

THE IMPACT OF RESOLUTION 1540 ON NON-PROLIFERATION ARCHITECTURE IN THE PAST 20 YEARS

*The Security Council extends the mandate of 1540 Committee by unanimously adopting resolution 1977 (2011);
Credit: UN Photo/Devra Berkowitz*

ABSTRACT

This article analyses the impact of resolution 1540 (2004) on national non-proliferation measures based on the 2022 Comprehensive Review. The analysis reveals that many UN Member States use domestic application of existing multilateral treaties to which they are parties as support for national implementation of resolution 1540. This indicates that, in many cases, the supplementary elements intended by the resolution, such as securing related materials or export controls, may not be sufficiently implemented. It concludes that in order to continue to promote national implementation, there will need to be some incentive to demonstrate that full and effective implementation of resolution 1540 is meaningful to all States. It also emphasizes that collaboration among Member States, civil society, industry, and academia is crucial to staying updated on scientific and technological advancements in the field.



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This April marks the 20th anniversary of the adoption of United Nations Security Council resolution 1540 (2004). Resolution 1540 was adopted in 2004 as a precautionary measure in response to growing concerns that terrorists and other non-State actors might acquire and use weapons of mass destruction (WMDs) in the wake of the September 11 terrorist attacks in the United States. At the end of November 2022, the 1540 Committee conducted a com-

prehensive review of the implementation of resolution 1540, which led to the adoption of the successor resolution 2663 and extended the mandate of the 1540 Committee for another 10 years. This article examines, through this 2022 Comprehensive Review, what impact resolution 1540 has had on the national non-proliferation measures of UN Member States.

The adoption of resolution 1540, alongside resolution

1373 (2001) on counter-terrorism, marked a rather controversial legislative move by the Security Council, responding to the post-9/11 recognition of the dangerous connection between WMDs and non-State actors, as exemplified by the covert nuclear proliferation activities of the “A. Q. Khan Network.” Instead of identifying a specific situation as a threat to international peace and security and taking action in response to it, the Security Council identified a possible

link between non-State actors and WMDs as a general threat to international peace and security. As a response, it required all UN Member States to establish national legislation aimed at preventing the proliferation of WMDs to and by non-State actors. Unlike international treaties, non-Council Member States do not have the right to participate in the negotiation of drafting resolutions, nor do they have the right to choose not to accept the resolution. The adoption of resolution 1540 in 2004 raised controversial debates among the UN Member States as well as within academia. During the adoption process, there was a divide between those

States emphasizing non-proliferation and those viewing the resolution as an extension of resolution 1373 (2001) with a heightened focus on counter-terrorism. Despite varying positions and divergent interpretations by the UN Member States, the Council ultimately unanimously adopted resolution 1540.

Since the adoption of resolution 1540 in 2004, the 1540 Committee has conducted periodic reviews of national implementation in 2006, 2008, 2011, as well as comprehensive reviews of national implementation in 2009, 2016, and most recently in 2022. These reviews summarized

the status of national implementation by all UN Member States for each of the key obligations of resolution 1540, using a table called the “1540 Matrix,” which the 1540 Committee formulates for each UN Member State. Due in part to criticism of legislative measures taken by the Security Council at the time of adoption, the 1540 Committee does not have the authority to verify or evaluate national implementation by Member States, and the 1540 Matrix is merely a compilation of information based on national reports submitted by Member States.

The updated 1540 Matrix in 2021 recorded one or more



Participants during the open consultations of the 1540 Committee on the 2022 Comprehensive Review; Credit: UN Photo/Manuel Elías

measures in 24,841 of the 44,004 data fields for all 193 countries, covering approximately 56% of the total. This represents an increase of about 6% compared to the same data from 2016. Looking at the operative paragraphs (OP) 1 to 3 separately, in OP1 on political commitment, some kind of measure or statement was recorded in 79% of the relevant data fields, 77% for OP2 concerning the obligation to establish national legislation, while 40% for OP3(a) and (b) on accounting for and securing related materials, and 51% for OP3(c) and (d) on border and export controls (see Table 1).

Concerning OP1, 153 of the 193 UN Member States have explicitly expressed some form of political commitment not to provide any support that would lead to activities related to WMDs by non-State actors. One of the objectives of resolution 1540 is to supplement existing international treaties aimed at disarmament and the non-proliferation of WMDs by adding non-State actors to the scope of those treaties. However, as a result of the adoption of the resolution amidst varying opinions, the implementation status in 2022 revealed that the majority of States

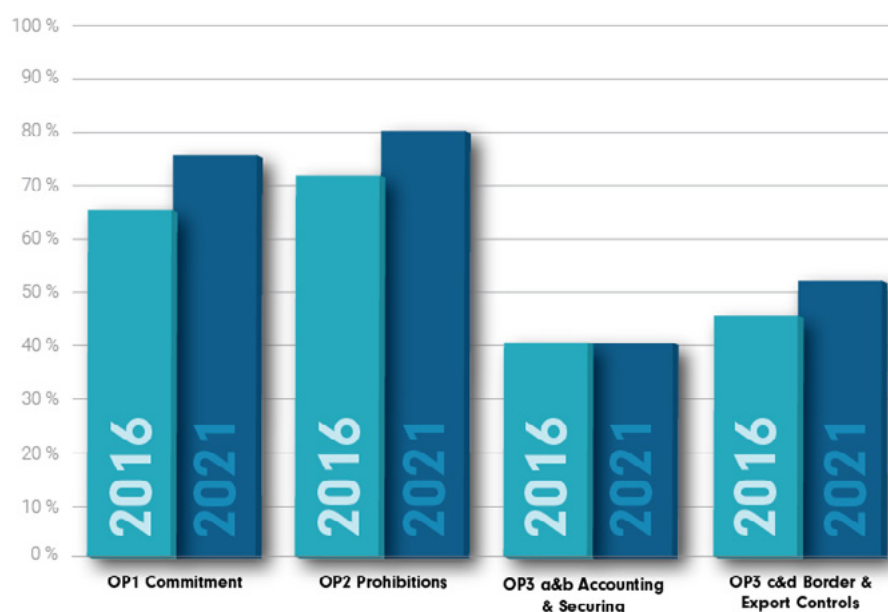


Table 1: Key obligations in the 1540 Matrix (2021), as stated in operative paragraphs 1 to 3 (OP1–OP3). Source: 1540 Committee Comprehensive Review Report (2021), p. 7.

