

# International Ju-Jitsu: Using United Nations Security Council Resolution 1540 to advance nuclear disarmament

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## **Introduction: Ju-Jitsu and Resolution 1540**

In the 16<sup>th</sup> Century Shirobei Akiyama, a Japanese man studying medicine in China, noticed that in a heavy blizzard branches of most strong trees broke while the elastic branches of the willow tree bent and efficiently freed themselves from the snow. He thus developed a martial art called *Ju-Jitsu*, which aims not to neutralize power with power but rationally absorb an attack and convert that energy to the opponent's own detriment.

On April 28, 2004, the United Nations Security Council adopted [Resolution 1540](#) requiring all States to take measures to prevent non-State actors from acquiring or developing nuclear, chemical and biological weapons, and to prevent the proliferation of nuclear, chemical and biological weapons in general.

Critics of the resolution fear that it provides a mandate for the powerful countries that already possess nuclear weapons, particularly the permanent members of the Security Council (P5), to impose pressure or even use force to prevent other States and non-State actors to acquire such weapons themselves (see [United Nations Security Council Unanimously Passes WMD Resolution](#), The Sunflower, May 2004).

While there are definitely problems with the resolution, peace activists would be well advised to adopt the *Ju-Jitsu* approach and utilize the political momentum for action required by the UN resolution to move their governments to strengthen the norms and controls not only against the spread of nuclear, biological and chemical weapons, but also against those possessed and deployed by the P5.

Thankfully, last minute changes in the resolution, made at the insistence of non-P5 Security Council members, provide political opportunities to do just this.

## **Disarmament obligations in Resolution 1540**

The resolution notes that proliferation means 'proliferation in all its aspects of all weapons of mass destruction,'<sup>1</sup> and that action to prevent proliferation includes the implementation of 'multi-lateral treaties whose aim is to eliminate or prevent the proliferation of nuclear, chemical or biological

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<sup>1</sup> Pre-ambular paragraph 2

weapons,<sup>2</sup> and the need for ‘all member States to implement fully the disarmament treaties and agreements to which they are party.’<sup>3</sup>

The resolution can thus be read to refer to efforts to prevent both horizontal proliferation (spread of weapons and related materials to those who do not yet have them) and vertical proliferation (continued possession, deployment and development of weapons by those already in possession of them). Such a reading is consistent with the disarmament obligations in the key multilateral treaties which aim to prevent proliferation of nuclear, chemical, and biological weapons – referred to in the UN Security Council resolution - including Article VI of the Non-Proliferation Treaty, and the prohibition of chemical and biological weapons in the Chemical Weapons Convention and Biological Weapons Convention.

## **Reporting**

Under the resolution, the Security Council established a Committee of the Security Council, consisting of all members of the Council, and called on all States to present a first report to the Committee within six months on steps they have taken or intend to take to implement the resolution. The reporting process provides an opportunity for all States to report on steps taken and steps planned to address both the vertical and horizontal proliferation of nuclear, chemical and biological weapons.

In addition to the pre-ambular language calling for ‘all member States to implement fully the disarmament treaties and agreements to which they are party,’<sup>4</sup> UNSC Resolution 1540 specifically ‘calls upon all States to promote the universal adoption and full implementation, and where necessary, strengthening of multilateral treaties to which they are parties, whose aim is to prevent the proliferation of nuclear, biological and chemical weapons.’<sup>5</sup>

Thus States should report not only on steps taken domestically to implement their own disarmament and non-proliferation obligations, but also on steps taken to promote the regional and international implementation of disarmament and non-proliferation obligations, including encouragement given to the Nuclear Weapon States to achieve complete nuclear disarmament.

