

UN Security Council Resolution 1540: Historical analysis, current status of implementation, and a look to the future

By Johan Bergenäs and Dr. Lawrence Scheinman¹

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What is UNSCR 1540?

United Nations Security Council Resolution 1540, adopted in April 2004, is one in a series of measures taken to address threats to the political and social order deriving from access to, or use of, weapons of mass destruction, related materials, and their means of delivery. As such it is an important addition to the web of treaties, accords, agreements and UN Security Council decisions that constitute the global nonproliferation regime. The resolution, implementation of which is an ongoing process, aims to prevent non-state actors, such as terrorist organizations, from gaining access to chemical, biological and nuclear weapons, as well as means of their delivery, such as missiles.

To that end, UNSCR 1540 requires 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.”² In this regard, two of the resolution’s 12 operative paragraphs (OP) are of considerable importance. OP2 requires all UN member states to adopt and enforce *domestic laws* with a view to criminalizing and punishing non-state actors who “manufacture, acquire, possess, develop, transport, transfer

or use,” so called weapons of mass destruction (WMD), their means of their delivery, and related materials.³ OP3 details the *domestic controls* that states shall establish and maintain, including: accounting and security for WMD, their delivery vehicles, and related materials “in production, use, storage or transport.” OP3 also requires physical protection measures – border controls and enforcement measures to “detect, deter, prevent and combat...the illicit trafficking and brokering,” of WMD as well as export, transshipment, and re-export controls, controls on funding and services benefiting these activities, end-user controls, and the adoption and enforcement of laws to this end.

UNSCR 1540 is distinct in several respects from other nonproliferation regime mechanisms. First, it focuses on non-state actors rather than on state proliferation. Second, it covers all three WMD types - chemical, biological and nuclear weapons. Third, in contrast to the flagship treaties governing state behavior in each respective weapons category, the Nuclear Nonproliferation Treaty (NPT), the Chemical Weapons Convention (CWC) and the Biological Weapons Convention (BWC), UNSCR 1540, was not multilaterally negotiated, but a result of a decision taken by the 15 member states in the UN Security Council at the time.⁴ Fourth, by being adopted under Chapter VII of the UN Charter, the resolution is binding on all UN member states, which goes beyond existing anti-terrorism conventions that collectively impose similar, though less comprehensive, obligations on convention parties. Fifth, in contrast to UN Security Council Resolutions specifically targeting a country in violation of its obligations under the NPT, (for example recent sanctions resolutions against Iran and North Korea), UNSCR 1540 is concerned with the general global threat posed by WMD terrorism.

Why a WMD terrorism resolution?

The September 11, 2001 terrorist attack in the United States catapulted terrorism to the top of the national and international security agenda in many parts of the world. The attacks led the UN Security Council to unanimously adopt Resolution 1373 under Chapter VII of the UN Charter, mandating that all states take measures to choke off funding to terrorist organizations. Subsequent terrorist violence coupled with non-state actors seeking WMD highlighted the dangerous nexus between WMD and terrorism. Resolution 1373 can in fact be considered the legal precedent for UNSCR 1540, as both resolutions impose a set of general obligations on all UN member states in reaction to a threat posed by non-state actors.

Another development stressing the urgency of taking action against WMD proliferation by and to non-state actors was the revelation that A.Q. Khan, the father of the Pakistani nuclear bomb, had been running a clandestine nuclear black market for several years. Writing in July 2007, Peter Crail pointed out that the Khan network demonstrated that terrorists “may be the recipients as well as the suppliers of [WMD] and technologies” and that the “traditional international WMD nonproliferation regime was not formed to address these types of proliferation considerations...”⁵

The United States, which was leading the effort to establish rules and regulations in regard to WMD terrorism had little interest in attempting to pursue a multilateral treaty process. The George W. Bush administration made it clear from the start that the crafting of multilateral treaties was not a priority. Among other things, it nullified the Anti-Ballistic Missile treaty in 2002 and rejected formal negotiations in connection with the BWC and the Fissile Material Cut-Off Treaty.

