

# 1540 COMPASS



SPECIAL EDITION — ISSUE 6



**Special issue on the 10th anniversary of the adoption  
of UN Security Council Resolution 1540**

1540's past, present, and future — p. 6

Regional perspectives — p. 32

## Message from the UN Secretary-General on the 10<sup>th</sup> anniversary of the adoption of UN Security Council Resolution 1540

Ban Ki-Moon  
SECRETARY-GENERAL, UNITED NATIONS

The use of poison gas in Syria was an alarming reminder of the continuing threat of weapons of mass destruction. This is despite global efforts to prohibit their use, prevent their proliferation and eliminate them all.

It is particularly important to prevent terrorists acquiring nuclear, chemical or biological weapons. That is why the United Nations Security Council unanimously adopted resolution 1540, which seeks to prevent the proliferation of weapons of mass destruction or their acquisition by non-State actors.

This year marks the resolution's 10th anniversary. Member States have worked consistently to implement its key requirements. The United Nations has built strong alliances in support of its objectives.

Today, I appeal to all States and other key actors to intensify efforts to stop the proliferation of these devastating weapons. The safety and security of everyone is at stake.

Weapons of mass destruction have no constructive role in the modern world. There are no right hands for these wrong weapons.

Let us work together to remove the threat they pose.



*UN Photo/Evan Schneider*



# 1540 COMPASS

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A journal of views, comments, and ideas for effective implementation of UN Security Council Resolution 1540 to prevent WMD proliferation and terrorism by non-state actors.

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The Compass welcomes letters and articles from all concerned with 1540 implementation. Articles should be 1,500-2,000 words in length and written in English. Digital photographs should be submitted in their native format, typically JPEG; scanned photographs should be saved in a lossless format like TIFF or BMP. Send submissions to [compass@cits.uga.edu](mailto:compass@cits.uga.edu).

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## From the Editor:

As UN Security Council resolution (UNSCR) 1540 (2004) reaches its 10-year jubilee and we take stock of its strengths and weaknesses, it should be recognized that no institution tasked with addressing existential global risks reaches full maturity in such a relatively brief period of time. With this acknowledgement in mind, the current special issue features diverse contributors' vision of the resolution's past, present, and future. They have different angles and approaches anchored in history, evolving geopolitical realities, scientific progress, and legal issues, but it will be up to our readers to make their own judgments and conclusions.



To facilitate this task, the special issue is structured differently from previous ones. We group the contributions into just two sections. The first tier is about the past, the present, and the future in a generic global context, while the second attempts to provide insights into specific regional topics. For instance, has Africa's security landscape improved significantly as a result of 1540 implementation? Has the biosecurity infrastructure been sufficiently bolstered in the Middle East? Can the 1540 promotion experience in Asia provide valuable lessons to follow in other regions?

Without prejudging possible conclusions by *Compass* readers, my own finding is that the resolution has won ample recognition for its uniqueness and value. For proof, look no further than the joint statement on UNSCR 1540 adopted at the recent Nuclear Security Summit held at The Hague. These countries, representing all five continents, committed themselves to achieving full global implementation of the nuclear-security elements of the resolution by its next comprehensive review in 2016. They intend to host and contribute to regional and subregional capacity-building events in support of UNSCR 1540 implementation while considering opportunities to provide support and resources for the work of the 1540 Committee and its programs, including voluntary financial contributions. One more significant commitment is to report on the progress of their efforts in relevant nuclear security forums, thus enhancing coordination and networking among major stakeholders.

Undoubtedly, this statement about nuclear security must be emulated within other domains covered by the resolution—paving the road for comprehensive cooperation.

A handwritten signature in green ink, appearing to read 'Igor Khrapunov', with a long horizontal flourish extending to the right.

IGOR KHRAPUNOV  
EDITOR, COMPASS  
CENTER FOR INTERNATIONAL TRADE & SECURITY

# Op-Ed: 1540 through the fog of war

Dana Perkins

FORMER MEMBER OF THE GROUP OF EXPERTS SUPPORTING  
THE 1540 COMMITTEE

Coined by the Prussian general Carl von Clausewitz in the nineteenth century, the “fog of war” metaphor illustrates how misrepresentation or a dearth or overload of information may produce uncertainty as to the current state of affairs. Combating non-state actors’ proliferation of weapons of mass destruction (WMD) is still one of the battlefronts of today’s world, but uncertainty still reigns in when asking the fundamental question: are we winning or losing the battle?

Dealing with nuclear, chemical, and biological weapons brings to mind another Clausewitz concept, that of “friction.” The notion of friction conveys how small events and problems add up to major deleterious effects in conflict situations. One can never anticipate those effects. According to theorists, the issue is not just that “for want of a nail the shoe was lost,” but that one can never assess in advance which nail on which shoe will turn out to be critical.

From its inception, UN Security Council resolution (UNSCR) 1540 represented a visionary approach by the Security Council to create a UN-wide, holistic system that addresses all nails in all shoes: it imposes binding obligations on all states to adopt legislation to prevent the proliferation of nuclear, chemical, and biological weapons and their means of delivery by non-State actors—in particular for terrorist purposes—and to establish appropriate domestic controls over related materials to prevent their illicit trafficking. Moreover, UNSCR 1540 closed the tactical gap in nonproliferation treaties that pursue state-centric solutions to the WMD proliferation challenge without specific measures that view non-state actors as potential sources of proliferation.

Notably, UNSCR 1540 encouraged closer international cooperation, affirmed support for the multilateral treaties whose aim is to eliminate or prevent the proliferation of WMD, and emphasized the importance of all states’ implementing them fully. Follow-on resolutions, namely UNSCR 1673, UNSCR 1810, and UNSCR 1977, reiterated among other things the objectives of UNSCR 1540. These measures are a reminder that the proliferation of nuclear, chemical, and biological weapons and their means of delivery constitutes a threat to international peace and security. Together they strengthened the role of the 1540 Committee in facilitating technical assistance, enhanced the Committee’s cooperation with relevant international organizations, and encouraged all states to prepare voluntary national implementation action plans and engage in active dialogue with the 1540 Committee. Governments can carry on such dialogue in part by inviting Committee members to visit their countries.

UNSCR 1540 will commemorate its tenth anniversary on April 28, 2014. This is a time to raise questions about its past and future as a nonproliferation tool: is UNSCR 1540 still relevant today, do states fulfill their obligations, and how should implementation be strengthened? Will this approach endure?

Worldwide threat assessments from intelligence services remain focused on the threat and destabilizing effects of nuclear proliferation, the proliferation of chemical- and biological-weapons-related materials, and the development of WMD delivery systems. The forces of globalization facilitate the rapid movement of chemical and biological materials, technologies, and latest dis-



coveries in science and technology, as well as of personnel with relevant expertise to use and exploit them.

Developments in international trade, the growing number of suppliers, and sophisticated procurement networks, moreover, make concealment an easier task for illicit trafficking networks that circumvent national and international controls. Fragile states and “ungoverned spaces” with alternative authority structures can serve as safe havens for terrorists or international criminal organizations. “Lone-wolf” extremists or networks of like-minded extremists with allegiance to multiple groups continue to show interest in acquiring and using chemical, biological, radiological, and nuclear weapons and related materials, while technological advances and the rapid diffusion of information have made launching an attack with such materials more feasible than in decades past.

Indeed, at the December 2011 Biological Weapons Convention Review Conference, then-Secretary of State Hillary Rodham Clinton noted that the “nature of the problem is evolving” and that an attack or “mass outbreak could cripple an already fragile global economy by cutting off the movement of people, goods, and sparking food shortages.”

When faced with challenges and threats to international peace and security of such unprecedented scope, scale, persistence, and complexity, how has the international community responded over the past decade in the context of UNSCR 1540?

Approximately 89 percent of UN member states reported at least once to the 1540 Committee on UNSCR 1540 implementation, while 58 percent reported more than once. This is an impressive reporting record, especially since a number of states belonging to the Non-Aligned Movement disputed the use of the UN Security Council and its Chapter VII powers.

In response to UNSCR 1977, eight states shared with the 1540 Committee their national implementation action plans, while nine states received visits from the 1540 Committee. The Committee and its Group of Experts also participated in various types of outreach activities to promote full implementation of UNSCR 1540, share experiences and lessons learned, build capacity, and



*Ambassador Oh Joon, 1540 Committee Chair, gives a statement at the joint open briefing of the Chairs of the Security Council committees 18 November 2013, at the United Nations in New York.*

supply technical assistance in the areas covered by the resolution. More than 300 such activities have taken place in the past six years alone.

While demonstrating an increased worldwide commitment to UNSCR 1540 objectives, these numbers—in particular the high rate of reporting from states—may give a false sense of security and confidence in states' capacity to deal with the threat posed by WMD and non-state actors. The 1540 Committee does not provide guidance on reporting or feedback to states on their national reports. As a result, few national reports comprehensively address the prohibitions, obligations, and recommended activities covered by UNSCR 1540 across the nuclear-, chemical-, and biological-weapons domains.

This raises the question whether “universality of reporting” has any significance as a “metric for success,” an evaluation criterion for implementing UNSCR 1540. A better indicator would be to track the numbers and quality of requests for assistance submitted to the Committee, and the speed and efficacy with which these requests have been met. Fifty-four states have open requests for assistance, while a significant number of international organizations and states have offered assistance in matching areas. Such figures offer a measure of true progress in the fight against proliferation—and a way to cut through the Clausewitzian fog surrounding this effort.

A significant development in UNSCR 1540-related history came when UNSCR 2118 was adopted on September 27, 2013, erecting a framework for the elimination of Syrian chemical weapons. UNSCR 2118 imposes an obligation on states to “inform immediately the Security Council of any violation of resolution 1540 (2004), including acquisition by non-State actors of chemical weapons, their means of delivery and related materials in order to take necessary measures therefore.”

While a verification mechanism was not envisioned when UNSCR 1540 was enacted in 2004, the UNSCR 2118 mandate to report violations puts some teeth in the international framework for preventing terrorists and other non-state actors from acquiring WMD, their delivery systems, and related materials. This is particularly significant considering that UNSCR 1540 was adopted under Chapter VII of the UN Charter, which gives the Security Council the authority to determine that a threat to the peace exists, that the peace has been breached, or that an act of aggression has occurred, and to make recommendations or decide what measures (whether involving the use of armed forces or not) shall be taken to maintain or restore international peace and security.

In the current global environment, then years after UNSCR 1540 was enacted, state and non-state actors continue to seek materials and technologies for WMD. Their opportunities and incentives to circumvent international and national controls are far from diminishing. As such, strengthening UNSCR 1540 implementation remains an acute challenge for the international community, as well as the most comprehensive weapon in the armory for combating the threat to global peace and security posed by terrorists' acquisition of WMD-related materials.

Despite the fog of war, it is plain that UNSCR 1540 will remain relevant and stand the test of time. However, uncertainty about how to measure progress will still befuddle many political leaders and policymakers. Since no one nation can meet the WMD proliferation challenge alone, international cooperation and assistance to states in need represent the pathways forward into the next decade. Identifying synergies and convergence with other international WMD nonproliferation instruments and a sustained effort to building a culture of nuclear, biological, and chemical security and safety will advance the implementation of resolution 1540 worldwide. Moreover, as noted in the U.S. National Security Strategy, building the capacity for economic growth while nurturing security and good governance are the only paths to long-term peace and security.





1540 COMPASS: SECTION ONE

## PAST, PRESENT, AND FUTURE

# Capstone and mortar

## Notes on the creation of UNSCR 1540

Richard T. Cupitt, Ph.D.  
U.S. UNSCR 1540 COORDINATOR, U.S. DEPARTMENT OF STATE<sup>1</sup>

When the UN Security Council unanimously adopted resolution 1540 (UNSCR 1540) on April 28, 2004, it created both a capstone and the mortar to unite several disparate international regimes aimed at preventing the proliferation of weapons of mass destruction (WMD) and their means of delivery. As a resolution taken under Chapter VII of the UN Charter, it sits atop all other forms of international law. As a means of closing gaps within and between the international nonproliferation regimes covering nuclear, chemical, biological weapons and their means of delivery, UNSCR 1540 creates a more formidable obstacle to those seeking such weapons.

With UNSCR 1540, the Security Council took a very innovative action. UNSCR 1540 created new, legally binding obligations within many of the old nonproliferation regimes, such as requiring prohibitions against proliferation activities by nonstate actors, obliging states to secure sensitive materials, and requiring states to adopt export controls on such items. As such, it became only the second UNSCR adopted under Chapter VII not to address narrowly defined security challenges or conduct<sup>2</sup>. It also established wholly new fields, such as combating the financing of proliferation and illicit brokering, and, to this day, it remains the only legally binding international instrument covering the proliferation of means of delivery of WMD and their related materials.

Ten years on, we have many examples of the considerable impact UNSCR 1540 has had. Dozens of states, as well as the European Union, have changed their laws, regulations, policies, and programs to mesh with the more than two hundred individual obligations the resolution establishes. Many international, regional, and subregional organizations have incorporated elements of the resolution into their mandates and work programs. A number of civil-society organizations have projects to help further implementation of the resolution (including publishing this very journal). UNSCR 1540 has become a foundation for the practical business of nonproliferation.

Most observers rightly point to President Bush's address to the UN General Assembly in September 2003 as a catalyst for action on nonproliferation by the Security Council.<sup>3</sup> However, French president Chirac and Russian president Putin, as well as U.K. foreign minister Straw, also called on the Security Council to take action against proliferation in their speeches to the same Assembly.<sup>4</sup> As we shall see, a far broader recognition of the threat posed by proliferation of WMD and their means of delivery to nonstate actors existed in the international community before these speeches.

No definitive work on the origins of UNSCR 1540 exists, yet understanding how and why this uniquely powerful and comprehensive tool to combat proliferation came to exist holds more than just historical interest. The Security Council clearly understood that

compliance with the resolution would pose many long-term challenges, a point it recognizes repeatedly in subsequent UNSCRs extending the mandate of the 1540 Committee, the body it established to monitor and foster implementation of the resolution. A better sense of the history of the resolution can help identify where key legal, technical, and political boundaries exist and where changes in the current environment might create opportunities to strengthen international efforts to combat proliferation.

A complete answer to how and why UNSCR 1540 came to be goes well beyond the scope of this article. Tackling those questions requires interviewing the many participants in this creation story and seeing the documents they saw, many of which remain classified. Instead, using open-source material, this article attempts to establish a pattern of creation, a timeline that students of UNSCR 1540 might find useful as a benchmark.

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#### PRECURSORS TO UNSCR 1540

Beginning with UNSCR 8 (1946), the Security Council sporadically dealt with WMD, ranging from proposals to investigate the alleged use of biological weapons, to the work of the Disarmament Commission, to sanctions against the South African nuclear program, to nuclear security assurances tied to the Nuclear Non-Proliferation Treaty. The Council began to quicken its focus on WMD proliferation with the onset of the first Gulf War and its adoption of UNSCR 687 (1991), which linked the lifting of sanctions on Iraq to the removal of WMD programs.

The acme of this period took place on April 3, 1992, with the first-ever Council meeting at the level of heads of state and government. The unprecedented meeting explored questions regarding the responsibility of the Security Council for the maintenance of international peace and security, reflecting renewed optimism that the Security Council could shrug off of its Cold War shackles. The resulting presidential statement (PRST) covered several security matters, including declaring, for the first time, that “[t]he proliferation of all weapons of mass destruction constitutes a threat to international peace and security.”<sup>5</sup> While the PRST paved the way for further action by the Council, its work on WMD in the 1990s continued to emphasize national WMD programs, particularly those of Iraq, North Korea, India, and Pakistan.

The events of September 11, 2001, firmly established that at least some terrorists would readily cause mass civilian casualties. Soon after these attacks, several international bodies outside of the Security Council issued new calls for the international community to address the nexus of WMD proliferation and terrorism. In its sessions in 2002, for example, the UN Advisory Board on Disarmament Matters began addressing the WMD terrorist threat, concluding that the threat posed a real and serious danger to the international community, and proposing that the newly created UN Security Council Counter-Terrorism Committee “coordinate all international efforts to prevent possible terrorist acquisition or development of weapons of mass destruction.”<sup>6</sup> It also urged states to use the review process in existing nonproliferation mechanisms “to take all necessary measures to prevent unauthorized persons from obtaining” WMD and materials and technologies used to manufacture them.

The first UN General Assembly resolution on this topic was introduced by India and specifically acknowledged the considerations by the Advisory Board.<sup>7</sup> The resolution, subsequently adopted by the General Assembly in January 2003, urged all UN member states to implement and strengthen both international and national measures to prevent terrorists from acquiring WMD and related materials. The Advisory Board also requested the UN secretary-general to compile a report to present at the 58th session of the General Assembly on measures to address this threat. This represented a step toward monitoring that would become an important element of UNSCR 1540.

Arguably, the G-8 issued the document with the greatest impact on the development of UNSCR 1540, namely the “Principles to prevent terrorists, or those that harbour them, from gaining access to weapons or materials of mass destruction.” The principles, more commonly known as the Kananaskis Principles, appeared in June 2002.<sup>8</sup> UNSCR 1540 repeats text, in whole or in part, from the first five of these six principles. Table 1 compares elements of the five principles with relevant paragraphs in the resolution, and clearly demonstrates their close connection. Additionally, Principles 2-5 each call for the provision to states of assistance necessary for their implementation. UNSCR 1540 consolidates these calls for assistance in its Operative Paragraph (OP) 7, but further clarifies who



should provide assistance (states in a position to offer assistance) to whom (states lacking the legal and regulatory infrastructure, implementation experience, or resources) and under what circumstances (in response to specific requests).

Diplomats often see previously agreed language as a safe harbor. As a text on which France, Russia, the United Kingdom, and the United States had agreed already, the Kananaskis Principles created a pool of language and concepts on which those four permanent members of the Security Council could draw in drafting the resolution. There is considerable overlap between the two texts. Yet UNSCR 1540 strips away some of the concepts entirely (e.g., catch-all controls, minimizing or eliminating stocks of dangerous materials), makes others into recommendations rather than core obligations (e.g., developing and maintaining national control lists), or relegates them to footnotes (e.g., multi-lateral control lists, missiles, and related materials, equipment and technology), hinting at some of the more divisive issues in negotiating the resolution.

But what of the concepts in UNSCR 1540 not found in the Kananaskis Principles, namely nonstate actors (OPs 1 and 2), financing (OPs 2 and 3d), outreach to industry and the public (OP 8d), the call not to reinterpret treaties or alter rights (OP 5), collaborative action to prevent illicit trafficking (OP 10), and the creation of a subsidiary body of the Security Council to monitor implementation (OP 4)? In some cases, the genesis seems clear. In its efforts to combat terrorism, for example, the Security Council had already identified financial measures as an important tool in UNSCR 1373. UNSCR 1540 certainly reflects that development. UNSCR 1373 created a Security Council subsidiary body, i.e., the Counter Terrorism Committee (CTC), to monitor implementation of the resolution. Several states referred to it in later Security Council sessions on the resolution. However, the Council circumscribed the powers of the subsidiary body for UNSCR 1540 compared to the CTC, particularly on reporting requirements and on assessing national implementation efforts. This suggests some division among Security Council members. Similarly, OP 10 of UNSCR 1540 has its roots in the Proliferation

Security Initiative, but, as we shall see, adapted to the divergent views among Council members regarding the initiative.