## **Peaceful resolution of related conflicts**

UNSC Resolution also calls on ‘all Member States to resolve peacefully in accordance with the Charter any problems in that context (i.e. relating to proliferation of all weapons of mass destruction) threatening or disrupting the maintenance of regional and global stability.’<sup>6</sup> This provides an opportunity for States to highlight peaceful methods for resolving such problems and to report on methods they have used or promoted. This could include:

- Recourse to the International Court of Justice to solve the dispute of the legality of the threat or use of nuclear weapons (ICJ Advisory Opinion of 1996)

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<sup>2</sup> Pre-ambular paragraph 5

<sup>3</sup> Pre-ambular paragraph 13

<sup>4</sup> Pre-ambular paragraph 13

<sup>5</sup> Operative paragraph 8 (a)

<sup>6</sup> Pre-ambular paragraph 3

- Support for United Nations Security Council action to respond to the nuclear, chemical and biological weapons programmes of Iraq, and opposition to the use of force by countries acting outside the United Nations (US and UK use of force against Iraq)
- Opposition to the doctrine of the pre-emptive use of nuclear weapons to respond to the threat of nuclear, biological or chemical weapons (US National Security Strategy)

## **Criminal law**

UNSC Resolution 1540 requires all States to adopt and enforce laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery.<sup>7</sup> States in implementing this obligation should extend such laws to include any person, regardless of whether they are a non-State actor or official of a State. This would be consistent with the objectives of the resolution, as outlined in the preamble which does not distinguish between State and non-State actors in determining proliferation risks.

Many countries have already adopted criminal laws relating to both State and non-State actors with respect to chemical weapons as part of their actions to implement the Chemical Weapons Convention. Some countries, e.g. New Zealand, have adopted such laws with respect to nuclear weapons (much to the displeasure of some of the Nuclear Weapon States). States should affirm that a discriminatory approach, i.e. prohibiting acts only if undertaken by non-State actors, would fail the legal principle of universality (the law must apply to all) and would encourage proliferation under the cover of agents of the State. The recent revelations of proliferation organized through the Khan network involving both non-State and State actors, indicates the necessity for responsibility to extend to State actors as well as non-State actors.

Adopting criminal laws which apply to both State and non-State actors would strengthen the global norm of illegality of nuclear, biological and chemical weapons.

## **Assistance to other States**

UNSC Resolution 1540 invites States to offer assistance to other ‘States lacking the legal and regulatory infrastructure, implementation experience and/or resources’<sup>8</sup> to fulfill the provisions of the resolution. Some observers fear that this section was inserted at the wishes of the United States in order to provide legitimacy for them to dictate to other States how they should deal with the proliferation of nuclear, biological and chemical weapons. If such assistance is only left to the USA and other Nuclear Weapon States, countries will no doubt be encouraged to implement only the counter-proliferation and horizontal non-proliferation aspects of the resolution and ignore the disarmament provisions. However, the provision does provide the possibility for States with strong non-discriminatory laws against nuclear, chemical and biological weapons, to assist other States to develop similar laws.

## **Disarmament Education**

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<sup>7</sup> Operative paragraph 2

<sup>8</sup> Operative paragraph 7

UNSC Resolution 1540 calls upon all States to ‘develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws [arising from multilateral treaties to which they are parties].’<sup>9</sup>

This provides an opportunity for States to report on actions undertaken to inform and educate industry and public on non-proliferation issues including work done to implement the recommendations of the United Nations Study on Disarmament and Non-Proliferation Education.

### **Transit through territorial waters**

The first paragraph of UNSC Resolution 1540 affirms ‘that proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, constitutes a threat to international peace and security.’ As such, activities on the high seas, involving the proliferation of nuclear, chemical and biological weapons could be considered as inconsistent with the United Nations Convention on the Law of the Sea which reserves the seas for peaceful purposes consistent with ‘the principles of international law embodied in the Charter of the United Nations.’<sup>10</sup>

Coastal States have authority in their territorial waters to prevent passage which is not innocent,<sup>11</sup> including passage which is ‘prejudicial to the peace, good order or security of the coastal State,’<sup>12</sup> or passage which is ‘in violation of the principles of international law embodied in the Charter of the United Nations.’<sup>13</sup>

States could therefore respond to the resolution by prohibiting the passage of nuclear, chemical and biological weapons and their means of delivery through their territorial waters.