Instead, it focused on generating smaller coalitions of states to achieve its foreign policy goals, a key case in point being the Proliferation Security Initiative (PSI). In fact, the PSI was a guide-post for the initial U.S. UNSCR 1540 drafts. In short, increased awareness of the perils of terrorism, the Bush administration's aversion to treaties and reliance on multilateral institutions, the A.Q. Khan revelations, and the absence of measures to combat WMD proliferation to non-state actors were all interconnected reasons for the adoption of UNSCR 1540

Current state of implementation

UNSCR 1540 established the 1540 Committee, to report to the UN Security Council on the implementation status of the resolution among UN member states. Countries were asked to present to the 1540 Committee a report detailing "steps they have taken or intend to take to implement this resolution."⁶ To date 160 states have submitted a first report detailing their implementation status and upon request from the 1540 committee submitted additional information regarding implementation. As of November 2009 thirty-two countries still had not submitted an initial report, virtually all from the developing world.

Implementing UNSCR 1540 can be a daunting task for many states, especially those in developing regions, for whom the substance of 1540 is seen to be remote from the realities with which they may have to deal in their daily lives - poverty, HIV-/AIDS, drug and human trafficking, small arms and light weapons, domestic instability - issues that are priority concerns to them and that consume their limited human, technical and related resources in making it impossible to take independent steps to implement what are for them secondary or tertiary issues. In short, in the case of a number of countries political energy and scarce resources

are allocated towards matters deemed imperative to maintaining a viable civil society.

Upon receiving member states' reports, 1540 Committee experts are charged with analyzing the submitted information to determine how well countries are implementing the resolution. To assist in this process, the 1540 Committee designed a matrix logging each state's achievement against the requirements of UNSCR 1540. The committee's analysis of each country's implementation success is not publicized, but general overview reports indicate that some states have addressed numerous UNSCR 1540 measures, while many others were in compliance with only a limited number of the steps called for in the resolution.⁷ However, one committee expert noted that the 1540 Committee had seen a significant increase in implementation efforts in recent years, indicating that UNSCR 1540 implementation is gaining traction.

Past and present UNSCR 1540 implementation challenges

Immediately after UNSCR 1540 was adopted, questions regarding the resolution's legitimacy emerged. A number of states objected that the resolution had been passed pursuant to Chapter VII of the UN Charter, making it automatically binding on all member states of the United Nations, and was legislating what states must do with very limited opportunity for non-Security Council members to participate in the process. They felt that the Security Council was effectively usurping the legislative powers of the General Assembly, and by-passing the treaty-making power of sovereign states.⁸ Many states asserted their strong preference for the objectives of the Resolution being achieved by negotiation of a multilateral treaty or Resolution in the General Assembly.⁹ In addition, a number of states expressed frustration over

what they perceived to be a lack of balance between nonproliferation and disarmament in UNSCR 1540.

Today, however, one rarely hears these sentiments vis-à-vis UNSCR 1540. Two follow-on resolutions, UNSCR 1673 (2006) and UNSCR 1810, (2008) extending the 1540 Committee for two and three years respectively, were passed by the Security Council and several regional organizations have passed resolutions endorsing the objectives of 1540 and calling on their member states to implement the resolution. Additionally, in December 2009, the outgoing 1540 Committee Chairman, Ambassador Jorge Urbina, stated that issues of the resolution's legitimacy, which represented an early challenge to effective implementation, no longer existed.