Although one may not point directly to a specific UNSCR or nonproliferation initiative, outreach to the public and industry nonetheless comprised an important part of national and international efforts to implement domestic nonproliferation measures. From accounting for materials in the Chemical Weapons Convention (CWC) and Nuclear Non-Proliferation Treaty (NPT) regimes to controlling exports of proliferation-sensitive materials, many states clearly saw such outreach as an important prerequisite for effective implementation of many nonproliferation measures.

The Kananaskis Principles created a pool of language and concepts on which those four permanent members of the Security Council could draw in drafting the resolution.

More than a year before the speeches of September 2003, therefore, key Security Council members had expressed and supported several basic concepts that would eventually appear in UNSCR 1540. Notably, these basic concepts, including those on preventing illicit transactions, also emerged many months before the public unraveling of the A. Q. Khan network in late 2003 and early 2004.<sup>9</sup> It seems likely that those revelations, and

the deadly Madrid bombings in March 2004, did have an impact, but more in gathering a broad base of support for the adoption of the resolution than in forming its roots.

#### DEVELOPING THE RESOLUTION

Despite its highly unusual nature, the evidence does not suggest that the initial process for developing UNSCR 1540 veered from that of more typical resolutions adopted under Chapter VII of the UN Charter. In October 2003, the United Kingdom reportedly shared an informal paper and Russia an informal draft resolution, while the United States continued to work on its draft.<sup>10</sup> Allegedly, the permanent five members exchanged drafts as often as every few days during these early discussions.<sup>11</sup>

By mid-November, members had achieved enough progress on the resolution that it began circulating among other Council members. Differences among

TABLE 1

KANANASKIS PRINCIPLES		UNSCR 1540	
Principle Number	Relevant Text	Operative Paragraph	Relevant Text
1	Promote the adoption, universalization, full implementation and, where necessary, strengthening of multilateral treaties and other international instruments whose aim is to prevent the proliferation or illicit acquisition of such items;	8(a)	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 or chemical weapons
2	Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage and domestic and international transport;	3(a)	Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport;
3	Develop and maintain appropriate effective physical protection measures ...	3(b)	Develop and maintain appropriate effective physical protection measures;
4	Develop and maintain effective border controls, law enforcement efforts and international cooperation to detect, deter and interdict in cases of illicit trafficking in such items,	3(c)	Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, ..., the illicit trafficking and brokering in such items ...;
5	Develop, review and maintain effective national export and transshipment controls over items on multilateral export control lists, as well as items that are not identified on such lists but which may nevertheless contribute to the development, production or use of nuclear, chemical and biological weapons and missiles, with particular consideration of end-user, catch-all and brokering aspects;	3(d)	Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls;

the permanent members, however, took more months to resolve and then build a consensus among the other members of the Council.<sup>12</sup> Datan, for example, speculates on the reasons for changes in drafts circulated on December 16 and 19, 2003, and then again in January 2004, on the application of Chapter VII to parts or all of the resolution, and to the definition of items related to WMD and means of delivery. Oosthuizen and Wilmshurst note that these definitions caused difficulty in the negotiations, with regard to both their content and how to include them in the resolution. In its statement in support of the resolution, China also noted that through these negotiations, the drafters had deleted a reference to interdiction at China's request.<sup>13</sup>

Meanwhile, outside pressures on the Security Council members to take action on WMD nonproliferation continued to mount. As early as August, the

United States apparently began giving information to Pakistan regarding the activities of A. Q. Khan, which it continued to supply as autumn turned to winter. In October, with Libya, the United States, and the United Kingdom in the midst of discussions aimed at ending Libyan WMD programs, German and Italian authorities intercepted the *BBC China*, bound for Libya with containers holding pieces for sophisticated centrifuges disingenuously labeled as machine parts.<sup>14</sup> Confronted with this and other evidence, President Gadhafi agreed to renounce the Libyan nuclear- and chemical-weapons programs, and the evidence of the links to the Khan network became more widely known. In December and January, Pakistan brought in 26 individuals for questioning regarding alleged proliferation activities, including three Khan Research Laboratory directors. Eventually Pakistan placed A. Q. Khan under house arrest on January 31, 2004, and he made a public confession on February 4, 2004. These



revelations likely added public pressure on negotiators to reach an agreement and produce a resolution.

By early spring, the last major unresolved issue seemingly involved the mechanism to monitor the implementation of the resolution. According to Datan, the establishment of a subsidiary committee of the Security Council does not appear until a March 28 draft, whereas prior drafts had required states to report on implementation to the president of the Council or the UN secretary-general. The new body could call on other expertise as appropriate.

As a decision taken under Chapter VII, the draft resolution meant that all states would need to take many significant domestic measures to implement their obligations. This unprecedented, expansive expression of Security Council authority, although within its mandate under the UN Charter, generated a realization that the Council might face a “legitimacy” gap among the whole of the UN membership. This prompted the drafters to address these more general concerns by engaging the international community more broadly than usual. Consequently, when the permanent members officially shared a draft resolution with the ten elected members of the Council on March 24, it appears that these other members of the Security Council, non-Council members, NGOs, and the press already knew something of the negotiations and sought a voice.<sup>15</sup>

Accordingly, the permanent members held consultations not just with the elected members of the Security Council, but with the Non-Aligned Movement (NAM). Malaysia, representing the NAM members, noted its appreciation of the very useful informal consultations with the sponsors that took on April 6.<sup>16</sup> In response to such consultations, Brazil, an elected Council member at the time, circulated a non-paper on April 8 offering some alternative views, and on April 20 circulated a few amendments expressing its concerns with the near-final version of the resolution.<sup>17</sup>

According to Datan, several NGOs had acquired early drafts of the resolution and began organizing a

campaign by civil-society organizations to demand an open debate by the Security Council through contact with national ministries of foreign affairs and the Security Council. Eventually this included submitting draft language to the Council members, distributing a media advisory, and issuing press statements during March 2004. Datan claims that these consultations produced some changes that went into an April 15 draft text.

This unusual outreach effort by the permanent members indeed culminated in an open session of the Council on April 22, where more than 30 UN member states made statements. Three overriding themes emerged from the debate arguing for adoption of the draft resolution. First, the speakers almost universally pointed to the nexus of proliferation of WMD and illicit activities by nonstate actors as a serious threat to international peace and security. Second, most speakers agreed that gaps existed in the existing international instruments for nonproliferation regarding such threats. Third, many participants expressed a sense of urgency behind the calls for action by the Security Council. The statement by Jordan captures this impact of this last theme on many:

In spite of our belief that the best approach we can adopt to address this matter is to exert efforts to engage in an intensive multilateral negotiation process aimed at developing an international instrument that regulates and addresses this problem, we still feel that, owing to the urgency of the threat that the current gap poses, a measured intervention by the Security Council would be both necessary and appropriate.

Most speakers focused on one or more concerns, most notably: the Security Council acting as a legislature and the use of Chapter VII of the UN Charter; disarmament; the relationship with other international nonproliferation instruments and bodies; the mandate of the proposed Committee; enforcement and coercion; and inadequate definitions. In the absence of earlier drafts of the resolution, it remains difficult to determine exactly what the sponsors did in

This unprecedented, expansive expression of Security Council authority generated a realization that the Council might face a “legitimacy” gap among the whole of the UN membership.

response to concerns raised from late March through the open session on April 22. Nonetheless, in its final form the resolution speaks directly to most of these concerns expressed in the open session.

Perhaps the most frequently mentioned recommendation involved the need to limit the invocation of Chapter VII. For example, Algeria, Brazil, and Chile—all then elected members of the Security Council—suggested narrowing its application to part but not all of the resolution, such as the first three OPs.<sup>18</sup> India took another approach and argued against including any sanctions or authorizing any specific enforcement action if the Council adopted the resolution under Chapter VII. To these ends, the Council does not use the word “decides” in several OPs. Many states interpret this omission as circumscribing the obligatory nature of those paragraphs. Notably, in line with the Brazilian statement, the Council does use “decides” in OPs 1-3, which outline the core prohibitions and domestic controls that states need to undertake. In addition, several sponsoring and supporting states made assurances that the resolution would not precipitate coercive action to ensure its implementation.<sup>19</sup>

Similarly, the language of OP 5 certainly reflects the deep-seated concerns expressed in the open session that action by the Security Council should not undo actions taken by the larger international community in the realm of nonproliferation and disarmament. This included concerns about interfering with “the right to possess nuclear materials and facilities for peaceful purposes” under the NPT. Most notably, the Council again uses the word “decides” in OP 5 to articulate the obligation of all states *not* to reinterpret existing rights and responsibilities in existing nonproliferation and disarmament instruments and bodies. The Council further underscores this point in its call to cooperate within the framework of the IAEA and OPCW in OP 8(c). Concomitantly, in OP 8(a) the Council only “calls upon” all states to promote universal adoption and national implementation of nonproliferation treaties, and, according to Boese, specifically modified the text to apply to current treaty parties to reflect an issue raised by Pakistan.

In OP 4, the resolution addresses several of the concerns raised by speakers in the open session regarding the proposed Committee. In particular it extends the mandate of the Committee to two years from the six-month period that appears in earlier

drafts, reflecting the concern that six months did not allow adequate time for reporting. It also responds to the perceived “[e]xcessive and exhaustive reporting obligations” under the CTC and al Qaeda/Taliban monitoring regimes, as expressed by India, by merely calling for but not requiring states to submit an initial report in six months.

Regarding disarmament, France specifically mentioned supporting the incorporation of a reference to disarmament obligations in the preamble in its remarks during the open session. The reference appears as Preambular Paragraph (PP) 13, which reflects the compromise. As German UN ambassador Gunther Pleuger, whose country then held the presidency of the Security Council, stated after the adoption of the resolution, “We would have preferred, however, to see it highlighted in the operative section as well.” Another compromise appears regarding the issue of using the resolution to hamper international cooperation for use of materials, equipment, and technology for peaceful purposes. This point was raised during the open session, including by India and Iran. In the end, the resolution specifically affirms this norm, but couples it with an admonition that the “goals of peaceful utilization should not be used as a cover for proliferation.”

The Council did not address every concern that emerged in the open session. As a non-permanent member of the Council, Algeria (in line with the official NAM statement) called for the resolution to affirm the value of efforts to create WMD-free zones. This does not appear in the final text. Peru, also an elected Council member, complained about the lack of specificity in the definitions (e.g., the lists of control items, means of delivery), a point others raised as well, to no avail. This may reflect a reluctance to change text that had proven difficult to resolve among the drafters months earlier.<sup>20</sup>

Perhaps the most important result of these consultations was the notable shift in views expressed by Pakistan. During the open session on April 22, Pakistan issued a statement asserting, along with other concerns, that “there is no justification for adopting this resolution under Chapter VII of the Charter.” Yet on April 28, in its position as a non-permanent member of the Security Council, Pakistan voted in favor of the resolution. In the remarks at the April 28 meeting of the Security Council, Pakistan’s Ambassador



Munir Akram, after referring to the statement of its concerns at the open session, said:

We appreciate the serious efforts made by the sponsors of the draft resolution to accommodate our major concerns and those of other States. The draft resolution was revised three times. That enabled Pakistan to support the resolution.<sup>21</sup>

He then referred to assurances to the Council by the sponsors that the resolution addressed a gap in international law and does not seek to prescribe specific legislation. OP 2 of the resolution specifically leaves this question to national discretion. Ambassador Akram also noted that the “legally binding obligations under Chapter VII arise only in respect of paragraphs 1, 2, 3, 4 and 5, which start with the word “decides” and which, at our request, have been grouped together for presentational purposes.”

He also mentioned changes by the sponsors to “clarify that there is no intention to oblige States to join treaties or arrangements to which they are not parties.” These changes appeared in PPs 5 and 11 and OP 8 (c), and through the insertion of the word “henceforth” in PP 15 to make it explicit that the resolution did not apply retroactively.

Given its impact, a better understanding of the origins of the resolution may help us see why it has proven so effective.

#### CONCLUSION

UNSCR 1540 has had a profound impact on the nonproliferation of weapons of mass destruction and their means of delivery since its adoption in 2004, as the 1540 Committee reports amply demonstrate. Although far from fully implemented by all states, many states have modified or adopted laws and policies to conform with the obligations of the resolution, while dozens of international and regional organizations have incorporated the objectives of the resolution into their mandates and programs. Given its impact, a better understanding of the origins of the resolution may help us see why it has proven so effective.

The evidence shows that despite its unique character for a Security Council resolution, UNSCR 1540 stems directly from several earlier efforts to address emerging nonproliferation threats, particularly the

Kananaskis Principles. Security Council members also purposefully set the resolution and the 1540 Committee within the existing nonproliferation instruments and bodies, rather than seeking to modify them. While Chapter VII resolutions rest above all other forms of international law, the Council both circumscribed the impact of the resolution on these nonproliferation instruments and sought to fill gaps in their mandates. That only served to bolster their effectiveness.

The timeline also points toward the importance of several heads of government reaching the same conclusion independently and nearly simultaneously—in this case that the Security Council needed to take action against proliferation of WMD—before the international community could take such bold steps. While often seen as a surprising embrace of multilateralism by the Bush administration, arguably several other national leaders can also claim credit in calling for Security Council action in the very same General Assembly session. This confluence of interest from the highest levels—not only at the Assembly but through the G-8 summit process—gave those negotiating the initial draft of the resolution considerable leeway for boldness.

Having agreed language on core elements of a resolution clearly permits drafters to focus on resolving a relatively narrow range of issues, both technical and political. When coupled with expressions of the need for urgent action from the very highest reaches of those governments that exercise the most control over the institution tasked with taking action (i.e., the permanent members of the Security Council), perhaps this makes a bold outcome likely rather than merely possible.

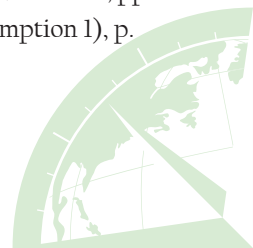
A bold approach, however, required the sponsors to take unusual measures to build a consensus among the remaining members of the Council and, as importantly, among the larger community of states that would need to implement the resolution. The extensive consultations with non-Council members, including in an open session, and with nongovernmental organizations, went far toward allaying concerns that the Council had overstepped its bounds.

Although the Council and the 1540 Committee would take additional action to address perceptions of a gap in the legitimacy of the resolution after 2004, the consultations—and the responsiveness of the drafters—during the months prior to the adoption of the resolution created a strong foundation for acceptance of the obligations of the resolution by all states.

Hopefully, this brief attempt to establish a timeline for the formation of the resolution and link the resolution to other international nonproliferation documents developed in the early years of this millennium will increase our understanding of the resolution. The timeline, for example, suggests that while the revelations of the A. Q. Khan network could have sparked greater support for the resolution from the wider UN body, they occurred after the initial movement toward crafting the resolution. Disentangling the web of circumstances and actions, I hope, will give rise to research that will more fully address how and why this remarkable resolution came into being, and discern the implications that understanding holds for our continued efforts to reduce the vulnerabilities we face in combating the proliferation of WMD and their means of delivery.

#### ENDNOTES

1. The author served as an Expert for the 1540 Committee from February 2005 through March 2012, including its Coordinator from August 2010 through March 2012.
2. The first resolution was UNSCR 1373 (2001) on counter terrorism and establishment of the Counter Terrorism Committee.
3. United Nations General Assembly (UNGA), 2003, A/58/P.7, “Address by Mr. George W. Bush, President of the United States of America,” pp. 8-12.
4. UNGA, 2003, A/58/P.7, “Address by Mr. Jacques Chirac, President of the French Republic,” pp. 14-17; UNGA, 2003, “Address by His Excellency Mr. Vladimir V. Putin, President of the Russian Federation,” A/58/PV.11, pp. 4-6; and, UNGA, 2003, Remarks by Jack Straw, Secretary of State for Foreign and Commonwealth Affairs, A/58/PV.11, pp. 30-32.
5. UNSC, “Note by the President of the Security Council,” S/23500, 31 January 1992.
6. UNGA, “Work of the Advisory Board on Disarmament Matters: Report of the Secretary-General,” A/57/335, 22 August 2002, pp. 4-5.
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8. Group of 8, “Statement by G8 Leaders: The G8 Global Partnership Against the Spread of Weapons and Materials of Mass Destruction,” Kananaskis, Canada, June 27, 2002.
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11. Merav Datan, “Security Council Resolution 1540: WMD and non-State trafficking,” *Disarmament Diplomacy* (April / May 2005, no. 79), <http://www.acronym.org.uk/dd/dd79/79md.htm>.
12. Wade Boese, “Security Council Unanimously Adopts Resolution on Denying Terrorists WMD,” *Arms Control Today*, 34 (May 2004), [https://www.armscontrol.org/act/2004\\_5/UN](https://www.armscontrol.org/act/2004_5/UN).
13. UNSC, “Non-proliferation of weapons of mass destruction,” S/PV.4956, 28 April 2004, p. 6.
14. Administration of George W. Bush, 2004, “Remarks at the National Defense University, February 11, 2004,” Washington, DC: USGPO, pp. 200-205.
15. Lars Olberg, “Reporting to the 1540 Committee – A Snapshot,” Lawyers’ Committee on Nuclear Policy, New York, November 2005, <http://lcnpp.org/disarmament/1540-olberg.htm>.
16. UNSC, S/PV.4950 (Resumption I), 22 April 2004, p. 3.
17. UNSC, S/PV.4950, 22 April 2004, p. 4.
18. UNSC, S/PV.4950, pp. 4-5 and 11.
19. See, for example, the open session remarks by France, Spain, and the United Kingdom during the open session, UNSC, S/PV.4950, op cit, pp. 7-9 and 12 and the remarks by the Philippines in voting for the resolution on April 28, UNSC, S/PV.4956, 28 April 2004, p. 9.
20. See, for example the remarks by Peru, South Africa, and Malaysia on behalf of the NAM in UNSC, S/PV.4950, pp. 20 and 22-23 and UNSC, S/PV.4950 (Resumption I), p. 4, respectively.
21. UNSC, S/PV.4956, op cit, p. 3.



# 1540's first ten years

## Global efforts to combat WMD proliferation and terrorism

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 U.S. DEPARTMENT OF STATE

In the ten years since UN Security Council resolution (UNSCR) 1540 was adopted by the UN Security Council in 2004, the UNSCR 1540 Committee and its Group of Experts have made great strides toward addressing the linkages and gaps related to the broad areas underlying the resolution. The Committee has thus advanced an important goal of UN member states. The resolution, led by the daily efforts of the UNSCR 1540 Committee Chair, members, and Group of Experts, has increasingly become an engine for bringing together and integrating the many international and regional tools and efforts to promote the nonproliferation of chemical, biological, and nuclear weapons of mass destruction (WMD) and WMD delivery systems and to combat WMD terrorism. It is becoming an overarching initiative whereby those tools can be incorporated and, best of all, understood. The UNSCR 1540 Group of Experts is increasingly part of the deliberations of national, regional, and international organizations (IOs) and civil society. To further improve its successful engagement in the many international nonproliferation efforts and mechanisms, the UNSCR 1540 Committee must continue to build relationships and increase its interaction with those other bodies and initiatives that are engaged in preventing WMD proliferation and terrorism. This is particularly true with bodies that have an overall WMD lens, and have a focus on matching assistance with needs.

