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## Building a Layered Defense to Combat Weapons of Mass Destruction (WMD) Terrorism

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September 11, 2001 sounded the alarm on the danger of terrorists carrying out attacks with ever more destructive weapons. Today, the United States and our international partners face terrorist enemies who seek to acquire and use chemical, biological, radiological, and nuclear weapons against innocent civilians. Since 9/11, the United States and the international community have taken important steps to combat this growing threat. The United States released its first comprehensive National Strategy to Combat Weapons of Mass Destruction (WMD) in December 2002. In April 2004, the United Nations Security Council adopted Resolution 1540. This resolution represents a cornerstone in the international legal foundation against WMD terrorism.

Important as strengthening this legal foundation is, our task at the State Department is also to build on that legal framework through the development with our partners of a global layered defense against WMD terrorism. Enacting laws is only the first step; success in stopping criminal behavior comes only if societies are willing and able to enforce them. We well know that often enforcement neither reaches where the terrorists reside nor is carried out in a manner sufficient to deter them. In leading the fight against WMD terrorism, the United States must work with partner nations to back Resolution 1540 with effective, integrated, and sustainable capabilities. Only then can we succeed in preventing, protecting against, and responding to this growing global risk.

### UN Security Council Resolution 1540: A Tool for Combating WMD Terrorism

UN Security Council Resolution 1540 affirmed that the proliferation of WMD to terrorists threatens international peace and security. Because Resolution 1540 was adopted under Chapter VII of the UN Charter and enjoys widespread support, it can play a growing role in encouraging partner capacity building to combat WMD terrorism. The Resolution mandates that ". . . all states shall 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." Resolution 1540 also requires all States to "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 their means of delivery." The resolution also takes care to define a non-state actor as an "individual or entity, not acting under the lawful authority of any state in conducting activities which come within the scope of this resolution," a definition that captures terrorists as well as terrorist facilitators. Resolution 1540 reminds us that the proliferation of the world's most dangerous weapons to the world's most dangerous actors requires states to take on new duties if they wish to remain in good standing within the international community.

### **The Emerging International Legal Framework to Combat WMD Terrorism**

While important in its own right, we see Resolution 1540 as but one step in a larger effort to strengthen the international legal framework to combat WMD terrorism. For example, in 2001, the UN Security Council adopted Resolution 1373, which obligated states to take additional steps to combat the threat of international terrorism, and specifically acknowledged "the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms trafficking, and illegal movement of nuclear, chemical, and biological and other potential deadly materials." Both Resolutions 1540 and 1373 established committees to monitor their implementation and to match donors with states requiring assistance in meeting their obligations. The development of an international legal framework to combat WMD terrorism continued in 2005 with the adoption of the Nuclear Terrorism Convention in April and adoption of an Amendment to the Convention on the Physical Protection of Nuclear Material in July. Both of these instruments, once they have entered into force, will strengthen the legal basis for cooperation to prevent and suppress acts of nuclear terrorism.

Amidst these various international legal accomplishments, a careful review reveals gaps that continue to exist in our legal framework against WMD terrorism. For example, there is an urgent need to secure not only adoption but also ratification, as well as full national implementation, of the Nuclear Terrorism Convention and the Amendment to the Convention on Physical Protection of Nuclear Materials. Nor should we remain content with the criminalization of acts of WMD terrorism, the focus of both the Nuclear Terrorism Convention and the International Convention for the Suppression of Terrorist Bombings. Criminalization forms but one element in a comprehensive legal strategy for deterring terrorists and their facilitators from planning, preparing, and carrying out attacks involving WMD. International legal consensus has traditionally prohibited imposing criminal penalties on unwitting facilitators of terrorism, pointing to the time honored tradition of mens rea, or the guilty mind requirement. However, civil and administrative penalties, as well as novel concepts of strict liability, could step in to fill this gap, and prevent and deter unwitting facilitators in the public and private sector from engaging in high risk activity that contributes to the proliferation of WMD to terrorists.

### **Taking a Strategic Approach to Combating WMD Terrorism: A Global Layered Defense**

While international legal frameworks are a starting point, a strategic approach to combating WMD terrorism begins by recognizing that the increasingly decentralized nature of terrorist and terrorist facilitation networks demands a cooperative and global response from a growing range of like-minded nations. The United States must work together with partner nations and international organizations to develop a global layered defense against this threat.