Other implementation challenges have related on the one hand to what is seen as somewhat ambiguous language and on the other to some quite demanding provisions. For example, in a number of places, the resolution calls on states to take "effective and appropriate measures" to implement UNSCR 1540 with regard to, for example, legislation and enforcement of export controls. However, no further explanation is provided, leaving many states, which may not have previous experience in many of the areas UNSCR 1540 addresses, uncertain just what is expected of them. However, it is worth noting, as 1540 Committee experts have done, that UNSCR 1540 is a vision for a safer and more secure world, and that it is up to each individual state to decide how to implement the provisions based on national and regional circumstances. Countries that do not have any WMD or materials to produce them may not emphasize the safety and security of such items, but instead focus on preventing their territories from being used by non-state actors as transit states. Other states may need to focus their efforts on educating the

private sector and scholarly institutions on dual-use goods and how to prevent intangible technology transfers.

As noted, many countries lack the capacity and resources necessary to effectively implement the resolution. In some countries and regions, UNSCR 1540 initially failed to gain political traction, primarily due to competing priorities and the necessary resources and capacity to successfully implement the Resolution. Today, many of the challenges to implementation have been addressed in various ways and to various degrees, but lack of capacity and resources to implement UNSCR 1540 remains a key obstacle to bringing many countries into compliance with the resolution.

National, regional, and international cooperation to implement UNSCR 1540

Beyond self-help, there are several avenues states can use to gain assistance in implementing UNSCR 1540. The 1540 Committee experts have solicited assistance requests from states with limited implementation capability with a view to creating a clearing-house function where they can pair those states with states that have shown an interest in helping other states' implementation efforts.¹⁰ The 1540 Committee, together with the United Nations Office for Disarmament Affairs (UNODA) and sponsoring governments, also periodically holds outreach and awareness-raising seminars and workshops in regions experiencing implementation challenges. For example, in December 2009, Egypt hosted a UNSCR 1540 implementation workshop to “enhance national capacities for the management of export-control processes at a practical level, and to improve information - and experience-sharing between participating countries.”¹¹ Another regional workshop held in Kenya in early February focused among other things on the sharing of

experiences and capacity-building, particularly in the biological area.¹² Previous similar workshops organized by the UNODA included meetings in Brazil, Qatar, Vanuatu, and Costa Rica.

International organizations with specialized knowledge, including the International Atomic Energy Agency and the Organization for the Prohibition of Chemical Weapons OPCW offer assistance to states to implement their NPT and CWC treaty obligations, thus contributing to increased UNSCR 1540 implementation. Other multilateral groups, such as the Organization for Security and Cooperation in Europe, have taken steps to help their member states to implement UNSCR 1540.

Nongovernmental organizations (NGOs) also work with individual states or groups of states to raise awareness of the resolution, provide legal or scientific advice for implementation, or train practitioners, such as national border guards and export control officials.

One concept that has gained considerable traction in recent years is that regional organizations can play an important role in facilitating implementation of UNSCR 1540 among member states. Chapter VIII of the UN Charter provides the legal framework for regional organizations to take appropriate action within the sphere of international peace and security. There is a strong record of support for regional and sub-regional organizations playing an important role in the UNSCR 1540 implementation process. That sentiment was reaffirmed by the two most recent 1540 Committee Chairmen (Ambassador Urbina and Ambassador Burian), a number of UN member states and UNSCR 1540 follow-up resolutions. For example, UNSCR 1810, which extended the 1540 Committee for three more years in 2008, explicitly encourages the 1540 Committee “to engage actively with States and relevant international, regional and sub-regional organizations to promote the sharing of

experience and lessons learned in the areas covered by resolution 1540 (2004), and to liaise on the availability of programs which might facilitate the implementation of resolution 1540.”¹³ It further requests “the 1540 Committee to provide opportunities for interaction with interested States and relevant international, regional and sub-regional organizations to promote implementation of resolution 1540.”¹⁴ Regional bodies, such as the European Union, Organization of American States, the Association of Southeast Asian Nations and its Regional Forum, offer efficiency, legitimacy and confidence with respect to UNSCR 1540 implementation. These regional bodies, consisting of like-minded states who came together on the basis of common interests and concerns, understand the region’s priorities, strengths and weaknesses, and consequently can effectively pool resources, share implementation experiences and identify where assistance is necessary, as well as pinpoint potential donors within and outside its membership. In short, there are multiple sources of assistance that states can take advantage of in trying to implement UNSCR 1540.