International efforts to promote WMD nonproliferation and combat WMD terrorism can be seen as a web of programs, legal instruments, and initiatives that often make it difficult to understand how they all relate and interact. These efforts include WMD-related treaties and conventions, export controls, the securing of nuclear materials, biosecurity, chemical security, and weapons destruction. The complexity of this global international effort strengthens the need for continuous coordination and collaboration. Most of all, it is benefited by initiatives that can provide an overarching, strategic momentum to pull the many pieces together to help them all move forward.

Coordination and collaboration have necessarily become an integral part of the work of the UNSCR 1540 Committee and its Group of Experts. This



coordination and collaboration has been occurring in three ways:

1. Among the substantive areas (nuclear, biological, and chemical)
2. Among the levels of government (national, regional, and international)
3. Among the different sectors (government and nongovernmental stakeholders)

#### UNSCR 1540 AND INTERNATIONAL ENGAGEMENTS

UNSCR 1540 is the only WMD nonproliferation instrument that focuses specifically on obligating states to control all forms of WMD and WMD-delivery proliferation, and to prevent nonstate actors from acquiring WMD and related materials. By adopting UNSCR 1540 under Chapter VII of the UN Charter, and stating in the resolution that proliferation of WMD and their delivery systems is a threat to international peace and security, UNSCR 1540 is legally binding on all states. The resolution requires states to develop and enforce appropriate legal and regulatory measures against WMD proliferation. States must therefore adopt and enforce laws in the areas of accounting and securing materials, physical protection, border and law enforcement, and export and trade-related controls.

Through country visits and engagement with relevant organizations and initiatives, the UNSCR 1540 Committee and Group of Experts are working to not only promote a more strategic and coordinated process, but develop and strengthen a wider culture of WMD nonproliferation.

In recent years, UNSCR 1540's Group of Experts has been actively involved in a number of international initiatives, meetings, and programs that provide a forum for the experts to instruct and discuss with one another how states can develop the necessary legal frameworks and enforcement structures to fulfill UNSCR 1540 obligations. These engagements have also provided the experts with opportunities to coordinate

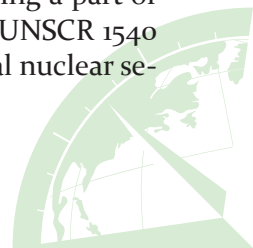
their work with relevant international, regional, and domestic bodies. Some of those engagements at the international level include the Nuclear Security Summit (NSS), international organizations, and the Global Partnership against the Spread of Weapons and Materials of Mass Destruction (Global Partnership).

UNSCR 1540 is highlighted in the NSS documents. For example, the 2010 NSS produced a work plan that details a number of efforts and activities states can take to ensure nuclear security. UNSCR 1540 is part of the overall global nuclear architecture. The NSS work plan calls on states to, in accordance with UNSCR 1540 provisions, "recognize the importance of evaluating and improving their physical protection systems to ensure that they are capable of achieving the objectives set out in relevant International Atomic Energy Agency (IAEA) Nuclear Security Series documents and as contained in the document 'Physical Protection of Nuclear Material and Nuclear Facilities' (INFCIRC/225)." The 2010 summit document reinforces requirements set forth in UNSCR 1540 regarding nuclear security. Finally, the work plan calls on states to "express their support for ensuring the effective and sustainable support for the activities of the 1540 Committee."

Canada and the Republic of Korea sponsored a joint statement at the 2014 Nuclear Security Summit titled "Promoting Full and Universal Implementation of United Nations Security Council Resolution

1540." A number of other summit participants joined in the statement. The joint statement underscores the importance of UNSCR 1540 in strengthening global nuclear security and reaffirms states' commitment to fully implement UNSCR 1540. A number of actions are outlined in the statement, including providing additional and ongoing assistance to states that request it in implementing their UNSCR 1540 obligations, hosting and contributing to regional and subregional capacity-building events, and considering opportunities to provide support and resources for the work of the 1540 Committee and its programs. By being a part of the global nuclear security architecture, UNSCR 1540 has been integrated into the overall global nuclear security approach.

Through country visits and engagement with relevant organizations and initiatives, the 1540 Committee and Group of Experts are working to [...] strengthen a wider culture of WMD nonproliferation.



In 2011, when the G-8 leaders extended the Global Partnership beyond its original ten-year mandate, the leaders agreed to four areas of focus for the initiative: nuclear and radiological security, biosecurity, scientist engagement, and facilitating implementation of UNSCR 1540. As such, the UNSCR 1540 Group of Experts has attended all meetings of the Global Partnership since 2012, when such meetings were opened to the inclusion of international organizations. The 27-member Global Partnership, like UNSCR 1540, has a mandate to prevent WMD terrorism and promote nonproliferation.

As such, the Global Partnership's work and engagements provide the UNSCR 1540 Group of Experts with an opportunity to consider how the work of the UNSCR 1540 Committee and the Global Partnership intersect and can be further coordinated. Several IOs<sup>1</sup> attend the Global Partnership meetings, thereby providing even more opportunity for the UNSCR 1540 Group of Experts to engage and be integrated into broader WMD nonproliferation efforts.

An underlying goal of the Global Partnership is to match assistance with the needs of countries around the globe in the areas of WMD nonproliferation and combating WMD terrorism. In doing so, partners are directly addressing many of the existing UNSCR 1540 requests for assistance. In fact, all Global Partnership projects are UNSCR 1540 projects, since they are all focused on preventing proliferation and WMD terrorism. The Global Partnership produces an annex each year on all of its activities. In the annex, Global Partnership members can list specific projects and funding that support UNSCR 1540 obligations. The UNSCR 1540 Group of Experts, through the Global Partnership, has also found ways to leverage the relationship developed through the Global Partnership to continually improve coordination and sharing of information.

To fulfill its mandate, the UNSCR 1540 Group of Experts must also engage the many IOs and implementing bodies whose work are directly connected to UNSCR 1540 obligations. For example, the full and effective national implementation of the Chemical Weapons Convention (CWC), the Biological and Toxin Weapons Convention (BWC), and the Nuclear Non-Proliferation Treaty (NPT) enables states to fulfill their relevant UNSCR 1540 obligations. International organizations, recognizing this connection, have worked with UNSCR 1540 to help members fulfill their

UNSCR 1540 requirements. In the case of the CWC, for example, the Organization for the Prohibition of Chemical Weapons (OPCW) invites the UNSCR 1540 Committee and its Group of Experts to relevant OPCW meetings, and the OPCW assists CWC parties in the context of requests received by the UNSCR 1540 Committee. In the case of the IAEA, for example, by helping member states prevent nuclear materials and related technologies from reaching nonstate actors, and by helping member states detect nuclear materials out of regulatory control, the IAEA assists states in fulfilling their obligations under UNSCR 1540. The IAEA Secretariat also provides assistance to member states upon request, thus helping them fulfill their obligations under UNSCR 1540. Similarly, the UN Office on Drugs and Crime (UNODC) focuses on assisting states that need help in developing legislation to implement conventions and treaties, such as the CWC and BWC, thereby promoting adherence to UNSCR 1540 requirements.

These international engagements have helped UNSCR 1540 implementation and have also helped to promote the global effort to combat WMD nonproliferation and terrorism, which is important to universal implementation of UNSCR 1540.

#### UNSCR 1540 AND NATIONAL AND REGIONAL ENGAGEMENTS

The UNSCR 1540 Group of Experts has conducted a number of regional meetings to engage countries on the resolution. These regional meetings are instrumental in promoting a more in-depth understanding of UNSCR 1540 and what is required from states. They allow for an approach that takes into account regional and cultural issues, which increases the sustainability of national UNSCR 1540 efforts.

These meetings are particularly useful in regions where states lack the capacity to implement the provisions of UNSCR 1540. During these regional meetings, the UNSCR 1540 Group of Experts may hold bilateral discussions with national participants to drill down on specific areas of concern regarding the country's adherence to UNSCR 1540 requirements. This effort, similar to the National Implementation Action Plans (NAPs) noted below, provides another more direct national and regional approach.



Helping with this process of “socializing” UNSCR 1540 from the bottom up are National Implementation Action Plans. These NAPs provide states with the opportunity to map out their priorities and plans for implementing UNSCR 1540. The plans are geared to fit national circumstances and will promote interagency coordination, which is necessary for successful implementation of UNSCR 1540 within each state.

The reporting elements of UNSCR 1540 provide another mechanism by which the overall global structure of WMD nonproliferation and combating terrorism can be strengthened. In completing these reports, nations can become more familiar with how they are applying and fulfilling all of the WMD aspects of the resolution. Reports also provide a basis for dialogue with the UNSCR 1540 Group of Experts and provide a means to track whether that state has ratified a number of relevant treaties and conventions, such as the BWC and CWC.

Regional organizations have provided a very useful platform for UNSCR 1540 coordination. The Organization for Security and Cooperation in Europe (OSCE), for example, has been instrumental in assisting states in developing NAPs. The success of the OSCE’s 1540 implementation efforts is the result of having established a 1540 Project Team to guide and manage implementation, which has been instrumental in raising awareness, and exploring and implementing concrete proposals for ways the OSCE can facilitate 1540 implementation. The OSCE could continue to support the 1540 Project Team in this manner, and strong regional 1540 efforts in other regional organizations should be implemented or strengthened. By developing partnerships with organizations such as the African Union, the Organization of American States, the League of Arab States, and the Association of Southeast Asian Nations, a more efficient process of building capacity, developing best practices, and sharing information can be realized. In addition, there is an important role for regional UNSCR 1540 coordinators. The OSCE benefited from having a person whose sole job was the promotion of UNSCR 1540 obligations within a particular region, and the Caribbean Community has also benefited from having such a regional coordinator.

Another regional effort to promote UNSCR 1540 goals of WMD nonproliferation and combating terrorism comes through regional centers of excellence

or training centers. These centers train scientists, engineers, technicians and others in chemical, biological, radiological, and nuclear (CBRN) security, developing a culture of security that by its very nature promotes the goals of UNSCR 1540. These centers can be an excellent platform for the 1540 Group of Experts to engage and to better understand national and regional needs and requirements. To date, the UNSCR 1540 Committee, through the UNODA, has been an observer at the IAEA Nuclear Security Support Center network, established in 2012.

It should be noted that the European Union (EU) is developing National Action Plans as part of its CBRN Centers of Excellence effort. The EU National Action Plans can complement the UNSCR 1540 National Action Plans. The EU plans will identify prioritized measures to mitigate CBRN risks, identify gaps to address the most important CBRN risks, and elaborate concrete actions to address these gaps.

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#### PROMOTING SUCCESS IN UNSCR 1540 IMPLEMENTATION

There are other sectors that will increasingly need to be engaged as countries fulfill their UNSCR 1540 requirements. For example, as highlighted at the African Union UNSCR 1540 conference in December 2013, concerns related to health, education, and post-conflict reconstruction are connected and relevant. Noel Stott, senior research fellow at the Institute for Security Studies, noted in his presentation “Regional and Sub-regional Coordination: The Role of the Civil Society in the Implementation of Resolution 1540 (2004)” that “Implementation of the obligations of resolution 1540 (2004) must...be located within Africa’s development goals and other socio-economic objectives.”<sup>2</sup> In particular, he noted that in addressing UNSCR 1540 issues there is a need and an opportunity to build national capacities in the areas of border management and security, medical laboratories, chemical industries, human and animal health, and agriculture. There is no one-size-fits-all approach. This once again highlights the complexity of UNSCR 1540 implementation in various regions, and therefore the need for regional outreach and coordination.

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#### ENGAGEMENT WITH NGOS

Additionally, in the past ten years, the 1540 Committee has recognized that international and national



nongovernmental organizations (NGOs) are important in the implementation of UNSCR 1540. Governments cannot do everything in combating WMD proliferation and combating terrorism, and thus it is important that nongovernmental stakeholders continue their engagement. Many NGOs are doing work that directly complements and supports the resolution. In this respect, UNSCR 1977 notes that the 1540 Committee, in doing aspects of its work, can draw on relevant expertise, including civil society and the private sector.

UNODA, in consultation with the UNSCR 1540 Committee and its Group of Experts, has hosted events with civil society to continue to highlight the role NGOs can play in promoting adherence to the resolution at the national, regional, and international levels. For example, in January 2013, civil-society representatives discussed their contributions to national and international efforts to fully implement the key requirements of UNSCR 1540.

A 2013 Stimson Center report titled “Meeting the Objectives of UN Security Council Resolution 1540: The Role of Civil Society” highlighted some of those areas, which include:<sup>3</sup> raising awareness and conducting advocacy and outreach; providing legal, policy, technical, and scientific expertise; delivering or facilitating implementation assistance, from specific projects to helping with reporting requirements and development of UNSCR 1540 national action plans; and bringing emerging WMD issues to the attention of the international community and the 1540 Committee and identifying gaps.

#### CONCLUSION

The UNSCR 1540 Committee and Group of Experts have made great strides since the resolution was adopted in 2004 in promoting the global effort to combat WMD proliferation and terrorism. The resolution is increasingly serving as an overarching mechanism by which the many tools and mechanisms of WMD nonproliferation can be organized and implemented. This trend will grow as the UNSCR 1540 Group of Experts continues to engage and work with relevant domestic actors as well as regional and international actors, including NGOs. Engaging sectors outside the security sector is important, as what takes place in other sectors impacts the long-term ability of states to fulfill their UNSCR 1540 obligations. Regions benefit

greatly from having UNSCR 1540 regional coordinators dedicated to the sole purpose of assisting states in complying with UNSCR 1540 obligations. The UNSCR 1540 Group of Experts should consider methods that will increase the ability of Global Partnership members to inform the UNSCR Committee of projects that are fulfilling specific requests that have been made to the UNSCR 1540 Committee. All of these efforts help move the international community toward universal reporting and full implementation of the resolution by all states.

NAPs, when being developed, involve (or should involve) all relevant stakeholders in an intra-governmental consultative process. Such NAPs should highlight gaps and provide steps for addressing those gaps. The NAP should also identify any assistance needs for that state. NAPs strengthen UNSCR 1540 implementation from the bottom up and can provide valuable information to the UNSCR Group of Experts as it interacts with the various WMD tools and mechanisms. As the European Union develops its National Action Plans, coordinating with the UNSCR 1540 Committee will help ensure the EU and 1540 action plans are complementary.

Awareness, coordination, collaboration, and continuous outreach at the national, regional, and international levels will be helpful to ensure all relevant tools and sectors are included to make UNSCR 1540 implementation universal, effective, and sustainable.

#### ENDNOTES

1. These IOs include the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons, INTERPOL, UN Office of Drugs and Crime (UNODC), Biological Weapons Convention Implementation Support Unit (BWC-ISU), and the UN Office of Disarmament Affairs (UNODA).
2. Statement made at the UNSCR 1540 African Union Regional Meeting, Ethiopia, December 10 – 11, 2013.
3. *Vienna Host the UNSCR 1540 Civil Society Forum*. 1540 Compass, Issue 3, University of Georgia, <http://cits.uga.edu/publications/compass/issue> [http://cits.uga.edu/publications/compass/issue\\_3](http://cits.uga.edu/publications/compass/issue_3).

# A decade of evolution in the international law of WMD

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This article is intended to provide an overview of how the past decade of implementing UN Security Council resolution (UNSCR) 1540 has impacted the development of an international law of weapons of mass destruction (WMD). After briefly discussing the legal status of the resolution, I will attempt to identify key elements of this field of international law that are derived from or supported by 1540. Finally, I will offer some few suggestions for further approaches to strengthening and consolidating this legal regime.

## SCOPE OF UNSCR 1540

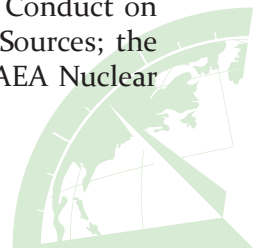
A threshold issue regarding the analysis of any legal instrument is to determine the scope of activities to which it applies. How to define weapons of mass destruction has itself been debated over many decades since the archbishop of Canterbury—apparently the first to use the term—applied it to the 1937 bombardment of Guernica in the Spanish Civil War. I do not propose to offer a precise definition of the term “international WMD law.” UNSCR 1540 itself does not define WMD. This parallels the failure to define “terrorism” in many of the international anti-terrorism instruments.

The term WMD is used in UNSCR 1540 only once—in its preamble reaffirming the 1992 statement of the Council’s President. Otherwise, the resolution speaks of a trilogy of technologies—nuclear, chemical, or biological weapons. The conflation of these three weapons technologies is of some interest, given their disparate character and histories. Of the three, chemical weapons are arguably the oldest. There is evidence that poisons and asphyxiating agents have been employed in warfare since antiquity. Biological weapons came later, perhaps as early as the middle of the eighteenth century, when a British general suggested that smallpox-infected blankets be distributed to attacking tribesmen at the siege of Fort Pitt (later Pittsburgh, USA). And nuclear weapons were not used until 1945 in the bombings of Hiroshima and

Nagasaki in Japan. (For a detailed discussion of the origins and usage of the term WMD, see Q. Michel, ed., in *Controlling the Trade of Dual-Use Goods—A Handbook*, Brussels, 2013, pp. 15-23). UNSCR 1540 also excludes various technologies or practices that some might characterize as WMD, such as massacres or bombardment of civilian populations with conventional explosives or even forced starvation. Since these and other measures are proscribed by international humanitarian law, the drafters of UNSCR evidently felt no need to include them. More importantly, the narrower scope of 1540 reflects its focus on the threat that these particularly dangerous weapons might be acquired and used by non-state actors, rather than by states in warfare.

Although some WMD technologies have a lengthy history, efforts under international law to restrain their use are relatively recent. This legal history precedes the adoption of UNSCR 1540 in April 2004 by many decades. This article will not attempt to cite all relevant instruments, declarations and resolutions, but they certainly include the following key treaties and conventions: the 1925 Geneva Protocol to the Hague Conventions banning chemical and biological warfare; the 19678 Treaty on the Non-Proliferation of Nuclear Weapons (NPT); the 1979 Convention on the Protection of Nuclear Materials (CPPNM) and its 2005 Amendment; the 2005 International Convention on the Suppression of Acts of Nuclear Terrorism (ICSANT); the 1972 Biological Weapons Convention (BWC); and the 1993 Chemical Weapons Convention (CWC).

Beyond these binding international instruments, a wide range of voluntary guidance documents has been developed that arguably contributes to the global legal framework for combating WMD proliferation. The author is particularly familiar with such guidance documents in the nuclear field. They include, but are—by no means limited to—the International Atomic Energy Agency (IAEA) Code of Conduct on the Safety and Security of Radioactive Sources; the growing number of documents in the IAEA Nuclear



Security Series (NSS); IAEA Safeguards instruments; and various export control regimes such as the Nuclear Suppliers Group. In the field of chemical and biological weapons, the Australia Group has developed guidelines and common export approaches for these technologies.