### **Regional and international collaboration**

UNSC Resolution 1540 ‘Calls upon all States to promote dialogue and cooperation on non-proliferation...’<sup>14</sup> Some States have joined the Proliferation Security Initiative (PSI), which aims to develop cooperation between States to address proliferation of nuclear, chemical and biological weapons and their means of delivery.

However, there is a risk that unilateral and coalition actions like PSI could undermine the work of multilateral approaches and mechanisms to address non-proliferation if such actions do not adhere to non-discriminatory norms and principles of international law.

States participating in PSI should report on such participation to the Committee of the Security Council, and ensure that such actions are consistent with the following principles<sup>15</sup>:

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<sup>9</sup> Operative paragraph 8 (d)

<sup>10</sup> United Nations Convention on the Law of the Sea, Article 301

<sup>11</sup> United Nations Convention on the Law of the Sea, Article 25

<sup>12</sup> United Nations Convention on the Law of the Sea, Article 19 (1)

<sup>13</sup> United Nations Convention on the Law of the Sea, Article 19 (2) (a)

<sup>14</sup> Operative paragraph 9

<sup>15</sup> Presented by the Global Security Institute to the Seminar on Weapons of Mass Destruction and the United Nations, New York, Mar 5, 2004. Convened by the government of New Zealand and the International Peace Academy.

1. Strive for universality, transparency in decision making with proper regard for legitimate commercial and security interests, verifiability, and equity in application.
2. Ensure strict compliance with existing international law relating to transit, such as the United Nations Convention on the Law of the Sea.
3. Reinforce the verification regimes of the Chemical Weapons Convention and the Nuclear Nonproliferation Treaty and assist in the creation of strengthened verification methods for the Biological Weapons Convention.
4. Strengthen mechanisms within the existing regimes to more clearly determine prohibited and permitted activities relating to transport of identified materials, components, and technologies.
5. Apply constraints and principles in a universal and equitable manner.
6. Apply restrictions in such a manner as to reinforce the existing arms control, nonproliferation and disarmament commitments and norms contained in treaty regimes.
7. Assist in establishing objective positive standards by which countries are determined to be in good standing with the existing relevant treaty regimes.
8. Ensure all measures reinforce the United Nations system and the rule of law.

## **Nuclear Energy**

While the NPT affirms the right of States to use nuclear energy for peaceful purposes, nuclear reactors create a very real proliferation risk with all known cases of nuclear proliferation arising from the diversion of fissile materials from nuclear reactors or from the diversion of uranium supposedly enriched for nuclear reactors. Countries which have foresworn the development of nuclear reactors could report on their capabilities to produce sufficient energy in alternative ways in order to encourage other States to phase out or forgo nuclear energy.

## **International steps**

In order to prevent the proliferation of nuclear weapons to States and non-State actors, a vital immediate step would be to achieve an international agreement to prohibit the production of fissile materials and place all existing stocks under international control. Such a measure would curtail the ability of States and non-State actors to acquire fissile material and use it to produce nuclear weapons. Concurrent steps which would curtail the ability of States and non-State actors to acquire nuclear weapons would be to disarm and disable all existing nuclear weapons pending the completion of negotiations on their elimination. The only guarantee against the proliferation of nuclear weapons to States and non-State actors is to eliminate the existing nuclear weapons and the means to produce them. This message should be made to the Committee of the Security Council by as many States as possible, along with other plans, proposals and actions leading to complete nuclear disarmament.

## **Conclusion**

UN Security Council Resolution 1540 provides opportunities for significant disarmament steps by States, including opportunities to put pressure on nuclear weapon States to implement their

disarmament obligations. The degree to which States act on these opportunities will depend mostly on how much encouragement and support they receive from disarmament advocates globally. So in short, it is up to us to make this happen and turn Resolution 1540 into a positive tool for disarmament.

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