Recent 1540 Implementation developments and next steps

UNSCR 1540 implementation challenges stemming from lack of capacity and resources remain, but efforts to implement UNSCR 1540 have, without a doubt, gained momentum in recent years. A few noteworthy recent developments include the federal Cabinet of Pakistan supporting a draft bill in January that would ban biological weapons activities, including the drafting of legislation and other regulations to prevent biological weapons proliferation.¹⁵ This is a significant development because Pakistan has been one of the most outspoken critics of UNSCR 1540. In addition, Bosnia and Herzegovina launched the “Implementation Program against CBRN Terrorism” in June 2009, a countermeasure to biological or chemical attacks, while Thailand has endorsed various laws

in connection with controls of nuclear-related materials using the EU control list as a guideline for dual-use materials.¹⁶ Singapore, which has one of the world's busiest ports, focuses efforts on export control and the supply chain including systematic outreach to industry.¹⁷

The mention of export control brings up one further point, namely that comprehensive measures to control trade of strategic goods in the interest of reinforcing nonproliferation can be seen by developing nations in particular as a constraint on their development objectives and the growth of their economies. Kofi Annan once remarked that “there is no long term security without development and no development without security.” Finding common ground between development and security in the context of export controls is one of the important challenges raised by 1540. Its solution lies in states recognizing the challenge and working collectively – regionally and internationally – to ensure that export controls work to enhance trade without undermining security and especially controlling non-state actor ability to traffic in weapons of mass destruction materials, equipment and technology.

Despite progress made toward compliance with UNSCR 1540, Ambassador Urbina, in the aforementioned remarks, also noted structural challenges hampering the 1540 Committee's effectiveness. Urbina has noted that the 1540 Committee's increasing workload was one obstacle to making more progress made in the last few years. The 1540 Committee's mandate has been expanded to include, outreach, review, technical assistance and lessons-learned activities, but no new tools and resources had accompanied these new responsibilities. Among other things Urbina recommended the hiring of additional 1540 Committee experts to alleviate some of the overload.

Finally, it is difficult to assess the impact of the election of U.S. President Barack Obama on UNSCR 1540 implementation. As noted above, each individual state has to decide independently how best to implement UNSCR 1540 provisions. However, President Obama has made nonproliferation and arms control, with the ultimate goal of disarmament, a key part of his foreign policy agenda and that may have ripple effects around the world. His agenda may have a direct impact on global UNSCR 1540 implementation in regards to his goal to secure vulnerable stockpiles of fissile materials worldwide before the end of his first term. If that goal comes to fruition, it would be a major step toward the full implementation of UNSCR 1540. In April 2010 the Obama administration will host some 40 heads of state to discuss the nuclear security issue at a summit in Washington marking an initial pragmatic step towards this end.

On a concluding note, implementing UNSCR 1540 is a comprehensive and daunting task for many states and it will likely take several more years, if not decades, for all countries to come into full compliance. It is important to be reminded of the ultimate goal of the measure: to prevent weak links in the global security chain that can be utilized by terrorist organizations seeking WMD. Former UN Secretary-General Kofi Annan before leaving office stated that, “In today’s world, the security of every one of us is linked to that of everyone else.” Hence, it is in every state’s best interest to do what is within their power to ensure the highest level of UNSCR 1540 implementation – for themselves and for others.

Notes

¹ Johan Bergenäs is a Research Associate at the James Martin Center for Nonproliferation Studies at the Monterey Institute of International Studies, Washington, DC office (CNS). Dr. Lawrence Scheinman is a Distinguished Professor at CNS. The authors also wish to thank Sophie Walker for research and editing assistance.