#### STATUS OF UNSCR 1540 IN INTERNATIONAL LAW

The status of resolutions of the Security Council in international law is established by Chapter V of the Charter of the United Nations. By adhering to the Charter (an international treaty), UN member states agree to accept and carry out “decisions” of the Council pursuant to Article 25. Of greatest significance for interpreting UNSCR 1540, the Council adopted the resolution under Chapter VII of the Charter, which pertains to “Action with Respect to Threats to the Peace, Breaches of Peace, and Acts of Aggression.” Under Articles 39 and 41 of Chapter VII, member states have committed themselves to implement those portions of UNSCR 1540 designated as decisions. However, the resolution has a mixed legal status—some provisions being binding and others non-binding.

In this regard, another important legal aspect must be taken into account. This involves the possibility that certain non-binding provisions of the resolution, as well as measures taken by states to implement these provisions, may have attained the status of customary international law. The determination of whether a measure should be considered customary law is much debated. However, in general, a customary rule of international law has been recognized where there is a legally significant “practice common to a plurality of States.” (See M. Sørensen, ed., *Manual of Public International Law*, Chapter 3, pp. 128-143.)

In the decade since the adoption of UNSCR 1540, the global community has arguably adopted a range of common practices with regard to international WMD law, with a significant number conducted with a view toward complying with the resolution. These practices not only relate to the decisions set forth in OP 1-5 of the resolution, but to other actions the Council “called upon” to implement under OP 8-10. Thus, it is submitted that implementation of UNSCR 1540 as a whole has contributed significantly to the development of an international law of WMD, both under treaty law and customary law. (See “Repertoire

of the Practice of the Security Council,” <<http://www.un.org/en/sc/repertoire/faq.shtml>>.)

#### IMPACT OF UNSCR 1540 ON INTERNATIONAL WMD LAW

As noted earlier, prior to adoption of UNSCR 1540, a “proliferation” of international instruments and initiatives has addressed chemical, biological, and nuclear weapons. UNSCR 1540 has rightly been called a “landmark resolution.” (See O. Jankowitsch-Prevor, “A New Role of Industrial Operators in Trade in an Evolving Nuclear Export Control Regime: Beyond Legal Responsibilities,” in Q. Michel, *Sensitive Trade—The Perspective of European States*, Brussels, 2011, p. 24.) The question remains, what has 1540 added to the existing framework? The following discussion will seek to identify major elements of 1540 that have influenced the character of WMD law and its implementation.

##### A. “UNIVERSALIZING” WMD LAW

At the outset, a fundamental point should be made. This lies in the Security Council’s ability to require all UN member states to implement decisions taken under Chapter VII of the Charter. By addressing the major elements of WMD law (as will be discussed), the Council has essentially “universalized” this field of law. (See P. Crail, “Implementing UN Security Council Resolution 1540: A Risk-Based Approach,” in *Nonproliferation Review* 13, no. 2 (July 2006): p. 357.) Although some few nation-states are not members of the United Nations, that number is vanishingly small. Thus, UNSCR 1540 consolidates the obligations or commitments under the broad range of WMD instruments, both binding and voluntary, making them applicable to all states, even those that have not adhered to the relevant instruments or documents.

##### B. REFRAIN FROM SUPPORT TO NON-STATE ACTORS

The primary focus of international WMD law-making prior to major terrorist events early in this century was on restraining the proliferation of WMD among nation-states. However, after the 9/11 terrorist incidents in the United States and those in other states, attention has turned increasingly to the threat that terrorists or criminal elements might acquire and use WMD. I have discussed elsewhere the emergence of nuclear security as the most active field of nuclear

law. (See C. Stoiber, “Nuclear Security: Legal Aspects of Physical Protection, Combating Illicit Trafficking and Nuclear Terrorism,” in *International Nuclear Law: History, Evolution and Outlook—10<sup>th</sup> Anniversary of the International School of Nuclear Law*, OECD/Nuclear Energy Agency, Paris, 2010, pp. 219-242.)

In light of this history, a fundamental advance in international WMD law under UNSCR 1540 was to extend its scope beyond the conduct of nation-states to the WMD-related activities of non-state actors. A footnote in the resolution’s preamble identifies the non-state actor very broadly 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.” These certainly include terrorists and terrorist organizations, criminals and criminal bodies, and even insiders who may violate their legal responsibilities. Operative Paragraph 1 establishes the basic obligation that all states must refrain from “any form of support” to non-state actors in the full range of WMD-related activities, from acquisition to use. Although a range of anti-terrorism conventions address this issue with respect to specific technologies and activities (such as particular modes of transportation), UNSCR 1540 broadens these prohibitions to the entire United Nations.

#### C. DEVELOP EFFECTIVE NATIONAL LAWS

Operative Paragraph 2 of UNSC 1540 builds on the prohibition against support for non-state actors in WMD activities, by requiring States to adopt laws prohibiting the full range of relevant activities. This provision recognizes that effective implementation of the obligations in the resolution can only be accomplished within the legal systems of nation-states. Given the international character of the WMD threat, it is important that these national laws be not only consistent with the relevant international instruments, but harmonized in a way that allows for efficient coordination of efforts to control WMD activities that may transcend national boundaries.

#### D. ESTABLISH DOMESTIC CONTROLS

Operative Paragraph 3 is the longest in the resolution, covering a range of domestic controls that states must take to prevent WMD proliferation. Specifically, four subjects are identified:

- Accounting for and securing items in production, use, storage, or transport
- Physical protection measures
- Border controls and law-enforcement efforts
- Export and transshipment controls, including financing and transport, with appropriate criminal or civil penalties

As indicated earlier, adopting these measures as a binding decision essentially universalizes these measures as part of an international WMD law—a significant advance.

#### E. ESTABLISH COMMITTEE TO MONITOR AND SUPPORT IMPLEMENTATION

Operative Paragraph 4 does not directly supplement international WMD law, but is perhaps one of the most important provisions in UNSCR 1540 because it establishes an institutional structure for monitoring and supporting the implementation of the resolution. Over the past decade, the 1540 Committee has conducted a wide range of activities in support of WMD law that should not be underestimated. Although not precisely an enforcement mechanism, the range of activities conducted under the aegis of the Committee has contributed significantly to the ability of UN Member States to meet their obligations under the resolution. Since others have described these implementation activities, I will not attempt to detail them in this article. Basically, they involve the assembly of relevant documents related to WMD, assistance in legislative and regulatory development, and coordination with other bodies—international, national, nongovernmental, and professional—in strengthening implementation of UNSCR 1540. In this regard, the annual reports of the Committee are perhaps the best source for understanding the nature and scope of its work over the past decade. See, e.g., the latest report for 2013 in UN document S/2013/769, December 26, 2013.

A second provision in Paragraph 4 is also relevant for the development of WMD law. This provision calls upon states to provide reports on their implementation of the resolution. As discussed previously, the development of a customary law of WMD is based on identifying practices



common to a plurality of states. The reports of states to the 1540 Committee thus constitute important evidence of such common practices and contribute to the development of WMD law in a very concrete manner. Further, the Committee's development of its 1540 matrix on national implementation is an important means for assessing compliance with the resolution and the level of common practice. See website for the matrix at <<http://www.un.org/en/sc/1540/national.../matirx.shtml>>.

#### F. MANDATORY REPORTING OF VIOLATIONS

A significant development for international WMD law that is not contained in UNSCR 1540 is reflected in another Security Council resolution adopted in 2013. UNSCR 2118 sets forth the Council's decision that member states shall immediately inform the Council of any violation of UNSCR 1540. This important requirement could be essential in enabling the Council and member states to respond to WMD proliferation events in a timely and effective manner.

#### G. NON-BINDING PROVISIONS

Moving beyond the five binding paragraphs, UNSCR 1540 contains significant non-binding provisions that also strengthen international WMD law. Paragraph 6 records the Council's recognition that effective national control lists for WMD-related materials and commodities are important and calls upon member states to develop them at the earliest opportunity. Paragraph 7 recognizes the need of some states for assistance in fulfilling their 1540 obligations and invites other states to offer assistance when requested.

Paragraphs 8 through 10 set forth provisions in which the Council calls upon member states to take additional measures in support of the resolution's objectives. Without going into the details of these measures, they include:

- Promoting universal adoption of relevant WMD multilateral treaties
- Adopting national rules and regulations to meet obligations
- Enhancing multilateral cooperation to achieve the resolution's objectives

- Working with industry and the public on implementation of relevant laws
- Promoting dialogue and cooperation on WMD proliferation
- Taking cooperative action to prevent illicit trafficking

Although these measures do not, in themselves, establish new rules of WMD law, they can contribute to the development of such rules through the aforementioned customary law process.

#### ADDITIONAL STEPS FOR STRENGTHENING INTERNATIONAL WMD LAW

The previous discussion has summarized the basic elements of the important framework of WMD law for global security. Although this discussion has identified a broad range of activities that contribute to the regime, consideration should be given to further legal approaches to strengthening its development and implementation. The 1540 Committee's Annual Report for 2013 contains a lengthy set of recommended future actions in its Part IV, "Assessment of Progress and Future Perspectives," pp. 12-16. Some of these steps (eighteen are summarized in paragraph 80) are relevant to the development of WMD law. Assistance in developing national laws and regulations is one of the most important measures. However, consideration might be given to additional measures explicitly focused on international WMD law.

#### A. AN INTEGRATED COURSE ON WMD LAW

Reference has been made in this article to a number of legal education courses or schools that instruct relevant persons in fields related to international WMD law. The author is particularly familiar with those in the nuclear law field, among the most important being the IAEA's International Nuclear Law Institute and the Organization for Economic Cooperation and Development (OECD)/Nuclear Energy Agency's International School of Nuclear Law. In the chemical- and biological-weapons fields, similar activities are conducted by the Organization for the Prevention of Chemical Weapons (OPCW) and the World Health Organization. These activities contrib-



ute significantly to the broader understanding and application of WMD law. However, there is room for improvement along several lines. First, the offerings in these schools relevant to WMD are limited by the time available, since a range of other subjects must be covered. Second, because each focuses on only one of the relevant WMD technologies, these bodies do not consider cross-cutting legal issues, including possible conflicts or inconsistencies in the handling of the different technologies. Third, they typically focus only on existing legal measures rather than take a forward-looking perspective on how the regime might be improved.

One approach that could be considered is for the 1540 Committee to sponsor a course on international WMD law, perhaps at UN headquarters in New York. The course would draw its faculty from relevant international organizations (the IAEA, OECD/NEA, UNODC, UNODA, and the OPCW) and experts (both legal and technical) from national governments. A curriculum would need to be developed that would first discuss the basic technical aspects of the WMD threat, moving on to a discussion of the relevant individual WMD legal regimes (nuclear, chemical, and biological) and then continue further to discuss cross-cutting legal issues and approaches. Finally, it would be of interest for the course to consider “the way forward” in terms of strengthening and consolidating the WMD legal regime, possibly with suggestions for measures to be taken to implement UNSCR 1540, either through other international instruments or through relevant organizations and national governments.

#### B. INTERNATIONAL WMD LAW MANUAL OR HANDBOOK

As discussed previously, a large number of publications address various aspects of international WMD law. These not only include materials on the website of the 1540 Committee, but also publications of relevant international organizations, as well as those of academic institutions, nongovernmental organizations, and industry. Although these publications focus on relevant aspects of WMD law within their competence, they may contain material not relevant to WMD proliferation. Further, they typically address only one technology or one aspect of WMD proliferation. Therefore, a consolidated publication that could be used by the 1540 Committee and other relevant bodies—both international and national—in imple-

menting WMD law would be a welcome addition to the literature. The 1540 Committee would be the logical body to propose such a publication and to convene representatives of other relevant bodies and other experts to determine the structure and content of such a publication. Printing the volume in all official UN languages (and perhaps others) would make it an even greater tool for assistance and instruction.

#### C. WMD LAW AND SECURITY CULTURE

An important development relevant for international WMD law is the increasing emphasis on security culture. Although resolution 1540 does not use the term, its binding decisions and non-binding recommendations cannot be effectively implemented in the absence of a strong security culture. The resolution’s preamble references the Code of Conduct on the Safety and Security of Radioactive Sources, which defines “nuclear security culture” as “characteristics and attitudes in organizations and of individuals which establish that security issues receive the attention warranted by their significance.” The 1540 Committee reports other activities relevant to establishing security culture, for example in the biosecurity field. Expanded activities by the Committee and other international and national bodies in the area of security culture can help foster customary international law rules that states should apply as part of international WMD law. Relevant steps in this regard would be to include language on security culture in the review and implementation reports of the 1540 Committee and review meetings of relevant international instruments. The range of security issues should also be included in assistance efforts, including training and assessment efforts.

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#### CONCLUSION

An extremely broad range of activities, institutions, and publications are relevant to assessing the current status of an international WMD law and possible ways for enhancing this important legal framework. This article has only attempted to identify the fundamental aspects of this field and to suggest some few options for additional work. What is clear is that the adoption and implementation of UNSCR 1540 over the past decade has played an extremely important role in consolidating and strengthening an international legal regime that is vital for maintaining global peace and security.



# The way forward for UNSCR 1540

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THE 1540 COMMITTEE

**B**yond an assessment of resolution 1540 and its contribution to the global nonproliferation regime, it is also important to try to look forward. This will provide not just a better understanding of what has been achieved but also of what remains to be done, taking into account existing and future challenges and emerging threats.

Resolution 1540 was unanimously adopted in 2004 by the UN Security Council, acting under Chapter VII of the UN Charter. It seeks to reinforce the nonproliferation commitments taken on by states, imposing explicit obligations to prevent non-state actors from engaging in illegal activities related to weapons of mass destruction (WMD), their delivery means, and associated materials. Its adoption was a clear response to the tragic events of September 11, 2001, and to the activation of terrorist groups in many parts of the world, followed by non-state actors' evident attempts to acquire WMD and related materials. Revelations regarding the A. Q. Khan network's smuggling efforts bore witness to these efforts.

The process that led the Security Council to adopt UNSCR 1540 unanimously was not an easy one. As a person directly involved in drafting the resolution at the working level, I recall tough and lengthy discussions about the nature of the resolution in general and about its concrete details—where, of course, the devil lies. To put it bluntly, two main approaches collided during the debates in January-April 2004. The first was not only about making the resolution strong but about making it obligatory. This brought it closer in character to a sanctions resolution.

The second approach contained a good deal of flexibility, allowing states to decide for themselves how to implement the resolution's provisions without breaking its fundamental obligations. In the end a compromise was found, making the resolution mandatory but without prescribing how states were to implement it. This was a remarkable achievement, bearing in mind that countries vary greatly in their legal frameworks and technical capabilities in the nonpro-

liferation area. It is noteworthy that not a single state opposed the adoption of the resolution.

In efforts to curtail the proliferation of WMD and related materials undertaken after adoption of UNSCR 1540, the international community has achieved impressive results. It has reduced the chances of non-state actors acquiring such weapons and thereby diminishing the threat that they will be used in terrorist acts.

Nevertheless, the danger is still there. Recent developments only confirm this observation. The use of chemical weapons in Syria, the anthrax attacks and ricin letters in the United States in 2011 and 2013, and 160 incidents related to nuclear and radiological materials in 2012 alone, according to the International Atomic Energy Agency (IAEA) Incident and Trafficking Database, remind us that much remains to be done.

Looking at present and future threats associated with the possible use of WMD, their means of delivery, and related materials, one can identify two types of risks. The first can be described as “external,” including emerging international conflicts, possible further spread of WMD to new states, more sophisticated terrorist tactics, and increased applications of and trade in dual-use nuclear, chemical, and biological materials for legitimate purposes. All these factors increase the danger that WMD and related materials will be diverted for malicious purposes, or at least create the conditions for this kind of activity to be carried out.

Another type of risk relates to the gaps in states' and the international community's implementation of the resolution itself. Analyses of future developments in the international arena from the 1540 perspective, and of further scientific and technological progress in WMD-related areas, require special study. Hence I will focus on the second type of risks and challenges.

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## FIRST REPORTS

I will begin with initial reporting. Progress in implementing the resolution since its adoption has been remarkably good, bearing in mind that reporting is voluntary. At the time of writing, however, 21

states had yet to make their first report. Why is it so important to achieve universal reporting when nearly all non-reporting states possess neither WMD nor related materials?

The first answer is easy to find. Those states that have no nuclear, chemical, or biological weapons, delivery means, or related materials can still serve as transshipment points—and thus be directly or indirectly involved in the processes of smuggling and proliferation financing. Terrorists and perpetrators of different kinds can exploit their geographical positions, porous borders, and lax export and other cross-border controls for malicious purposes.

The second answer is that terrorists are looking for weak points. This was mentioned in the 2009 Comprehensive Review of UNSCR 1540 implementation. A single gap could lead to a disaster, because even one breach can sink the ship of proliferation controls. Of course, reporting is not equivalent to implementation. But the absence of firsthand information from a state makes it difficult to assess risks and identify gaps and challenges. So, weakness in implementation poses an objective threat to the international nonproliferation regime and to global security.

In this regard, the task of achieving universal reporting is very important. The 1540 Committee has intensified its work with such states on a bilateral level. In 2013 a series of meetings took place between members of the Committee and the experts on the one side, and representatives of missions from these states in New York on the other. This work yielded preliminary results, as two states submitted their initial reports and more are in the pipeline. The 1540 Committee's 2013 Annual Review calls for additional efforts to achieve substantial progress toward the goal of universal reporting.

Bilateral contacts between the members of the Committee, the experts, and national missions and capitals look like a promising direction to take. Success nonetheless depends on the Committee's ability to find the right approach in its interactions with

countries in the coming years, including visits to non-reporting states.

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#### ADDITIONAL REPORTS

The submission of additional information is as important as universal reporting. Reporting needs to be a continuous process. The resolution is about international cooperation and is preventive in nature. Thus, the more information the 1540 Committee has about steps that are being taken and challenges that states face, the better it can perform its tasks. Regular reporting helps it understand the trends in implementation of the resolution, including gaps, new developments, and assistance needs.

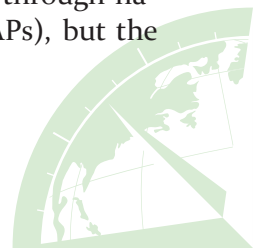
It is noteworthy that non-state actors and perpetrators are trying to develop new methods and techniques for acquiring nuclear, chemical, and biological weapons and related materials. Without regular reporting, it is difficult to understand what national legislation is being developed that conforms to UNSCR 1540 and can help capacity-building efforts where needed.

At the moment, work is ongoing on states' updated matrices in accordance with the new format approved by the 1540 Committee.

The Committee seeks additional information on what is being done in the capacity-building sphere. Regular, supplementary reporting is important for keeping the international community informed of states' efforts to meet the requirements of the resolution.