use domestic application of existing multilateral treaties to which they are parties as support for national implementation of resolution 1540. This indicates that, in many cases, the supplementary elements intended by the resolution may not be fully implemented.

Two particularly important complementary elements of resolution 1540 with other international treaties are the “non-proliferation for non-State actors” and “export control measures.” With regard to the former, the status of implementation of OP2 indicated that many States take the national implementation of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), the

Chemical Weapons Convention (CWC), and the Biological Weapons Convention (BWC) and/or counter-terrorism conventions as the main legal framework for their implementation of resolution 1540. In such cases, while the CWC and BWC stipulate the prohibition of the means of delivery for the respective weapons, the NPT does not include the means of delivery of nuclear weapons within the scope of the treaty. Consequently the implementation status of prohibiting means of delivery relevant to nuclear weapons is significantly lower than those of chemical and biological weapons. Likewise, in countries where the counter-terrorism laws are used as the primary source

of national implementation, the definition of “non-State actors” may be limited to terrorists or organized crime. The definition of “terrorist” also varies from State to State, and a number of countries restrict this definition to the lists established by the Counter-Terrorism Committee under the mandate of resolution 1373 (2001).

Similarly, with regard to OP3, the implementation status of accounting for and securing related materials shows that many States who rely on the national implementation of existing treaties for

the national implementation of resolution 1540 have not been able to adequately cover all obligations. Looking at the implementation status by weapon category, for nuclear weapon-related materials, “production,” “use,” and “storage” are controlled higher than “transportation.” One reason for this is that non-nuclear weapon States under the NPT are obliged to make a safeguards agreement with the International Atomic Energy Agency (IAEA), and for this purpose, States establish domestic control over “production,” “use,” and “storage” but not “transportation,”

which is not included in the agreement. Likewise, the CWC States Parties are subject to verification under the CWC and thus are fulfilling the obligation of accounting for the “production,” “use,” and “storage” of chemical weapon-related materials, but not “transportation.” In contrast, the BWC does not explicitly provide for biosecurity obligations, and therefore, for many States, unless a separate biosecurity control system is established outside of the national application of the BWC, the domestic control obligation under resolution 1540 is not fulfilled.



Néstor Osorio (left) chairs a meeting of the Security Council extending the mandate of the 1540 Committee; Credit: UN Photo/JC McIlwaine

Similar to OP3(a) and (b) on domestic control over accounting for and securing related materials, the status of implementation of OP3(c) and (d) on border and export control is also low. This could also be attributed to the absence of internationally agreed-upon treaties regulating export control. Instead of legally binding treaties, the main framework for export control are the so-called multilateral regimes that are comprised of the Nuclear Suppliers Group (NSG), Missile Technology Control Regime (MTCR), the Australia Group (AG), and the Wassenaar Arrangement (WA). These export control regimes are voluntary coordination frameworks among interested countries and are not legally binding. Each regime has a limited number of participating countries: 48 for NSG, 35 for MTCR, 42 for AG, and 42 for WA. Most UN Member States are not participants in these export control regimes, which are sometimes perceived as export barriers by non-member countries. Due to the absence of an internationally agreed upon framework for export control, many countries that do not participate in the existing export control regimes have not established domestic export control measures.

Based on the 2022 Comprehensive Review, it appears that many UN Member States have not made special efforts to fulfil the legal obligations imposed by the Security Council, except for implementing the existing treaties. However, resolution 1540 is the only universal legally binding framework that obliges all 193 UN Member States to establish domestic control measures over WMD-related materials, equipment, and technologies. In particular, securing related materials and export control are complementary elements to the existing treaties, which are crucial for WMD non-proliferation purposes. There can be no doubt that it is now an essential tool in the international WMD non-proliferation architecture. In order to continue to promote the national implementation of resolution 1540 in the years ahead, there will need to be some incentive to demonstrate that full and effective implementation aimed at the non-proliferation of WMDs by non-State actors is meaningful to all States.

Fortunately, the Security Council unanimously adopted successor resolution 2663 on 30 November 2022, and extended the 1540 Committee's mandate for another 10

years until 2032. Resolution 2663 (2022) provides ample scope for the 1540 Committee's activities, which include intensifying its efforts to promote the full implementation of resolution 1540, particularly noting the need for more attention on accounting for and securing related materials, as well as national export and transshipment controls, among others. It also encourages the 1540 Committee to develop and review voluntary technical reference guides, which could assist States' implementation. Furthermore, resolution 2663 (2022) continues calling upon Member States to take into account developments in the evolving nature of the risk of WMD proliferation and rapid advances in science and technology in their implementation of the resolution. Twenty years have passed since the adoption of resolution 1540 and the global security environment has changed. It is inevitable that all Member States work together, in partnership with representatives of civil society, including industry and academia, to keep abreast of scientific and technological development.