² UN Security Council, Resolution 1540 (2004), S/Res/1540, Operative Paragraph (OP) 1, April 28, 2004.

³ UN Security Council, Resolution 1540 (2004), S/Res/1540, OP 2, April 28, 2004. OP 2 also covers those individuals and groups who assist or finance aforementioned activities.

⁴ It must be noted that various drafts of the resolution was circulated to a broader group of states and sessions were held in the UN Security Council, including non-UN Security Council states.

⁵ Peter Crail, “Implementing UN Security Council Resolution 1540: A Risk-Based Approach,” *Nonproliferation Review*, No. 13, July 2006, p. 355.

⁶ UN Security Council, Resolution 1540 (2004), S/Res/1540, OP 4, April 28, 2004.

⁷ Dr. Richard Cupitt, UN 1540 Committee expert speaking before the 10th Annual International Export Control Conference, June/July 2009, Istanbul, Turkey.

⁸ The following states raised concerns about the Security Council's role as a legislator compared to an enforcer as is the case with, for example, the NPT: Pakistan, Indonesia, Islamic Republic of Iran, Egypt, Mexico, Lichtenstein, Nepal, Namibia, Brazil, and South Africa.

⁹ During Security Council meetings leading up to the resolution's passage and in their reports to the 1540 Committee the following states have raised concerns with UNSCR 1540 not being negotiated in a multilateral forum or called for such negotiations: Algeria, Chile, Benin, Peru, New Zealand, India, Singapore, Switzerland, Cuba, Indonesia, Egypt, Malaysia, speaking on behalf of the Non-Aligned Movement, Republic of Korea, Jordan, Liechtenstein, Nigeria, Namibia, Kuwait, Pakistan, Brazil, and Libyan Arab Jamahiriya.

¹⁰ Assistance request forms can easily be found and downloaded on the UNSCR 1540 Committee website at <http://www.un.org/sc/1540/assistanctemplate.shtml>

¹¹ The workshop was held from December 7-10, 2009 with financial support from the European Union and the Governments of Norway and the United States. Officials from the Republic of the Congo, Democratic Republic of the Congo, Egypt, Ethiopia, Ghana, Kenya, Libya, Mauritania, Morocco, Nigeria, South Africa, Sudan, United Republic of Tanzania and Uganda, as well as representatives from a number of international, regional and sub-regional organizations, were invited to participate. http://www.unic-eg.org/index.php?option=com_content&view=article&id=333:egypt-to-host-united-nations-workshop-on-implementing-security-council-resolution-1540-2004-in-cairo&catid=1:latest-news&Itemid=71.

¹² The Kenya workshop was held in Nairobi between February 2-4, 2010 and was jointly organized by the government of Kenya and the United States, in cooperation with the United Nations Office for Disarmament Affairs. Invited to participate in the event were officials from the Governments of Algeria, Botswana, Burkina Faso, Cameroon, Democratic Republic of the Congo, Congo, Egypt, Ethiopia, Gabon, Ghana, Kenya, Libya, Mali, Morocco, Nigeria, Senegal, South Africa, United Republic of Tanzania, Tunisia and Uganda.

¹³ UN Security Council, Resolution 1810 (2008), S/Res/1810, paragraph 11.d, April 25, 2008.

¹⁴ UN Security Council, Resolution 1810 (2008), S/Res/1810, paragraph 11.e, April 25, 2008.

¹⁵ The Biological and Toxin Weapon Convention Bill, 2009, <http://www.bioprepwatch.com/news/211539-pakistan-moves-to-ban-bioweapons>.

¹⁶ EU Annex I to Regulation 428/2009, List of Dual-Use Items and Technology http://trade.ec.europa.eu/doclib/docs/2008/september/tradoc_140595.pdf.

¹⁷ UN Security Council, Meeting Summary, October 2, 2009. <http://www.un.org/News/Press/docs/2009/sc9758.doc.htm>.