Though the 1540 Committee has gathered a lot of data, it remains unclear, without additional feedback, how existing laws and regulations work. Do such measures work mainly to provide environmental protection and public health, for example in the biological area, or are they nonproliferation-oriented? It would be welcome if states made their own assessments of the effectiveness of the measures taken and more actively shared their practices and experiences. Some steps in this direction have been made, through national implementation action plans (NAPs), but the main work lies ahead.

States that have no nuclear, chemical, or biological weapons, delivery means, or related materials can still serve as transshipment points.



NATIONAL IMPLEMENTATION  
ACTION PLANS

With regard to NAPs, the 1540 Committee is encouraging states to develop NAPs on a voluntary basis, “mapping out their priorities and their plans for implementing the key provisions of resolution 1540 (2004) and to submit these plans to the 1540 Committee” (Operative Paragraph 8 of resolution 1977 (2011)). So far ten states have submitted NAPs to the Committee, and a number are in the pipeline. Legislative action is an important element in a NAP. This may not mean starting from scratch, but rather making sure that gaps in existing legislation are covered and that national law is up to date.

As our experience demonstrates, the development of a NAP is kind of a roadmap that helps a state fully meet the requirements of UNSCR 1540. In its NAP, each state can establish its own priorities, timelines, and spheres of action. By submitting NAPs, countries give the Committee their vision of achievements, gaps, and challenges, providing important insight that helps the Committee understand the status of implementation of the resolution and what measures remain to be taken. NAPs are also essential for identifying assistance needs. They are an avenue for furthering implementation of the resolution, and for enhancing interaction between the Committee and states in the coming years.

New forms of cooperation among states are being developed. For example, a 1540 peer-review mechanism initiated by Croatia and Poland and a number of successful regional workshops confirm states’ interest in identifying effective practices and exchanging experiences. The implementation process is also a matter of trust. States should be on the same page on implementing the resolution, and their efforts should complement one another.

The implementation process is also a matter of trust. States should be on the same page on implementing [1540], and their efforts should complement one another.

ASSISTANCE

With regard to assistance, the implementation of resolution 1540 is a global endeavor that requires sus-

tained cooperation from all stakeholders. After all, the global effectiveness of resolution 1540 depends on the efforts of all. The 1540 Committee has a mandate to facilitate the delivery of assistance to states that need support to fulfil their obligations under resolution 1540.

The Committee plays a matchmaking role, connecting requests with offers of assistance. This assistance can vary from help with developing legislation and regulatory requirements, to the supply of appropriate equipment, to help strengthen border controls or training personnel such as police and customs officials.

Looking forward, it is important that concrete and detailed applications for assistance be sent to the Committee in accordance with established procedures to maximize the chances of success. In this regard, it is important that the register of assistance requests and offers be kept updated. The improved and updated consolidated list of assistance requests prepared by the Group of Experts is a good example of recent activities. This detailed and comprehensive list helps turn requests into action by providers such as the Global Partnership and international organizations such as the IAEA or Organization for the Prevention of Chemical Weapons (OPCW).

The area of assistance is not only very important – it is also sensitive. This is because in some cases it is about physical protection of nuclear sites or storage facilities for WMD-related materials. In this regard, work on a bilateral basis seems a preferable way of doing business, thus helping respect states’ legitimate security concerns. It is well known that the IAEA sticks to the principle of confidentiality when providing assistance to states.

VISITS TO STATES

There are also other very direct and practical ways that states can avail themselves of support to achieve full 1540 implementation. Governments have begun more actively inviting 1540 Committee experts to visit

their countries, going over in detail their regulatory and practical arrangements to implement the resolution. In the past year, the Committee has visited Bangladesh, Burkina Faso, Grenada, Niger, the Republic of Korea, and Trinidad and Tobago at the invitation of these governments. More invitations are forthcoming. The important features of these visits are that they usually involve ministerial-level participation, and that they cover the full scope of the resolution, engaging the whole range of government departments and agencies.

Some visits are carried out on a smaller scale, helping government officials and legislators develop NAPs or identify their assistance needs. We call these country-specific activities. For example, members of the Group of Experts have recently visited states to help develop voluntary NAPs. They also went to Vienna to meet officials from Bosnia-Herzegovina, Montenegro, and the Former Yugoslav Republic of Macedonia to help them elaborate measures for more effective implementation of resolution 1540.

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#### PARLIAMENTARIANS

A new element of activity that should be made permanent is 1540 Committee work with parliamentarians. When it comes to control of WMD-related materials, it is obvious that in many cases such materials are not fully covered by national legislation, especially in the biological and chemical areas. As mentioned already, many states submitted their reports and additional information six to eight years ago and have not updated their reports since then. Some countries have not criminalized non-state actors' efforts to get unauthorized access to WMD-related materials. Coordination of international organizations' efforts to implement the resolution also needs improvement.

Needless to say, lawmakers can facilitate the adoption and enactment of the necessary legislation and, where relevant, can monitor its implementation. In the Committee's current program of work, as approved by the UN Security Council, engagement with parliamentarians is an essential part of plans for outreach in 2014 and beyond. In early October last year, the Chair of the 1540 Committee participated for the first time in the annual Assembly of the Inter-Parliamentary Union (IPU) in Geneva. This session was a

success. One hopes it will lead to further engagement with IPU members in many parts of the world.

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#### POINTS OF CONTACT

Another important task for the future is the issue of points of contacts (POCs). POCs may look technical, but communication among the right people across governments and international organizations is essential for resolving problems and sharing necessary information. In this regard, the Chair of the Committee has once again contacted states and relevant international organizations (IROs) calling on them to notify their POCs if they have not already done so. Thus far, 68 states and 12 IROs have designated POCs.

The rapidly changing global, political, scientific, and technological environment requires the exploitation of all available opportunities for international cooperation. The dynamic global environment imposes new challenges on the international community in the area of nonproliferation. In this regard, the 1540 Committee's relationship with relevant international organizations and bodies has always been of great importance. This includes participation in events with the OPCW, the IAEA and the Biological Weapons Convention Implementation Support Unit. For example, the 1540 Committee was invited to the first ministerial-level IAEA nuclear-security meeting, in July 2013.

The 1540 Committee is also trying to expand the scope of its activities in this area. One can note the events undertaken in collaboration with the European Union Joint Action project on the Biological Weapons Convention and Chemical, Biological, Radiological, and Nuclear Centers of Excellence. In February of this year, the World Customs Organisation addressed an open briefing for UN member states hosted by the 1540 Committee. We are looking forward to expanding our contacts with the Financial Action Task Force, since most states face challenges from activities such as money laundering, illegal financing of arms, and drug smuggling. Strengthening connections with these organizations will lead to more effective implementation of UNSCR 1540.

The tenth anniversary of resolution 1540 is a good time to think constructively about new ways to implement the resolution effectively.



# The UN Office on Drugs and Crime helps states meet 1540 obligations

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## BACKGROUND: UNODC'S MANDATE ON THE RELEVANT LEGAL INSTRUMENTS

The UN Office on Drugs and Crime (UNODC) is entrusted by the General Assembly of the United Nations with promoting the ratification and effective implementation of the international conventions and protocols related to counterterrorism among member states. UNODC efforts help strengthen the capacity of national criminal-justice systems to prevent and counter terrorism, in compliance with the principles of the rule of law and with due respect for human rights. Seven of these international legal instruments deal, in varying degrees, with the criminalization of certain acts by non-state actors involving chemical, biological, and nuclear weapons or nuclear or other radioactive materials. These acts range from the illicit possession, handling, and use of nuclear material to discharging chemical, biological, radiological, or nuclear (CBRN) weapons from or against ships or aircraft, to nuclear smuggling. The seven international legal instruments include the International Convention for the Suppression of Acts of Nuclear Terrorism, the Convention on the Physical Protection of Nuclear Material (CPPNM) and its 2005 Amendment, and the International Convention for the Suppression of Terrorist Bombings, plus two maritime instruments adopted in 2005 and one on civil aviation that was adopted in 2010.<sup>1</sup>

It should be highlighted that the abovementioned instruments do not make terrorist motivation<sup>2</sup> a *conditio sine qua non* for most of the abovementioned acts to be criminalized under national law. In some cases, it is an element of the offense, and in others, the possibility is open to the national legislator to include such intentions as an aggravating circumstance.

By obliging states party to the aforementioned instruments to criminalize certain acts related to those items and certain related materials, these instruments assist those states in fulfilling several of their obligations under UN Security Council resolution

1540 (2004) (UNSCR 1540). More specifically, these obligations are found in operative paragraph 2 of UNSCR 1540, which requires 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, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them.”

Additionally, the CPPNM and its 2005 Amendment require states to protect nuclear material at certain levels specified therein. It is worth noting that operative paragraph 3 of UNSCR 1540 requires states, among other things, to “develop and maintain appropriate effective physical protection measures.”

Hence, the relevant international legal instruments against terrorism are indeed useful for states to meet several of their obligations under UNSCR 1540. They also require states to criminalize attempts, participation, and several forms of assistance, which are also requirements of UNSCR 1540. As for the obligation enshrined in the resolution to adopt and enforce laws prohibiting non-state actors from financing the acts described, the International Convention for the Suppression of the Financing of Terrorism is also an instrument of key importance for states.

## UNODC'S TECHNICAL ASSISTANCE

States are not alone in the endeavor of incorporating and implementing international legal instruments against terrorism at the national level. What assistance can UNODC provide?

UNODC offers legal technical assistance and tailored capacity-building to member states that request it. It helps with ratification and full implementation of these instruments through a variety of means, including:

- Awareness-raising and capacity-building on the provisions of the instruments

- Review or assistance in drafting national legislation
- Training of criminal-justice and law-enforcement officials in the effective implementation of the instruments (investigation, prosecution, and adjudication of cases)
- Enhancing international cooperation in criminal matters related to CBRN terrorism

The key role played by UNODC in furnishing legal technical assistance to member states in order to prevent nuclear and radiological terrorism has been recognized in a variety of forums. In 2012, for example, the UN High Level Meeting on Countering Nuclear Terrorism with a Special Focus on Strengthening the Legal Framework recognized the UNODC's work—in particular that of its Terrorism Prevention Branch's Global Project on Strengthening the Legal Regime against Terrorism—in promoting the ratification and the full implementation of the international legal instruments dealing with nuclear terrorism and nuclear security. In particular, participants welcomed UNODC's ongoing efforts to assist member states that request help through this process and invited member states to avail themselves of the UNODC's successful and long-established technical legal assistance program.

In 2009, the Global Initiative to Combat Nuclear Terrorism (GICNT) granted UNODC official observer status, emphasizing that “UNODC's commendable work in addressing issues related to counter terrorism, including nuclear terrorism, has already had a positive impact in promoting implementation of the universal legal framework against terrorism, including the Convention on the Physical Protection of Nuclear Material and its 2005 Amendment, United Nations Security Council resolutions 1373 and 1540 and the International Convention for the Suppression of Acts of Nuclear Terrorism.” UNODC participates regularly, and as appropriate for its capacity as an official observer, in activities of the GICNT.

In order to provide an idea of the work conducted by UNODC with respect to the 18 international legal instruments against terrorism, it can be highlighted that since 2003, when the Terrorism Prevention Branch of UNODC began its legal technical assistance, such assistance has been provided to 169 countries. Its efforts have resulted in an estimated 628 new

ratifications of the international legal instruments, 113 new or revised pieces of counterterrorist legislation developed by member states, and over 18,500 national criminal-justice officials trained. In 2013 alone, 83 countries were assisted through national or regional activities, resulting in 24 new ratifications and over 2,500 officials trained.

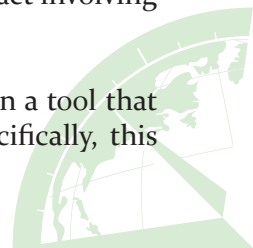
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#### ADDRESSING THE CHALLENGES

Legislative incorporation of the international conventions and protocols may pose some difficulties for member states due to factors such as the complexity of some of the issues covered, as well as differences in scope and definitions in some conventions. Accordingly, model legislative provisions for the implementation of the criminalization provisions of the International Convention for the Suppression of Acts of Nuclear Terrorism, the Convention on the Physical Protection of Nuclear Material, and the CPPNM's 2005 Amendment were jointly developed by UNODC and the International Atomic Energy Agency (IAEA) in 2009. Additionally, UNODC has, over the years, developed model legislative provisions for the legislative incorporation of the criminalization provisions of the international legal instruments against terrorism, which also include those dealing with CBRN issues.

UNODC works to raise awareness regarding why universal adoption of the international legal instruments against terrorism is important and beneficial for member states, apart from being obligatory under UN Security Council resolution 1373 (2001). In some cases, this may not be immediately apparent to states, given the scope of some of the instruments. A member state may not recognize the benefits that might result from ratifying and incorporating into national law a particular treaty. As an example, a country that does not have nuclear material could believe that there is no need to ratify and implement the treaties related to nuclear terrorism. However, this is not the case. If nuclear material were smuggled into its territory, or if a citizen were the victim of a nuclear terrorist attack abroad, being a party to the international legal instruments and having the relevant domestic legislation in place would enable the country to effectively prosecute offenders for smuggling nuclear material, or to claim jurisdiction over the terrorist act involving its citizen.

This and other issues will be raised in a tool that UNODC will develop shortly. More specifically, this



tool will be devoted to the international legal framework against CBRN terrorism and will aim at assisting states with the ratification and legislative implementation of that framework.

#### COOPERATION WITH THE 1540 COMMITTEE AND OTHER ENTITIES

In carrying out activities relevant to promoting the international legal framework against CBRN terrorism, UNODC works closely with relevant international and regional organizations and entities, including the Counter-Terrorism Implementation Task Force, the African Union (AU), the Biological Weapons Convention Implementation Support Unit, the Committee established pursuant to UNSCR 1540 (2004) and its Group of Experts, the European Union, the IAEA, the International Civil Aviation Organization, the International Maritime Organization, the Organization for the Prohibition of Chemical Weapons, and the Organization for Security and Cooperation in Europe. UNODC contributes to these bodies' activities as appropriate.

Examples of recent relevant activities to which UNODC has contributed include:

- Two Regional Workshops on the Implementation of UNSCR 1540 (2004), organized by the UN Office for Disarmament Affairs (UNODA) in Addis Ababa, Ethiopia, in December 2013, and in Astana, Kazakhstan, in March 2014
- Two IAEA Regional Workshops on Facilitating Adherence to and Implementation of the 2005 Amendment to the CPPNM, in Brussels, Belgium, November 2013, and in Mexico City, Mexico, in April 2014

Activities organized by UNODC include:

- Two Workshops on the 2005 Amendment to the Convention on the Physical Protection of Nuclear Material and the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism for selected African states, held, respectively, in Dakar, Senegal, in June 2013 and in Nairobi, Kenya, in October 2013. Both events benefited from participation by the IAEA, the 1540 Committee Group of Experts, the AU, and civil society. The United Kingdom contributed to both events in its

capacity as a donor for the project and also through providing expertise.

- A Workshop on Chemical, Biological, Radiological and Nuclear (CBRN) and Maritime Terrorism for ASEAN countries, held in Bangkok, Thailand, in December 2012. The 1540 Committee Group of Experts, the IAEA, and UNODC participated.

It should also be noted that UNODC has positively responded to the request from the 1540 Committee to be a provider of assistance, within its mandate, to states requesting relevant assistance to the Committee and has already worked with several member states in this regard.

#### THE UNODC-WCO CONTAINER CONTROL PROGRAM

Another requirement of UNSCR 1540 is that states “develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering” of materials, equipment, and technology covered by relevant multilateral treaties and arrangements, or included on national control lists, which could be used for the design, development, production, or use of nuclear, chemical and biological weapons and their means of delivery, and that they “establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export.”

UNODC's Container Control Program (CCP) may be of assistance to states in this regard. Jointly developed by UNODC and the World Customs Organization (WCO), the CCP has assisted 25 countries with enhancing the security of cargo containers at sea and land borders since its inception in 2006. It has plans to expand to 25 more countries in the near future. Containers are used for shipments of all types of legal goods, but also for illegal goods such as drugs, arms, and chemical, nuclear, and biological materials. Yet fewer than two percent of cargoes are subject to in-depth inspection, due to high volume and the speed of handling. The CCP aims at preventing illicit trafficking and container crime while also facilitating legitimate trade and increasing state revenues.



More particularly, the CCP assists states in establishing dedicated container profiling units (port control units, or PCUs). PCUs comprise law-enforcement officers equipped and trained for this mission and stationed at selected sea and dry ports. They are set to play an important role in national security schemes, as they have the potential to profile containers without unnecessary hindrance to the flow of legitimate trade.

Specifically relevant to UNSCR 1540 is the Advanced Interdiction Training (AIT) module in the context of the CCP. AIT addresses the control of imports, exports, or transit of commodities subject to licensing or authorization (Strategic Trade Controls (STC) on weapons of mass destruction, dual-use goods, and CBRN materials). In order to enhance the capacity of the PCUs in the sphere of risk profiling for trafficking of these items, the training includes activities for building up basic profiling capacity, knowledge of controlled commodities, specific regulations applicable to the international trade in these commodities, and analysis of fraud patterns. The first AIT training was held in December 2011 in the port of Rotterdam, The Netherlands for advanced PCUs from Ecuador, Ghana, Panama, Pakistan, and Senegal. It was delivered by experienced profilers and CBRN/STC trainers. The three-week curriculum, based on a UNODC-WCO Handbook, includes one week on STC identification and profiling, one week on chemical controls, and one week of follow-up/practical training, with the option of adding specialized training and providing post-training support to units. Further AIT workshops were held for the PCUs from Benin, Ghana, Senegal, and Togo in Tema, Ghana, in February 2012 and in Dakar, Senegal, in November 2012. In 2013, AIT workshops took place for the Panamanian port control units in Panama City, and for Pakistani port control units in Ankara, Turkey. An ASEAN Regional Forum Workshop on Countering Illicit Trafficking of CBRN Materials was organized by Canada and UNODC. It was held in Manila, the Philippines, in November 2013.

#### CONCLUSION

In 2006 the General Assembly approved a United Nations Global Counter-Terrorism Strategy.<sup>3</sup> The Assembly recognized the synergies among the different instruments and encouraged UNODC to step up technical assistance to states, upon request, to facilitate implementation of the international conventions and

protocols related to the prevention and suppression of terrorism and relevant UN resolutions.

In the context of its longstanding and successful technical legal assistance program, UNODC is increasingly devoting resources to assist member states in ratifying and implementing the CBRN-relevant legal instruments. It thereby also assists them in fulfilling, as we have seen, several of their obligations under UNSCR 1540. In doing so, it will continue to strengthen and expand its partnerships with relevant entities in a synergetic manner in order to maximize results and better serve member states. New tools such as the upcoming publication on the international legal framework against CBRN terrorism will also contribute to these efforts.

The work of the Container Control Program will be strengthened further. Following the success of initial training activities, and in light of the keen awareness and interest shown by the PCUs, and if donor funding permits, AIT will be implemented on a larger scale within the CCP.

Through all these efforts, UNODC will contribute not only to helping states meet their obligations under UNSCR 1540 but to making the world a more secure place.