A layered defense, or defense-in-depth, is a strategic concept employed in a diverse range of security-related fields, from missile defense to cybersecurity. Its central premise, applicable to combating WMD terrorism, is that no single layer, or capability, can provide us with sufficient protection against a determined and adaptable terrorist adversary. However, a terrorist or a terrorist facilitator who has to overcome multiple defenses in the course of his attack plan is more likely to be detected or deterred, or to fail during the attempt. We must also beware that terrorists who suffer defeat may

provide valuable information regarding the points of vulnerability in our current defenses. Our challenge then is to improve our defenses – to add new "layers" – on a continuous basis in such a way as to defeat terrorists employing novel tactics or seeking to exploit previous vulnerabilities. A well functioning layered defense should focus not merely on determining terrorist intentions and capabilities but should also involve the development of targeted strategies whose purpose is to shut down the ability of specific terrorist organizations to acquire and use WMD.

A layered defense must consist not only of laws and regulations effectively implemented and enforced, but also of a broad range of interoperable systems, tools, procedures, algorithms, and other innovative capabilities. These capabilities, in concert with the right legal framework, enable law enforcement, military, first responders, and other security officials to take rapid and confident action to prevent, protect against, and respond to the threat or use of WMD by terrorists. A global layered defense against WMD terrorism will take years to develop, and its successful integration will require extensive cross-border information sharing, R&D and technical cooperation, the spreading of legal and regulatory best practices, and regular training and exercising in joint and combined formats to identify and fix gaps or weaknesses in our collective defenses.

The disciplines involved in combating WMD terrorism will require international cooperation across the full spectrum of partner government agencies, including but not limited to Ministries of Foreign Affairs, Defense, Interior, Finance, Science and Technology, Energy, Health, Environment, Customs, as well as related regulatory agencies. Our way forward is identified in the U.S. National Strategy to Combat Weapons of Mass Destruction, released in 2002. It says: "One of the most difficult challenges we face is to prevent, deter, and defend against the acquisition and use of WMD by terrorist groups. The current and potential future linkages between terrorist groups and state sponsors of terrorism are particularly dangerous and require priority attention. The full range of counterproliferation, nonproliferation, and consequence management measures must be brought to bear against the WMD terrorist threat, just as they are against states of greatest proliferation concern."

We chart this course with the benefit of lessons learned from some important successes achieved in recent years. The Proliferation Security Initiative (PSI), announced in 2003, provides an example of how states can work together in a post 9/11 environment to achieve important objectives regarding today's most urgent threats. Consisting of over seventy partners, PSI has led to a significant improvement in our collective interdiction capabilities by employing the full range of national assets to the development of flexible operational concepts that take into account a range of complex jurisdictional challenges.

Important as interdiction is, a comprehensive approach to combating WMD terrorism extends beyond interdiction capabilities. It involves developing and deploying capabilities to prevent and deter the full range of linkages – transport, travel, communications, and financial – between terrorists seeking WMD and their facilitators. Protecting against WMD terrorism requires capabilities to detect and disrupt such linkages, while minimizing harm to innocent civilians and law abiding institutions in the process. In the event a terrorist succeeds in attacking us with WMD, our response measures should include cooperative consequence management to save lives and mitigate economic loss and attribution techniques to increase our chance of bringing terrorists and their facilitators to justice, while deterring future terrorists from considering a similar path.

### **Combating the WMD-Terrorist Nexus in an Age of Globalization**

I thank those who organized this event and especially those who had the vision to establish a panel within this conference

to focus on the preeminent threat to international peace and security today, weapons of mass destruction in the hands of terrorists. The globalization of trade, finance, and communications has increased the complexity of this threat and counsels for a global response. The worldwide expansion of the Internet and of tightly linked intermodal transportation networks have unleashed our collective productivity and accelerated the speed of institutional change across our societies and within our governments. The task of our generation is to make certain that all nations can benefit from these technological and economic trends, are positioned to take the necessary and proper steps to establish effective governance over new activities enabled by these innovations, and at the same time can marshal these breakthroughs to help develop integrated and capable international coalitions to confront and defeat the nexus of terrorists and WMD in all its forms. Thank you.

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