle, it could turn out to be an opportunity.

In a previous publication¹ I indicated a list of the most significant precedents of multilateral norms on WMD delivery systems which could serve as a term of reference for the 2012 Conference on the Middle East. Following is an adjusted and updated version of that list:

The Missile Technology Control Regime (MTCR) was formed in 1987 and seeks to limit the risks of proliferation by controlling exports of goods and technologies that could make a contribution to WMD delivery systems (other than manned aircraft). The regime places particular focus on missiles and unmanned aerial vehicles (UAV) capable of delivering a payload of at least 500 kg and having a range of at least 300 km. These parameters could be a useful reference point for the Middle East negotiators.

MTCR, however, is a technology transfer regime and not the regional weapons prohibition instrument foreseen by the NPT 2010 declaration on the Middle East. It is not legally binding and does not include a verification mechanism. The MTCR exclusion of manned aircraft would not apply to the WMDZFZ in the Middle East. Turkey is one of the 34 MTCR members.

The MTCR parameters have also become a point of reference for bilateral engagements. Under an agreement between South Korea and the US, first signed in 1979 and revised in 2001, the range of South Korean ballistic missiles is limited to 300 kilometres and their payload to 500 kilograms, like in MTCR. The deal was revised a few weeks ago: the range limit is now 800 kilometres and the payload can be increased depending on the range of the missile.

The 1988 INF Treaty between the US and USSR on the prohibition of their intermediate and shorter-range nuclear missiles (defined as having a range between 500 and 5,500 km) appears to be the most suitable bilateral term of reference for a total prohibition of missiles

¹ Carlo Trezza: paper presented during a May 2012 meeting in Alghero on the MEWMDZFZ Conference under the auspices of the Peace Research Institute Frankfurt.

4 EU NON-PROLIFERATION CONSORTIUM

capable of delivering WMD. This issue was addressed in an interesting recent article.² The Treaty's sophisticated dismantlement techniques and verification measures, including the use of 'national technical means', are indicative of the high level of requirements and costs involved in missile elimination and verification mechanisms.

The 1991 UN Register of conventional arms requires all UN member states to report on weapons transfers including missiles, missile launchers and combat aircraft. Although there is no legal obligation, all Middle Eastern states are expected to notify the UN of their missile and combat aircraft exports and imports. According to the latest UN report, no Middle Eastern country made any submission in 2011.

Although delivery systems *per se* were not on its agenda, the Arms Control and Regional Security in the Middle East (ACRS) discussions were the most significant regional attempt to deal with arms control in the Middle East. Established in 1991, they came to an end in 1995 without achieving any meaningful result. They were held within the framework of the Middle East peace negotiations and therefore had a specific Arab/Israeli connotation. The ACRS discussions focused mainly on confidence building. Missiles were among the weapons subject to elimination and verification by the two mechanisms, UNSCOM and UNMOVIC, established by UNSC resolutions 687 and 1284 regarding Iraq. These resolutions introduced drastic measures for elimination and intrusive verification. Resolution 687 of 1991 provided, *inter alia*, for the 'destruction, removal, or rendering harmless, under international supervision ... of all ballistic missiles with a range greater than 150 kilometres and related major parts and repair and production facilities'. With resolution 1284 of 1999, UNSCOM was replaced by UNMOVIC, which acted on the same missile parameters with a reinforced inspection system. Iraqi missiles were actually destroyed under UNMOVIC supervision.³

The Hague Code of Conduct (HCoC), which is an offshoot of the MTCR, is basically a transparency mechanism for missile transfers adopted in 2002. Its main features are information exchanges by states on their policies regarding ballistic missiles and space launch vehicles and pre-notification of their launches. The Code refers exclusively to ballistic missiles and space launch vehicles.

All states of the region are also legally bound by UNSC resolution 1540 of 2004 which affirms that proliferation of WMD 'as well as their means of delivery' constitutes a threat to international peace and security. The implication of such language is that international sanctions and even the use of force under chapter 7 of the UN Charter can be envisaged. For the purposes of resolution 1540 the term 'means of delivery' is defined as 'missiles, rockets and other unmanned systems capable of delivering nuclear, chemical, or biological weapons that are specially designed for such use.' More specific definitions would probably be necessary for a regional prohibition which would also have to include aircraft. But they could all be founded on the UNSCR 1540 definition.

UNSC resolution 1929 of 2010, the latest resolution regarding the Iranian nuclear problem, also contains references to missiles. It indicates that Iran shall not undertake any activity related to missiles capable of delivering nuclear weapons. States shall not supply Iran with combat aircraft, missiles or missile systems. The Syrian missile activities are not restrained by any UNSC resolution. The mechanisms established for Iraq and Iran are formulated as

² Michael Elleman: Banning Long-Range Missiles in the Middle East. A First Step for Regional Arms Control, on *Arms Control Today* (May 2012).

³ On WMD and missile elimination prior to the 2003 Iraq War, see the fascinating book: Hans Blix, *Disarming Iraq*, New York: Pantheon (2004).

sanctions and would not be suitable for a voluntary and consensual process such as the one foreseen under the NPT auspices.

In view of the peculiarity of the NPT mandate and of the persistence of intra- and interstate tension and violence in the entire region, exacerbated by the developments during the Arab Spring, legally binding and verifiable prohibition and elimination of WMD and their delivery systems appears a distant objective. Joining and effectively implementing existing legally and non-legally binding relevant commitments, so far widely neglected in the Middle East, would be a more achievable goal. The first step towards an arms reduction process should however be the establishment of a set of confidence-building measures as indicated in para. 6 of the 2010 NPT declaration on the Middle East. This provision applies to all WMDs as well as to delivery systems.

Surprisingly, the wording of that declaration suggests that only negotiations on WMD should evolve in parallel: delivery systems are not mentioned. Unless one believes that these systems should be dealt with separately for nuclear, chemical and biological weapons – something which would cause confusion and duplications – a 'stand-alone' table jointly dedicated to all WMD delivery systems could follow an independent and possibly faster track.

The most straightforward way to initiate the process would be for Middle Eastern countries to join the HCoC Code, which, as a measure of soft security, would enhance confidence in the region. Libya, Jordan, Iraq, Turkey, Morocco and Sudan are among the 134 countries having already joined it. Regional transparency measures are specifically foreseen by the Code.

The UN Register of Conventional Arms contemplates reporting on transfers of delivery means, such as missiles, combat aircraft and even 'large-calibre artillery'. All these weapons are 'dual systems' capable of delivering conventional and non-conventional arms. Implementation of the Register's provisions is pertinent to the Middle Eastern WMD context and would therefore be a meaningful confidence-building step.

The selection of the 'relevant international organizations' called upon to prepare background conference documentation on delivery systems (MTCR, HCoC, UNODA, civil society?) and the definition of the term 'delivery systems,' primarily based on range and payload, will probably turn out to be one of the first issues to be resolved. Preparatory reflection now will probably make life easier at the time of the conference.