*The views expressed in this article are those of the author and do not necessarily represent those of the UN Office on Drugs and Crime.*

#### ENDNOTES

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2. Indeed, in certain cases, the conventions and protocols require that for an act to be criminalized it be carried out, *inter alia*, “with the purpose of intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act.”
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1540 COMPASS: SECTION TWO  
REGIONAL PERSPECTIVE

# Implementation in the Asia-Pacific

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This year marks the tenth anniversary of the adoption of UN Security Council resolution (UNSCR) 1540 (2004), which provides a good opportunity to review the successes and future challenges associated with its implementation in the Asia-Pacific. Numerous activities have been carried out to support states as they implement the provisions of the resolution. The UN Office for Disarmament Affairs (UNODA) has been responsible for many of these, including those undertaken by the UN Regional Center for Peace and Disarmament in Asia and the Pacific (UNRCPD). UNRCPD covers 43 states in five subregions,<sup>1</sup> namely South Asia, Central Asia, Northeast Asia, Southeast Asia, and the Pacific. Its geographic purview ranges from Turkmenistan to Tonga, and Mongolia to the Maldives.

Containing over half of the world's population,<sup>2</sup> the region is incredibly varied, both in proliferation risks and in the degree to which states have put resolution 1540 into effect. Despite concerted effort from many actors over the past ten years, further work is still required to achieve universal and effective implementation of the resolution throughout the region. Some states have taken significant steps by enacting and enforcing relevant legislation and control mechanisms. On the other hand, three states have yet to submit their first national reports to the 1540 Committee, as required by the resolution. From UNRCPD's experience

of working within the region, it has become clear that only by developing a good understanding of the diversity of the region—including states' different needs and systems—is it possible to deliver effective implementation support. This article will examine some key contextual issues that impact upon implementation in the region, and discuss UNRCPD's plans to contribute to these efforts.

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## THE ASIA-PACIFIC LANDSCAPE

In 2012, GDP growth rates across four of the five subregions (excluding the Pacific) averaged at between 5-6 percent per year, which is double the worldwide average of just 2.3 percent.<sup>3</sup> The region is also home to some of the world's biggest producers of high-technology products, including dual-use goods.<sup>4</sup> Additionally, the maritime character of international trade in the Asia-Pacific region, coupled with rapid economic and industrial growth, highlights the importance of ensuring that, *inter alia*, effective export controls and transit and transshipment monitoring are a focus of 1540 implementation efforts. The unique situation of this region also creates a risk that rapid growth may outstrip the development and implementation of regulatory structures aimed at preventing proliferation.

The region (excluding Central Asia) is an overwhelmingly maritime one: approximately 85 percent of the borders in Southeast Asia, 60 percent in Northeast Asia, and 45 percent in South Asia are comprised of maritime boundaries.<sup>5</sup> The majority of internation-

al trade in the region is conducted via ports. In 2012 the World Shipping Council reported that 27 of the top 50 container ports in the world by volume (over half) were based in 12 states in the Asia-Pacific region.<sup>6</sup> From a nonproliferation perspective, ports are often considered to be one of the weakest links in the logistical supply chain due to high volumes of cargo and the inherent difficulty of monitoring container shipments.<sup>7</sup> In 2012 alone, the 27 container ports mentioned above handled a combined total of over 288 million twenty-foot-equivalent-unit shipping containers—an enormous amount, and an increase of 21 million from 2011 levels.<sup>8</sup>

The chemical-, biological-, and nuclear-related material and technology (CBN) landscape across the region is likewise quite varied and contains a number of potential proliferation risks. From a nuclear perspective, the region contains, *inter alia*, two of the world's three largest producers of natural uranium, several states with nuclear weapons, and a number of states which either have, or are considering, civilian nuclear energy. In Central Asia, significant efforts have been undertaken to: address the issue of unsecured Soviet-era nuclear waste, convert research reactors from highly enriched uranium (HEU) to low enriched uranium (LEU), convert existing stocks of HEU to LEU, and generally improve nuclear security. However, the expansion of civilian nuclear power generation in the wider region, specifically in states that do not have previous experience of such, may pose a potential proliferation risk unless nuclear security issues are managed appropriately. The IAEA reports that across five states<sup>9</sup> in Northeast and South Asia there are total of 116 operational reactors<sup>10</sup> and another 43 under construction.<sup>11</sup> In recent years, a further five states in Southeast Asia and one each in South Asia and Central Asia<sup>12</sup> have indicated that they are either planning for developing civilian nuclear power, or are examining the feasibility of such.<sup>13</sup>

Across the region there has also been a significant growth in the production and storage of industrial chemicals. For example, there is a large number of designated Other Chemical Production Facilities (OCPF) in the region. An OCPF is a multipurpose plant that,

although not currently producing items listed on the Schedules of the Chemical Weapons Convention, is technically capable of producing them.<sup>14</sup> As of December 31, 2012, the Organization for the Prohibition of Chemical Weapons listed approximately 2,500 OCPFs in the Asia-Pacific region. Approximately 70 percent of these facilities are located in Northeast Asia, 20 percent are located in South Asia, and another 5 percent are located in Southeast Asia. This is in addition to the approximately 180 facilities in the region that produce Schedule 2 chemicals and the approximately 300 that produce Schedule 3 chemicals, which can be used in chemical-weapons programs.<sup>15</sup>

In relation to biological issues, there is a risk that rapid developments in advanced life sciences and biotech industries in the region may outpace the capacity of states to address associated proliferation risks. Biosecurity legislation across the Asia-Pacific needs to be enhanced to ensure that it effectively addresses the issue of bioterrorism.<sup>16</sup> Additionally, a number of projects have already been conducted in Central Asia to engage and redirect both former weapons scientists and technicians and, more broadly, those with skills that could be misused in such programs.<sup>17</sup>

The global nature of efforts to implement resolution 1540 universally is reflected in the range of actors undertaking assistance activities in the region.

#### 10 YEARS OF ASSISTANCE IN THE ASIA-PACIFIC

The global nature of efforts to implement resolution 1540 universally is reflected in the range of actors undertaking assistance activities in the region. Activities have been undertaken by UN entities, especially the UN Office for Disarmament Affairs (UNODA). Reports by the 1540 Committee, a committee of the UN Security Council, highlight the wide-ranging and varied support provided by UNODA in the Asia-Pacific region from 2004 to 2013<sup>18</sup>. Of the approximately 60 events that the Committee lists during that period as being related to the Asia-Pacific region, one-third were organized in conjunction with or received input from UNODA. The majority of these activities involved international conferences and regional events that examined issues related generally to nonproliferation and, directly or indirectly, to resolution 1540.

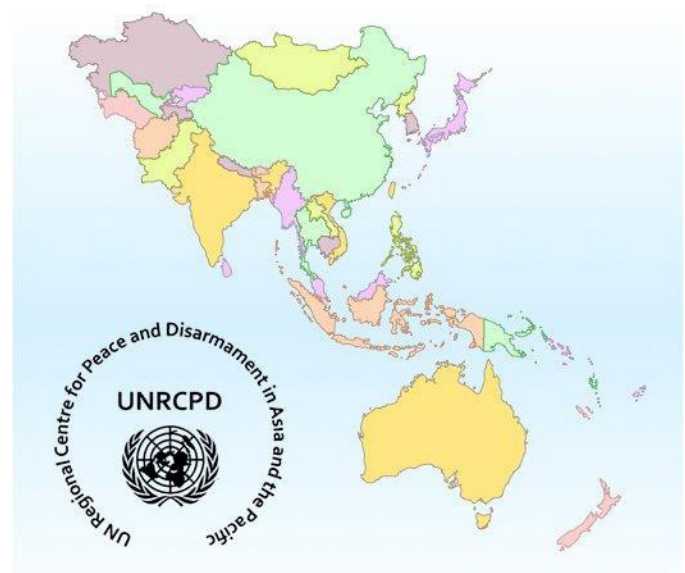


The concerted effort in the region is also reflected in the 2012 G-8 Global Partnership Working Group Annual Report,<sup>19</sup> in which approximately 200 projects were self-reported by G-8 states to have taken place in the region. Reflecting the regional context outlined earlier, the three main areas in which these projects focused were nuclear (42 projects), biological (35 projects), and export controls (41 projects). Further, 44 projects occurred specifically in Central Asia and another 28 took place in Southeast Asia. In total, projects targeted over 30 states in the region, including 63 projects delivered on a bilateral basis to 14 states. Central Asian states received assistance in over half of these bilateral projects, with the main emphasis being nuclear issues. A more recent addition to the nonproliferation landscape in the region is the European Union's CBRN Centers of Excellence. Since 2011, the Centers of Excellence have run, or are running, some 21 projects in the region split across Southeast Asia (17) and Central Asia (4).<sup>20</sup> However, it is important to note that the figures above understate the total number of projects conducted in the region, because accurate information is not readily available due to a myriad of different reporting and recording methods.

#### CHALLENGES IN MOVING FORWARD

Despite some success, significant work remains to be done to achieve universal implementation of the resolution throughout the region.<sup>21</sup> For example, some states have adopted comprehensive strategic trade controls, while many others currently have no strategic controls or related legislation.<sup>22</sup> Likewise, levels of reporting to the 1540 Committee have also varied, with three states in the region yet to submit initial national reports. Only one state, Kyrgyzstan, has submitted a voluntary National Action Plan for implementation.<sup>23</sup> Reflecting the findings of the 1540 Committee's 2009 Comprehensive Review, deficiencies in biological-weapons controls, restriction on access to means of delivery and precursor materials, enforcement of national control lists, and the financing of nonproliferation-related activities have also been identified in the region.<sup>24</sup>

National capacity issues may compound the difficulties some states face in translating assistance into sustainable results. To develop an effective export control regime, for example, not only the capacity to enact effective laws, policies, and procedures but also efficient state institutions are required to regu-



UNRCPD works with 43 countries in Asia and the Pacific to achieve their peace, security and disarmament goals. For more information, visit [www.unrccd.org](http://www.unrccd.org).

late and enforce these measures.<sup>25</sup> Of the 54 states currently listed on the 1540 Committee's website as requesting assistance to implement the resolution, 18 are from the Asia-Pacific region.<sup>26</sup> While some of these requests are quite detailed and specific, others may indicate a need for assistance to help states assess which capacity-development activities they require. Complicating the issue further is the often sensitive nature of implementation needs, which may preclude sharing in an open forum. Eleven Asia-Pacific states have nominated national Points of Contact to date according to the 1540 Committee's website.<sup>27</sup> Enhanced cooperation with these focal points, and encouraging more states to nominate focal points, would lead to a greater understanding of implementation needs so that offers of assistance can be matched up with requests appropriately and quickly.

Due to the large number of actors that have provided bilateral and multilateral assistance via a myriad of reporting methods, it is currently difficult to obtain an accurate picture of the impact of the assistance provided over the past ten years. In order to target future assistance, a comprehensive overview of past activities is needed. The 1540 Committee website provides an excellent outline of certain activities. At present, however, because of the large number of actors providing assistance both multilaterally and bilaterally, there is no *single source* from which to obtain information as to what assistance has been provided and what the

outcomes were. A more accurate picture is needed in the region as to what states have done and how. Follow-up activities to assess whether states were able to render assistance effectively, how effective it was, and what changes resulted from the activity, would help paint a more complete picture of where implementation efforts stand and what is still required.

It is often noted that effective implementation of resolution 1540 would facilitate trade and grease the wheels of the economy by allowing freer movement of goods and services across borders. Effective control regimes are needed in order to ensure that imported and exported goods are easily identified and given a speedy green light to move to their destinations. This is especially important for high-tech and potentially dual-use goods. An example to this effect is the 2012 World Economic Forum's Enabling Trade Index, which ranks Singapore, a state with comprehensive strategic trade controls, number one in the world for enabling trade.

While nonproliferation measures are not always high on the agenda of smaller states without CBN-related industries, it is vital that the 1540 implementation web be cast wide in order to fortify the global regime. Developing states in particular often have competing domestic priorities—such as providing basic services and security to their populations—to which enacting nonproliferation measures may seem secondary. However, the impact that implementing measures associated with resolution 1540 can have on these other priority areas is significant, and it can make smaller or developing countries more secure in a number of areas. For example, increased capacity to monitor ports and borders will also enhance states' ability to interdict illegally trafficked small arms, drugs, and people. An ability to track proliferation-related financial transactions will also affect monitoring of other financial transactions associated with transnational crime or terrorist activity. Likewise, enhancements to biosafety and biosecurity measures have clear benefits to public health, especially in a region with a history of pandemic outbreaks, such as SARS, avian influenza, H1N1, and the Nipah virus.<sup>28</sup>

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Within the Asia-Pacific, effectively moving forward with implementation of resolution 1540 will need to take into account a wide variety of factors. Assistance will need to include the maritime characteristics of the region, and the associated need for strong export controls and transit and transshipment mechanisms. A proactive approach to ensuring that legislation and regulatory mechanisms keep pace with the rapid growth of CBN-relevant industries in the region will also be essential. However, assistance must also be delivered in a manner that takes into account the capacity of states to actually implement changes, without detracting from existing national priorities. In such a diverse region, a good starting point for ensuring that implementation assistance is delivered effectively is the development of an accurate picture of the needs of individual states.

UNRCPD, as the regional arm of UNODA, plans to add value to work already being undertaken in the Asia-Pacific in the next few years. Based in the region and in regular contact with governments, UNRCPD is ideally placed to discuss pressing matters with states, help identify their needs, and assist with coordination of ongoing activities. In addition to organizing regional conferences and workshops on 1540-related issues, the Center seeks to address a number of the specific gaps outlined above. In 2014, for instance, in order to more accurately target future assistance, the Center plans to develop a comprehensive information database cataloguing the projects that have been undertaken in the region over the past ten years. It will document future activities as well. Likewise, with an eye to capacity issues in the region, the Center plans to offer support to states compiling their first national reports on implementation. UNRCPD will be working with states and other stakeholders in the coming months and years to identify and provide assistance where needed, in close cooperation with the 1540 Committee and UNODA in New York. During the past ten years, implementation has come a long way in the Asia-Pacific, and work over the next ten years looks equally promising.



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# Developing a biosecurity culture in MENA countries

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The objectives of UN Security Council resolution (UNSCR) 1540 (2004) are crucial for ensuring that a strong regime is put into place to prevent non-state actors from using biological materials to threaten international peace and security. However, challenges to legal implementation of the Biological and Toxin Weapons Convention (BTWC) and regulation of biological materials vary regionally. Jordan and most countries of the Middle Eastern and North African (MENA) region are signatories of the BTWC; they are also bound by UNSCR 1540. In the MENA region, there is some movement towards a more robust biosecurity regulatory environment, but the progress is slow and uneven. In addition, and in order to fulfill the requirements set forth in these international legal instruments, there is a necessity for the region to develop its national experience, expertise, and infrastructure. However, there are numerous ways to combine the various elements of biosecurity into a successful biosecurity framework. Each country proceeds from a different starting point measured by current practice, needs and demands, culture, the legislative environment, and levels of resources and facilities.

The objective of this article is to summarize the biosecurity-related projects in the Middle East, and their contribution to the ongoing construction of a global network committed to ensuring that biological materials and technology are only used for peaceful purposes. Thus, these efforts will advance resolution 1540 while developing a biosecurity culture in MENA countries.

This long extension puts the Committee on a different footing, firmly establishing it as a durable mechanism in international efforts to stem the proliferation of weapons of mass destruction.

The role of nongovernmental organizations and other interested observers—civil society—has long been neglected by governments in the quest for a world secure from the threat of biological weapons or bioterrorism. New trends illustrate a greater appreciation of the need for a cooperative partnership. Nevertheless, because of the unique political and geostrategic circumstances of the region, civil institutions in the MENA region have extensive firsthand experience in dealing with arms control and nonproliferation issues. Thus, the article begins by describing a task force that convened between 2010-2012 under the auspices

of track II engagement to discuss the technical parameters of implementing a weapons-of-mass-destruction-free zone (WMDFFZ) in the MENA region. The task force was composed of policy and technical experts from throughout the region, acting in their private capacity, in addition to facilitators and observers from Europe and the United States. The group elected for an initial focus on the dimensions of a WMDFFZ specific to biological weapons (BW). This was an area which—by comparison to other WMD issues—offered the fewest political obstacles

to constructive discussion. The article will attempt to present an overview of some of the issues at play today in the biosecurity dialogue.

The findings of the “bioengagement” program conducted by the Center for Science, Technology, and Security Policy (CSTSP) in the broader Middle East and North Africa (BMENA, including Afghanistan and Pakistan) are also reported. The program focused on building trust and partnerships between scientists from the United States and BMENA countries and promoting safe, ethical, and secure life sciences research.





*Bio-Safety Level 3 lab at the Institute Pasteur in Morocco*

Many of the projects carried out under the EU chemical, biological, radiological, and nuclear (CBRN) Centers of Excellence (CoE) Initiative relate directly to obligations set forth in UNSCR 1540. By prosecuting the CBRN CoE Initiative, the European Union and the UN Interregional Crime and Justice Research Institute (UNICRI) help states meet their international obligations. As a result of the ongoing activities of the EU CBRN CoE Initiative in the Middle East, twelve projects addressing countries' needs were launched in 2013. The article presents an overview of these projects.

The article also highlights the main achievements of the Biosafety and Biosecurity International Consortium (BBIC), a network set up to exploit the extraordinary advances being made in biotechnology in order to bring the benefits to communities in the MENA region and to manage biological risks regardless of their origin. The BBIC process thus enables the

countries of the region to identify the biological risks to which they are exposed and mitigate them through the development of national and regional biosafety and biosecurity strategies underpinned by legislative, human, and physical infrastructure, national preparedness, and contingency planning. Main activities related to biosafety and biosecurity in MENA countries are presented by the end of this article.

Specific lessons learned from the abovementioned projects, networks, and initiatives are described in the article. Heeding these lessons will provide a platform for facing current challenges to the establishment of regional biosecurity. The article concludes with suggestions for next steps that can be taken to promote building healthier and more secure communities in the MENA region, and for the role scientists, regional champions, and governments have to play in this important, challenging task.

TRACK II TECHNICAL DISCUSSIONS  
ON THE BIOLOGICAL WEAPONS  
DIMENSIONS OF IMPLEMENTING A  
WMD-FREE ZONE IN THE MIDDLE  
EAST AND NORTH AFRICA<sup>1</sup>

In 2010, a task force was convened under the auspices of track II engagement to discuss the technical parameters of implementing a WMDFZ in the MENA region. While the goal of establishing a zone is shared in principle by all governments in the region—as well as the broader international community—political and strategic realities continue to make achievement of that goal elusive. Recognizing these high-level obstacles, the task force was formed to explore more specific technical challenges that might emerge under potential WMDFZ implementation scenarios—“technical” being interpreted broadly to include the various technological, scientific, and organizational elements that might go into formation of a zone.

The task force was composed of policy and technical experts from throughout the region, acting in their private capacity, in addition to facilitators and observers from Europe and the United States. Early meetings included subject-matter-expert presentations and discussion on the fundamentals of biological weapons, arms control under the BTWC, the role of confidence-building measures in assessing BTWC compliance, and the responsibilities of the scientific community in controlling BW-relevant materials, technology, and expertise. Having established a common baseline of understanding, participants subsequently presented and discussed regional perspectives on BW, including policy, threat perceptions, and prospects for cooperation. Recognizing common ground, the task force—and specifically a subgroup of life-sciences experts—explored possible foundations for a regional framework for addressing BW threats, as well as opportunities for near-term confidence-building and cooperation.

The task-force discussions suggested agreement on certain common principles or pillars that should support a zone free of BW, regardless of the mode of implementing such a zone. These include:

- *Prevention* of the acquisition or use of BW by malevolent actors

- *Detection* of outbreaks of infectious disease in the region, including those that could potentially result from acts of bioterrorism
- *Response* and mitigation in the event of an attack using BW

Each of these pillars should additionally be supported by cross-cutting foundations of awareness and general education across regional stakeholder communities (public, private, and governmental). It was the sense of the task force that these three pillars should serve as guiding foundations for near-term confidence-building and cooperation on addressing BW threats.

Confidence-building<sup>2</sup> on each pillar would include regional exchanges of information on relevant national legislation, policies, best practices, and technical approaches currently implemented in the countries of the region. Such exchanges would begin at the basic level of orientation seminars. As confidence is built and collaborative relationships developed, exchanges can advance to training, cooperative implementation, and possibly even integrated capacities for addressing biological threats. The task force developed topical ideas for confidence-building activities under each pillar, with over twenty proposed activities in total.

Importantly, none of the proposed activities would necessarily require binding political commitments. Nor should they impose unnecessary burdens on legitimate bioscience activities. Many of the proposed activities, if implemented, could also help countries realize additional benefits in terms of capacity to manage biological risks and detect and respond to infectious disease outbreaks.

The Middle East presents a complex political environment for controlling BW. However, the task force demonstrated that common ground can be found for productive exchange and cooperation.

FUTURE OPPORTUNITIES FOR  
U.S.-BMENA COOPERATIVE  
BIOENGAGEMENT<sup>3</sup>

The program focused on scientific engagement to counter biological threats. It recognized the important role that scientists could play in preventing and responding to biological risks and threats. The activities



of the program included cooperative threat reduction and cooperative engagement to identify new opportunities and approaches for future engagement in the BMENA region.

The challenges that the bioengagement programs face were identified. They include limited funding, inadequate means to evaluate program success, lack of sustainability of programs, and lack of coordination among funding agencies.

Funding, evaluation measures, and sustainability of programs are interconnected and lead to the development of short-term goals for bioengagement activities. Moreover, demonstrating the success of bioengagement programs is inherently difficult because no evaluation criteria exist to measure the ultimate goal of the programs, which is to prevent terrorist acquisition of tools and expertise and identify possible uses quickly. No definitive measures exist to measure the effectiveness of programs focused on prevention.

Coordination among funding agencies and donor countries is a separate challenge that affects the long-term implementation of bioengagement programs in certain regions. A large number of funding agencies and implementers support or carry out bioengagement activities, particularly in regions where terrorist concerns or BW concerns are high.

Specifically focusing on bioengagement efforts in the BMENA region, differences in scientific capacity across the region (in part caused by access to materials, local investment in science and technology, or laws governing or restricting certain types of research) further complicate the development of programs. For example, experience with laboratory biosafety and biosecurity programs varies greatly across the region.

On the other hand, the program described new opportunities for bioengagement and specific improvements to the process of bioengagement that account for differences in capacity and need throughout the BMENA region.

The recommendations were built based on the identified challenges, gaps, and needs in addressing biological risks. Of importance, the opportunities and approaches would contribute to the decades-long concept of a *web of prevention*, in which a variety of programs are carried out to address security concerns.

#### EU CBRN CoE Initiative in the Middle East

The EU CBRN CoE is a worldwide EU initiative jointly implemented with the European Commission's Joint Research Center (EC-JRC) and UNICRI. The initiative aims to mitigate CBRN risks of criminal, accidental, or natural origin by promoting a coherent policy, improving coordination and preparedness at national and regional levels, and offering a comprehensive approach covering legal, scientific, enforcement, and technical issues. The initiative mobilizes national, regional, and international resources to develop a coherent CBRN policy at all levels, thereby aiming to ensure an effective response.

So far, much of the CBRN training provided by the European Commission has been in the former Soviet Union, focusing on nuclear safeguards and security. However, growing demand for nuclear energy, biotechnology, and

chemical substances in parts of Africa, in the Middle East, and in South and Southeast Asia requires the extension of a culture of safety and security to these regions. This shift reflects the requirement under UN Security Council resolution 1540 to assist countries in need on a global scale. The Group of Eight (G-8) industrialized states has agreed to facilitate implementation of this assistance.<sup>4</sup>

Through its ongoing cycle of activities, the initiative enables countries to realize their objectives under the resolution. In particular, the CoE contributes to the achievement of the key requirements of UNSCR 1540 by supplying assistance and technical support to help governments assess national and regional needs and to help develop tailored CBRN CoE projects to plug CBRN gaps<sup>5</sup>. The EU CBRN CoE Initiative in the Middle East undertook twelve projects in 2013<sup>6</sup>. The projects deal with key CBRN issues such as improving

This long extension puts the Committee on a different footing, firmly establishing it as a durable mechanism in international efforts to stem the proliferation of weapons of mass destruction.



*Bio-Safety Level 3 lab at the National Institute of Health in Pakistan*

CBRN legal frameworks, enhancing chemical and biological waste management, assessing the risk of CBRN misuse, improving biosecurity and biosafety, building capacity to counter illicit trafficking in chemical agents or nuclear or radiological substances, raising awareness about CBRN-related topics, bolstering the emergency response to CBRN events, and promoting secure exchanges of data about CBRN-related events. The latest project being launched in the Middle East region concerns “Strengthening Capacities in CBRN Response and in Chemical and Medical Emergency,” and will be implemented by EU member states’ agencies in close cooperation with local authorities. The overall objective of this project is to develop a comprehensive inter-country (Iraq, Jordan and Lebanon), interagency structure for the coordination, establishment, and implementation of CBRN incident response throughout the region. It will address national needs in the countries by improving the existing CBRN emergency response capacity and provide

comprehensive technology solutions and training in prevention, preparedness, and response.

THE BIOSAFETY AND BIOSECURITY  
INTERNATIONAL CONSORTIUM<sup>7</sup>

The BBIC is a network which aims to enable the countries of the MENA region to identify the biological risks to which they are exposed and mitigate them through the development of national and regional biosafety and biosecurity strategies underpinned by legislative, human, and physical infrastructure.

The approach is an holistic one—a whole-of-government, one-world view of all biological risk across the spectrum of natural, accidental, and intentional threats as they pertain to humans, animals, plants, and the environment, including water. The network’s main activities are:



TABLE 1. BIOSAFETY AND BIOSECURITY ACTIVITIES IN MENA COUNTRIES

COUNTRY	ACTIVITY
United Arab Emirates	<ul style="list-style-type: none"> <li>◊ 1<sup>st</sup> Biosafety and Biosecurity International Conference, Abu Dhabi, November 12-14, 2007.</li> <li>◊ BBIC Core Group meeting, “Developing a Framework for Biosafety and Biosecurity Strategies for the MENA Region,” Abu Dhabi, May 2008.</li> <li>◊ Biosecurity Strategy for the Abu Dhabi Emirate.</li> </ul>
Morocco	<ul style="list-style-type: none"> <li>◊ In March 19, 2013, the Regional Secretariat for the African Atlantic Façade (AAF) within the frame of the Centers of Excellence Initiative of the European Union was established in Rabat.</li> <li>◊ 2<sup>nd</sup> Biosafety and Biosecurity International Conference, Casablanca, April 1-14, 2009.</li> <li>◊ The creation of the Moroccan Biosafety Association (MOBSA) in October 2009.</li> <li>◊ With the help of UNICRI, Morocco is in the final phase of putting in place a National Action Plan on CBRN Risks.</li> </ul>
Jordan	<ul style="list-style-type: none"> <li>◊ 3<sup>rd</sup> Biosafety and Biosecurity International Conference, Amman, September 12-16, 2011.</li> <li>◊ The Middle East Regional Secretariat for CBRN Centers of Excellence was established in MESIS/Amman, September 5, 2012.</li> <li>◊ In 2009, Jordan established the National Center for Security and Crisis Management (NCSCM).</li> <li>◊ Through the Biosecurity Engagement Program (funded by U.S. Department of State, Bureau of International Security and Nonproliferation, Office of Cooperative Threat Reduction), several biosafety and biosecurity activities were conducted in Jordan for participants from Egypt, Iraq, Libya, Jordan, and Pakistan.</li> <li>◊ Between March-April 2004, a WHO field testing program for a project on “Guidelines for Assessing National Health Preparedness Programs for the Deliberate Use of Biological and Chemical Agents” was conducted with technical contributions from various Jordanian ministries (Health, Defense, Interior, Industry, etc.), the Jordanian Red Crescent Society, the Australian Agency for International Development (AusAID), Health Canada, the Organization for the Prohibition of Chemical Weapons (OPCW), and the United Nations Children’s Fund (UNICEF), as well as different technical programs from WHO Headquarters and the Eastern Mediterranean Regional Office (EMRO) of WHO.</li> </ul>
Oman	<ul style="list-style-type: none"> <li>◊ A workshop on the assessment of all-hazard emergency preparedness and laboratory capacity-building for biosafety/biosecurity was held in Muscat, Oman, from August 30-September 1, 2010.</li> <li>◊ The EU/WHO/Ministry of Health (MoH) Biosafety &amp; Biosecurity Project in Oman was launched in 2010.</li> </ul>
Pakistan	<ul style="list-style-type: none"> <li>◊ On July 21, 2008, the Pakistan Biological Safety Association (PBSA) was launched in collaboration with the Committee on Scientific and Technological Cooperation (COMSTECH).</li> <li>◊ In June 2010, the Pakistan-International Council for Life Sciences (ICLS) chapter was established in Islamabad.</li> <li>◊ The ICLS, in collaboration with COMSTECH and the Pakistan Academy of Sciences, organized two conferences on “Conduct of Responsible Science” Safety, Security and Ethics:</li> <li>◊ Islamabad Conference: June 9-10, 2010</li> <li>◊ Lahore Conference: January 31-February 1, 2011</li> </ul>



TABLE 2. BIO-SAFETY LEVEL 3 (BSL-3) LABS IN MENA COUNTRIES

COUNTRY	BIO-CONTAINMENT LABS
Morocco <sup>1</sup>	<ul style="list-style-type: none"> <li>◊ The Institute Pasteur in Morocco (IPM) is located in Casablanca (Figure 1): Reference Laboratories—virology (BSL-3), operational 2006.<sup>2</sup></li> <li>◊ Gendarmerie Royale (BSL-3, in Rabat).</li> <li>◊ Mohamed V Military Hospital (BSL-3).</li> <li>◊ Biopharma Laboratory in Rabat (BSL-3): vaccine development.</li> <li>◊ The National Institute of Hygiene (BSL-3): Department of Virology. It is a WHO reference center for poliomyelitis and measles and WHO reference center for influenza.</li> </ul>
Pakistan <sup>3</sup>	<ul style="list-style-type: none"> <li>◊ BSL-3 facilities exist at Aga Khan University and Indus Hospital Karachi.</li> <li>◊ The BSL-3 laboratories at Aga Khan University are private diagnostic laboratories that process routine clinical samples. The BSL-3 laboratory is primarily used for processing samples from patients suspected of Mycobacterium tuberculosis (TB) infection.</li> <li>◊ The BSL-3 lab at Indus Hospital is used mainly for TB diagnosis.</li> <li>◊ Recently, in January 2014, Pakistan's first BSL-3 laboratory was inaugurated at the National Institute of Health (NIH) (Figure 2).<sup>4</sup></li> <li>◊ The state-of-the-art BSL-3 laboratory is the first of its kind in the public sector for high-risk micro-organisms that are too hazardous to be handled elsewhere.</li> <li>◊ The laboratory's establishment will facilitate advanced scientific research and development in virology and molecular biology on pathogens of public health importance in collaboration with scientific organizations.</li> </ul>
Egypt <sup>5</sup>	<ul style="list-style-type: none"> <li>◊ U.S. Naval Medical Research Unit No. 3 (NAMRU-3) was formally established by the U.S. Secretary of the Navy in 1946.</li> <li>◊ NAMRU-3 is a U.S. Navy research Biosafety Level 3 enhanced (BSL-3E) laboratory with extensive human and animal viral diagnostic capacity, located in Cairo, Egypt.</li> <li>◊ NAMRU-3 is one of the largest medical research laboratories in the MENA region and is also the regional influenza reference laboratory for WHO EMRO, with close ties to the influenza laboratory at the U.S. Centers for Disease Control and Prevention (CDC).</li> </ul>
Palestine	<ul style="list-style-type: none"> <li>◊ Central Public Health Laboratory (CPHL) in Ramallah: BSL-3 is currently maintained in the laboratory for culturing infectious agents like tuberculosis and other microbial agents with high pathogenicity.<sup>6</sup></li> </ul>

1 K. R. Tamsamani (2009), Improving Biosafety and Biosecurity in the MENA Region, Regional Biosecurity Workshop: Alexandria, Egypt, February 23-24, 2009.

2 M. Hassar (2011), Enhancing Biosafety & Biosecurity in North Africa and the Middle East—IPM Experience, Workshop on Biosecurity Challenges of the Global Expansion of High Containment Biological Laboratories, Istanbul, Turkey, July 10-13, 2011.

3 A. Nasim and E. Khan (2012), Biotechnology and Biosecurity Initiatives in Pakistan: A Country Report. The National Academies Press: Biosecurity Challenges of the Global Expansion of High-Containment Biological Laboratories.

4 <[biosafety-lab-opened-at-nih-to-handle-microorganisms](#)>.

5 The National Academies Press: Review of the DoD-GEIS Influenza Programs: Strengthening Global Surveillance and Response (2007). 5 Naval Medical Research Unit 3 Egypt Avian and Pandemic Influenza Activities.

6 N. Shuaibi (2013) Central Public Health Laboratory, Ramallah, West Bank, Palestine. A “Train the Trainers” Biosafety and Biosecurity Course; El Hassan Science City, Royal Scientific Society, Amman, Jordan, November 19-21, 2013.



- Holding biennial conferences
- Designing and implementing national strategies
- Establishing two biosafety and biosecurity training centers for the region (one in Jordan and another in Morocco)
- Creating national and regional biosafety associations

The main biosafety and biosecurity activities in selected countries of the MENA region are summarized in table 1.<sup>8</sup>

**Bio-Containment Labs in the MENA region:** Many institutes work using Biosafety Level 1 (BSL-1) and Biosafety Level 2 (BSL-2) facilities. Biosafety Level 3 (BSL-3) facilities are found in four countries, as outlined in table 2.

#### CONCLUSIONS AND RECOMMENDATIONS

Regional networks and activities are appropriate forums to help assuage current UNSCR 1540 implementation challenges. Many experts from the MENA region are involved in these regional activities and initiatives. Through bringing champions from each of the sectors concerned together, these initiatives are building networks of experts both nationally and regionally to ensure that National Contact Points and the necessary relationships are in place to deal with a biological event before it happens. By sharing the experience and knowledge acquired through such initiatives and networks, the MENA experts can influence their national decision-makers. These networks also work across difficult political boundaries through sustainable connections. Such initiatives can play a valuable role in identifying mechanisms to advance the interests of all countries involved.

In a region where a number of very sensitive political boundaries are found, a key element that makes any network functions effectively is face-to-face meetings, workshops, seminars, and training. The initiatives and related activities in MENA region have promoted a better understanding of threat perceptions, built relationships among security experts, officials, and academics, and served as a laboratory for new ideas. These networks can also offer potential contri-

butions toward implementing UNSCR 1540 among their members.

However, to sustain the activities of the initiatives in the MENA region, such as training, policy development, and capacity building, a sustainable funding vehicle that shores up the implementation capacity of regional networks and ensures that they can fulfill their potential as facilitators of security-related measures, including UNSCR 1540 implementation, is necessary. Particularly important is funding from private foundation sources in order to strengthen true regional ownership and to counter the perception of a process driven by governments external to the region.

Sustainable and effective biosafety and biosecurity activities developed and implemented in the MENA region, with the assistance of thoughtfully applied funding and expertise, will strengthen regional and global security and solidarity, and ultimately provide opportunities for countries in this region to implement resolution 1540 through regional networks.

#### ENDNOTES

1. M. Martellini (2011), paper presented at the 7th Review Conference of the Biological and Toxin Weapons Convention.
2. In the context of this paper, “confidence building” is not meant to imply participation in confidence-building measures (CBMs) as implemented under the framework of the BTWC.
3. K. M. Berger (2013), AAAS report.
4. UN Security Council Resolution 1540, April 2004; and Canadian Government (note 6), para. 4.
5. M. de Bruijn and O. McCarthy, “The Centres of Excellence: A New 1540 Player,” *1540 Compass International Organizations*.
6. <http://www.cbrn-coe.eu/Projects.aspx>.
7. <http://www.bbic-network.org/Content.aspx?pg=1813efa8-1942-470f-9381-dd35028309f4&mID=6c35628a-f36e-4b5e-bfec-ff14727e6188>.
8. <http://www.bbic-network.org/Content.aspx?pg=f65da96b-7b90-4241-965f-dc0fb93bf257&mID=49e6e7b1-d6a3-49a3-b2f3-0ef6c92b5829>.

# Making progress implementing UNSCR 1540 in Africa

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According to the U.S.-based Nuclear Threat Initiative (NTI)<sup>1</sup>, while many African countries present a transit or terrorist concern, the continent has not afforded significant attention to the implementation of UN Security Council resolution 1540 (2004).<sup>2</sup> NTI attributes this largely to a combination of conflicting priorities, lack of capacity, and reporting fatigue, but also because the threat of use of weapons of mass destruction (WMD) in the region is not considered pressing.

While this may have been true in the past to a certain extent, it is no longer the case that African states are not paying attention to implementing UN Security Council resolution 1540 (hereafter referred to as UNSCR 1540). It is also an oversimplification to measure implementation by the number of states that have submitted their initial or subsequent reports to the committee established pursuant to UNSCR 1540, known as the 1540 Committee. As a subsidiary body of the UN Security Council, this Committee's main function is to facilitate implementation of the resolution within the three primary obligations expected of UN member states, namely:

- prohibit support to non-state actors seeking WMD and their means of delivery
- adopt and enforce effective laws prohibiting activities involving the proliferation of WMD and their means of delivery to non-state actors
- enact and enforce effective measures to reduce the vulnerability of many legitimate activities to misuse in ways that would foster the proliferation of WMD and their means of delivery to non-state actors

Deficient reporting in Africa does not necessarily mean that UNSCR 1540 is not being implemented on the continent. While submitting reports to the 1540 Committee is a requirement of the resolution, it can be argued that it is better to submit a quality report, which takes more time and contains accurate information and can guide dialogue with the 1540 Committee, than to submit a superficial report to check the block on a to-do list. In fact, the key value of such reports is to enable the Committee and the state to identify where assistance may be required.

Importantly, UNSCR 1540 also reiterates that none of the obligations contained within it shall conflict with or alter the rights and obligations of parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), the Chemical Weapons Convention (CWC), or the Biological and Toxin Weapons Convention (BTWC). All African states are party to the NPT, 32 are party to the BTWC, and only Angola and Egypt have yet to ratify the CWC.

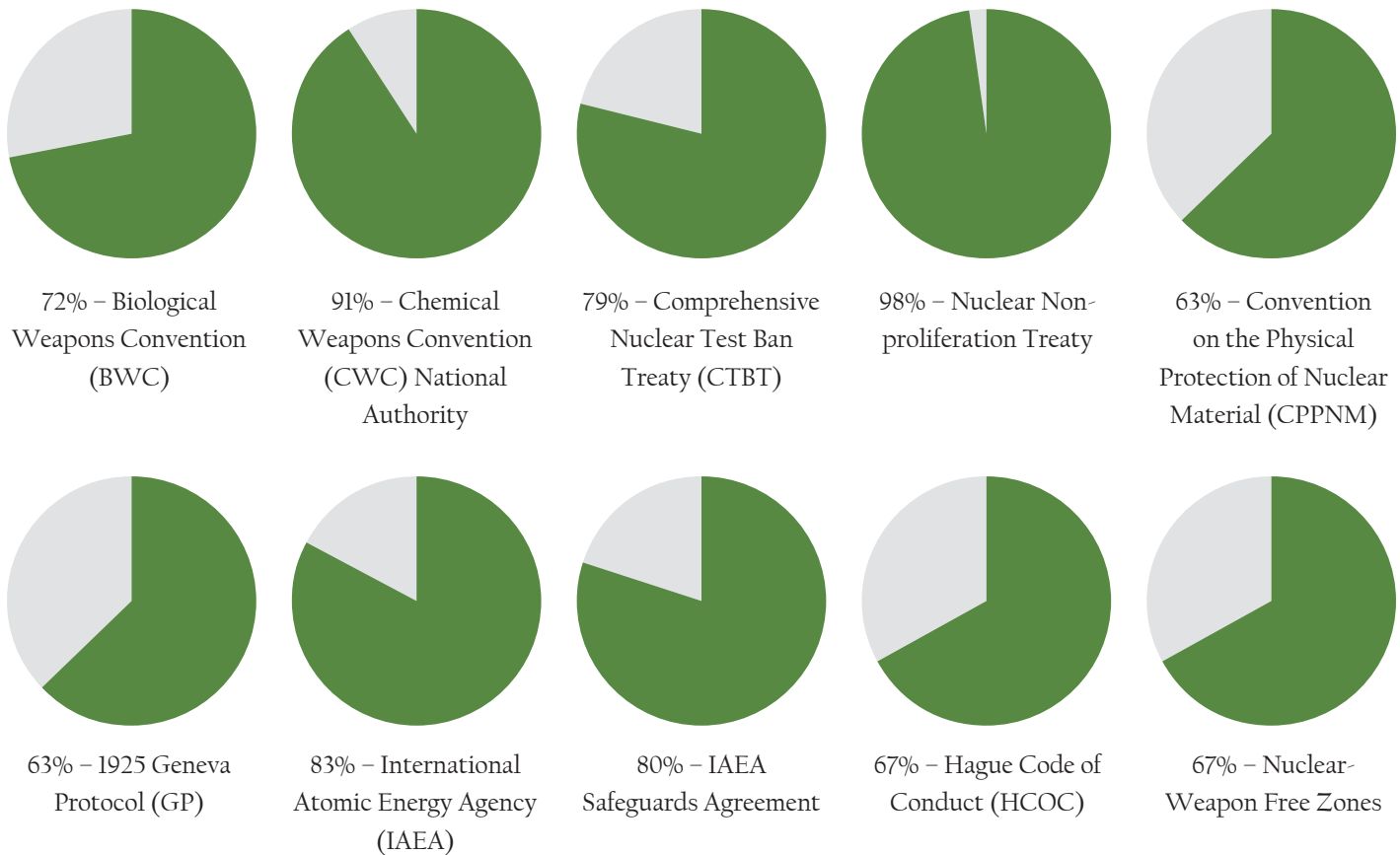
In addition, implementing any global nonproliferation regime at the local level—whether a UN Security Council resolution or indeed a treaty or convention—needs to undergo a number of processes. These include a process of “ownership-taking” or “buy-in,” a process of “cultural insertion,” and a process of domestic policy and legislative formulation.

The 1540 Committee engages in various types of outreach activities to promote full implementation of UNSCR 1540. It shares experiences and lessons learned, helps with capacity building, and provides technical assistance in the areas covered by the resolution. Since its establishment, the Committee, including its members and experts, have hosted and participated in various conferences, workshops, seminars, and relevant international, regional, subregional, or country-specific meetings in Africa.<sup>4</sup>

Many of these events were organized by member states in cooperation with the 1540 Committee, as well as by the UN Office for Disarmament Affairs (UNODA) and other UN bodies. Some have been ar-



FIGURE 1: ADHERENCE BY AFRICAN STATES TO NON-PROLIFERATION INSTRUMENTS RELEVANT TO RESOLUTION 1540 (2004) <sup>3</sup>



ranged by African civil-society organizations active in working towards identifying and enhancing Africa's role in international efforts to strengthen WMD disarmament and nonproliferation. Such efforts unfold in the context of Africa's developmental and security imperatives through the provision of primary research, policy formulation, and implementation activities.

Besides specifically arranged workshops on UNSCR 1540, the Committee has also made extensive use of opportunities presented by seminars. Such gatherings, for example, help empower states to implement conventions such as the 2005 Amendment to the Convention on the Physical Protection of Nuclear Material and the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism, and to counter illicit trafficking and terrorism in general.

From 2006-2013, some twelve UNSCR 1540-related seminars and workshops took place in Africa. Of these, however, it should be noted that only six focused specifically on UNSCR 1540 (one apiece in 2006, 2007, and 2009; two in 2012; and one in 2013). These events brought together national representatives, regional

organizations, and experts from the international community. The purpose of the events ranged from raising awareness about the resolution, sharing implementation experiences, and identifying potential gaps in legislation, to providing guidance on reporting and effective implementation and presenting the many opportunities on offer for assistance. Meetings in Ghana in 2006 and in Botswana in 2007, for example, raised awareness of UNSCR 1540 and initiated a process to identify the means by which African states could begin to put in place appropriate mechanisms preventing non-state actors from developing, acquiring, manufacturing, possessing, transporting, transferring, or using nuclear, chemical, or biological weapons or their means of delivery. These meetings also examined how best to establish domestic controls over related materials (equipment, technologies, and materials which could be used for weapons-of-mass-destruction purposes).

It was not until 2012, however, that an "All-Africa" approach was taken. This came partly from recognition that Africa was lagging behind other regions in the world with respect to implementation efforts. A

growing number of intergovernmental as well as civil-society organizations, moreover, had recently launched specific support programs, including those developed within the framework of the G-8's Global Partnership Working Group.

The first such workshop was held in Pretoria, South Africa, from November 21-22, 2012. The government of South Africa hosted the event in collaboration with the African Union (AU) and with support from the UN Office for Disarmament Affairs. The Institute for Security Studies (ISS) facilitated logistical arrangements and acted as the "implementing agency" for South Africa's Department of International Relations and Co-operation (DIRCO). This approach was instigated to a large extent by Baso Sangqu, then the chairperson (2011-2012) of the 1540 Committee and South Africa's permanent representative to the United Nations. He underscored South Africa's position that "the threat that non-State actors may acquire materials that could be used for nuclear, chemical or biological weapons or their means of delivery is a danger for all States."

At the same time, however, he expressed his concern about the lack of concrete and sustainable progress in the area of disarmament of weapons of mass destruction (WMD).<sup>5</sup> For Sangqu:

the commitment of African States to prevent non-State actors, including terrorists, from acquiring WMD or their means of delivery has been well established. In 1999, the Organisation of African Unity (OAU) adopted the Convention on the Prevention and Combating of Terrorism. In the broader context of disarmament and non-proliferation, the status of acceptance of legal obligations by African States with respect to international instruments on disarmament and non-proliferation is high, for example, the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), the Convention on the Physical Protection of Nuclear Material (CPPNM), the Chemical Weapons Convention (CWC) and the Biological and Toxin Weapons Convention (BTWC). Furthermore, through the Pelindaba Treaty, African States have established an African nuclear-weapon-free zone.<sup>6</sup>

A growing number of intergovernmental as well as civil-society organizations, moreover, had recently launched specific support programs.

At the same time, he recognized that delays and challenges to the full implementation of these instruments at the national level remained. Governments still needed to set up national authorities and bodies, enact legislation, and report to the agencies administering these instruments.

Participants included officials from 36 African states.<sup>7</sup> Each state nominated representatives from the following institutions or their equivalents: Ministry of Foreign Affairs and International Relations, Ministry of Defence, Ministry of Home Affairs, Policing and National Security Authorities, Radiation Protection Authorities, Ministry of Science and Technology, Atomic Energy Commission, Ministry of Public Health and Sanitation, and Customs Department.

Three members of the 1540 Committee—the then-chair, Ambassador Sangqu, and two members of the UNSCR 1540 Group of Experts—participated in the workshop. In addition, the following multilateral and international organizations were present: the African Union, Inter-Governmental Authority on Development (IGAD), Southern African Development Community (SADC), International Atomic Energy Agency (IAEA), Comprehensive Nuclear Test Ban Treaty Organization (CTBTO), Organization for the Prohibition of Chemical Weapons (OPCW), Biological and Toxin Weapons Convention Implementation Support Unit (BTWC—ISU), World Health Organization (WHO), World Customs Organization (WCO), UN Office for Drugs and Crime (UNODC), and UN Office for Disarmament Affairs. Representatives of nongovernmental organizations such as the Stimson Center and the Institute for Security Studies also participated. The workshop agenda included presentations and plenary discussion sessions, as well as an opportunity for informal bilateral discussions between the 1540 experts and fellow participants.

It became clear from these discussions and debates on how best to meet the obligations of UNSCR 1540, given the limited capacities and resources of African states, that there are synergies between implementing UNSCR 1540 and advancing African states' socio-economic and developmental objectives. Participants





in this first all-Africa workshop noted that while a one-size-fits-all approach is inapplicable, some similarities have emerged between states' UNSCR 1540 implementation efforts. These include the adoption of domestic laws and regulations, adherence to international treaties and conventions, cooperation with international organizations, interministerial and interagency coordination, training and outreach, and analysis of how 1540 implementation coincides with the state's other socioeconomic objectives. It was further noted that the African Union, which has a 1540 Focal Point, as well as regional economic communities (RECs) such as SADC, ECOWAS, and IGAD, could bring added advantages through such measures as sensitizing member states, identifying gaps, mobilizing resources, developing model legislation, and providing technical support.

Importantly, the workshop emphasized that Africans should drive the process of implementing 1540 in Africa and that, as Africans, we need to find linkages between national developmental processes and obligations under UNSCR 1540. Participants also recognized that it was incumbent on all to encourage leaders to see UNSCR 1540 within the context

and importance of other international disarmament and nonproliferation regimes—including the Treaty of Pelindaba, the continental agreement establishing Africa as a nuclear weapon-free zone.

This view was echoed in a recent EU Institute for Security Studies Policy Brief that points out: “Supporting national implementation of UNSCR 1540 has made it possible to increase international co-operation towards an objective—preventing WMDs from falling into the hands of non-state actors and terrorists—that per se complements and reinforces the existing non proliferation and disarmament regimes... in essence, UNSCR 1540 partly draws on existing obligations already present in the NPT, BTWC and CWC: the obligation to prevent WMD proliferation by non-state actors and the obligation to adopt measures at both the legislative and operational levels. UNSCR 1540 is now considered by most implementing actors as a nexus to enhance both universal participation to these three main treaties and the effectiveness of national implementation.”<sup>8</sup>

The Pretoria workshop concluded with the African Union Commission's (AUC) undertaking to further

promote and enhance the implementation of resolution 1540 in Africa. The Commission pledged to communicate the outcomes of the workshop to member states, request the AU Executive Council to express its commitment to resolutions 1540 (2004) and 1977 (2011), and authorize a structured, formal mechanism for follow-up at the political level. Subsequently, the Peace and Security Council (PSC), in the Report on Its Activities and the State of Peace and Security in Africa [Assembly/AU/3(XX)]—a document considered by the 20th Ordinary Session of the Assembly of the Union, held on January 27-28, 2013 in Addis Ababa—stressed the relevance of resolution 1540 (2004) and highlighted the challenges to its full and effective implementation in Africa.

On this occasion, the 20th Ordinary Session of the Assembly of the Union, in its decision [Assembly/AU/Dec.472(XX)], welcomed the convening of the Pretoria workshop and requested the AU Commission to take all necessary steps, in collaboration with the 1540 Committee and the relevant partners, to implement the proposals and recommendations made at the workshop in support of member states' efforts in implementation of the resolution.

As a result, from December 10-11, 2013, and as a follow-up to the Pretoria workshop, the AUC, with support of UNODA and in collaboration with the 1540 Committee organized a workshop at the AU Headquarters in Addis Ababa on implementation of UNSCR 1540. Thirty-five AU member states participated in the workshop.<sup>9</sup>

Partner states that also attended were Morocco (which is not a member of the AU) and the United States. Regional Economic Communities that participated in the workshop included the Intergovernmental Authority on Development and the Common Market for Eastern and Southern Africa (COMESA). The North African Regional Capability (NARC) also attended, as did various relevant regional and international organizations, including: the African Biosafety Association (AfBSA), the Forum of Nuclear Regulatory Bodies in Africa (FNRBA), the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons, the Preparatory Commission of the Comprehensive Nuclear Test Ban Treaty Organization, the UN Interregional Crime and Justice Research Institute, the UN Office on Drugs and Crime, the World Customs Organization, and the Institute for Security Studies. The second workshop thus expanded the

list of invitees to include RECs not present at the first All-Africa workshop, as well as professional associations and relevant continental networks.

UNODA, in its presentation, pointed out that it was planning to increase its activities in Africa in support of the implementation of resolution 1540. In particular, it undertook to facilitate reporting by states. The AUC reiterated that its role should be seen within the framework of the Common African Defence and Security Policy (CADSP) and the relevant decisions taken by AU organs to promote and supporting states in fully implementing multilateral WMD disarmament and nonproliferation regimes. It was emphasised that the African Union, working with the RECs, will continue to support strengthening the capacities of member states through providing platforms for sensitisation, dialogue, and sharing of experiences. Mobilization of technical assistance at both the regional and global levels for African states to meet their UNSCR 1540 implementation and reporting obligations was seen as a key task of the AUC in the future.

The workshop concluded with a series of recommendations, including:

1. To further develop an African approach to implementation of resolution 1540, with a central coordination role by the African Union.
2. To designate National Points of Contact if states have not yet done so.
3. To continue to develop activities to further enhance the capacity of the Points of Contact and engage them in relevant initiatives and capacity-building programs.
4. To emphasize to the RECs their important role in facilitating the implementation of resolution 1540, including designating a 1540 Point of Contact for each REC.
5. To acknowledge the value of visits by the 1540 Committee to African states as an important tool to facilitate gap analysis, interagency coordination, awareness raising, identification of assistance needs, and overall implementation of resolution 1540.



6. To promote an African approach to developing national export control lists.
7. To take advantage of the assistance mechanism of the 1540 Committee, as well as assistance and capacity-building programs provided by relevant international and regional organizations and civil society.
8. To put UNSCR 1540 into effect, thereby sending an important political message concerning nuclear nonproliferation and disarmament.

In 2014, in light of the above, the UNODA and its Regional Center for Peace and Disarmament in Africa (UNREC) and the ISS planned to co-host a series of three subregional (and language-based) African workshops focused mainly on national reporting capacities and methodologies. Two of these workshops have already taken place in Gabon and South Africa, with a third due to take place in Togo. In order to encourage a more open and frank discussion, the workshop organizers identified “champions” of UNSCR 1540. These are member states that have reported regularly over the past ten years and whose reports are perceived as being well-written. Champion states identified by organizers include Angola, Gabon, Kenya, Togo, and South Africa. The workshops create a safe space for these champions, as well as 1540 Committee members and experts to share their experience and effective practices with the non-reporting member states.

#### CONCLUSION

The full implementation of UNSCR 1540 is a long-term task. It is not surprising, then, that since the adoption of the resolution, states, including African states, have steadily increased their implementation efforts with growing support from international, regional, and subregional organizations and civil society.

The recent period has seen many important developments suggesting the emergence of a new momentum on the African continent: an increased African Union role in facilitating the implementation of UNSCR 1540; a more active dialogue between African states and the 1540 Committee, and visits of Committee members to African States<sup>10</sup>; more capacity-building activities in Africa from providers of assistance; and a growing role in UNSCR 1540-related matters by the Lomé-based UNODA Regional Center for Peace

and Disarmament in Africa and nongovernmental organizations such as the Institute for Security Studies.

#### ENDNOTES

1. NTI is an organization with a mission to strengthen global security by reducing the risk of use and preventing the spread of nuclear, biological, and chemical weapons.
2. See: <<http://www.nti.org/analysis/reports/sub-saharan-africa-1540-reporting/>>.
3. Presentation made by Bennie Lombard at the Workshop on the Implementation of United Nations Security Council Resolution 1540 (2004), Addis Ababa, Ethiopia, December 10, 2013.
4. See: <<http://www.un.org/en/sc/1540/index.shtml>>.
5. Statement by Ambassador Baso Sangqu, Permanent Representative of South Africa to the United Nations, at the Joint Briefing to the Security Council on Counter-Terrorism, United Nations, New York, November 14, 2012.
6. Benita Pavlicevic and Adèle Kirsten, “Africa Guide to UN Security Council Resolution 1540 (2004),” Institute for Security Studies, 2014.
7. Algeria, Angola, Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Cote d’Ivoire, Democratic Republic of Congo, Djibouti, Egypt, Ethiopia, Gabon, Ghana, Guinea, Kenya, Lesotho, Liberia, Libya, Malawi, Mauritius, Mozambique, Niger, Rwanda, Senegal, Sierra Leone, South Africa, Sudan, Swaziland, Tanzania, Tunisia, Uganda, Zambia, and Zimbabwe.
8. Charlotte Beaucillon, “Multilateralism, the EU, and UNSCR 1540: Reinforcing National Responsibilities,” Policy Brief Number 10, European Union Institute for Security Studies, December 2012.
9. Algeria, Angola, Benin, Burkina Faso, Comoros, Cote d’Ivoire, Djibouti, Democratic Republic of Congo, Eritrea, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Liberia, Libya, Malawi, Mali, Mauritania, Mozambique, Namibia, Niger, Republic of Congo, Sahrawi Arab Democratic Republic, Senegal, Seychelles, South Africa, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, and Zimbabwe.
10. Republic of the Congo (June 2012), Madagascar (May 2012), Burkina Faso (November 2013), and Niger (January 2014).



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