



RESOLUTION 1540 (2004) AND PROLIFERATION FINANCE

© Ibrahim Boran - UNSCR 1540 requires States to implement legislation to prohibit any financing of a wide range of WMD-related activities by non-State actors

ABSTRACT

Resolution 1540 (2004) and successor resolutions set out the Security Council's baseline requirements regarding weapons of mass destruction (WMD) proliferation financing. Countering proliferation finance is important to combating WMD proliferation, but the Report of the 2022 Comprehensive Review did not identify a significantly higher level of implementation by States than compared to 2016. Although the 1540 Committee offered no direction in this respect, the Security Council acknowledges Financial Action Task Force (FATF) guidance in several 1540 successor resolutions, suggesting FATF is well-placed to do so. Publishing 1540 proliferation financing implementation guidance would be a good start.



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INTRODUCTION

Resolution 661 (1990), imposed on Saddam Hussein's Iraq, was the first Security Council resolution to focus on the threat from WMD.¹ Amongst other requirements, the resolution prohibited making available to Iraq any funds or any other financial or economic resources, although no distinction was made between funds for Iraq's WMD programmes and funds for other purposes.

Resolution 1540 (2004) was the first Security Council resolution to include language specifically addressing the financial underpinnings of WMD proliferation (although the resolution does not use the term WMD, referring instead to nuclear, chemical and biological weapons and means of delivery). Resolution 1540 includes two key requirements in this respect: first, States must implement legislation to prohibit

any financing of a wide range of WMD-related activities by non-State actors and, second, States must put in place controls on funding or financial services related to export or trans-shipment of WMD and related materials that would contribute to proliferation (whether by non-State or by other actors is left unspecified). Subsequent resolutions restate these two requirements but do not add to them (see Table below).

¹ S/RES/661

1540 (2004)	1810 (2008)	1977 (2011)	2325 (2016)	2663 (2022)
<p>(OP 2) Decides ... that all States... shall 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 ... finance [these activities];</p> <p>(OP 3) (d) Decides ... that all States shall ... Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over [nuclear, chemical, or biological weapons and their means of delivery, and related materials], including ... controls on providing funds and services related to ... export and trans-shipment such as financing, ... that would contribute to proliferation, ... and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations.</p>	<p>(PP) Taking note of international efforts towards ... preventing the financing of proliferation-related activities, taking into consideration the guidance of the framework of the Financial Action Task Force (FATF)...</p> <p>(OP 10) Decides that the 1540 Committee shall continue to ... promote the full implementation ... of resolution 1540 (2004), [including] the compilation of information on ... [paragraph] 2 of that resolution, as well as of paragraph 3 ... including controls on providing funds and services such as financing to ... export and trans-shipment.</p>	<p>(PP) Emphasizing the need for States to take all appropriate national measures ... consistent with international law, to ... prevent proliferation financing ...</p> <p>Taking note of international efforts towards ... preventing the financing of proliferation-related activities, and taking into consideration the guidance of the framework of the Financial Action Task Force (FATF) ...</p> <p>(OP 9) Decides that the 1540 Committee shall continue to ... promote the full implementation ... of resolution 1540 (2004), [including] the compilation of information on ... [paragraph] 2 of that resolution, as well as of paragraph 3 ... including controls on providing funds and services such as financing to ... export and trans-shipment.</p>	<p>(OP 12) Decides that the 1540 Committee shall continue to ... promote the full implementation by all States of resolution 1540 (2004) ... particularly noting the need for more attention on: ... proliferation finance measures;</p> <p>...</p>	<p>(PP) ... taking note of efforts to prevent the financing of proliferation-related activities, and taking into consideration inter alia the guidance of the framework of the Financial Action Task Force (FATF) ...</p> <p>(OP 12) Decides that the 1540 Committee shall continue to ... promote the full implementation ... of resolution 1540 (2004) ... particularly noting the need for more attention on: ... proliferation finance measures; ...</p>

Table

References to financing, funds or financial services in resolution 1540 (2004) and successor resolutions.

(PP = Preambular Paragraph; OP = Operative Paragraph)

Controls on funding or financial services related to exports or trans-shipments are complex to formulate and implement, but the lack of significant improvement since 2016 would suggest that States currently afford such controls a low priority.

CURRENT STATE OF PLAY

With respect to the first requirement, prohibitions on financing, the 2022 Comprehensive Review Report records that, of all possible measures across all States, the Committee identified 88 per cent implementation (the Committee provided no estimates of numbers of States). This was an increase of 5 per cent in comparison with 2016 data.² The Report also notes that, as in 2016, legislation related to counter-terrorism financing, country-specific targeted financial sanctions

and financial intelligence units, rather than to resolution 1540's primarily activity-based prohibitions on financing.

As regards the second requirement, the Committee's Report noted that around 58 per cent of Member States had adopted measures relevant to the financing of exports and trans-shipments but that this was not significantly different from 2016 data. Again, the Committee noted that legislation related mainly to terrorism financing, money-laundering and the role of financial intelligence units.³

Given that resolution 1540 dates from 2004, 58 per cent would appear a rather low percentage. Of course, controls on funding or financial services related to exports or trans-shipments are complex to formulate and implement, but the lack of significant improvement since 2016 would suggest that States currently afford such controls a low priority. Arguably, the 2022 Comprehensive Review was a missed opportunity to try to improve this percentage by strengthening language on proliferation financing, as was proposed by some Committee members.

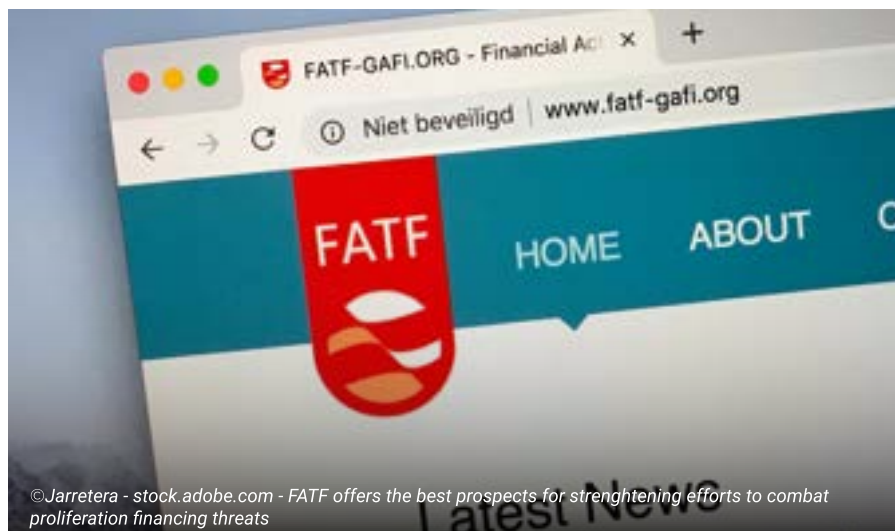
² Paragraph 42 of S/2022/899.

³ Paragraph 70 of S/2022/899.

DEFINITION OF PROLIFERATION FINANCE

The Table illustrates two other important points: first, the terms “proliferation finance” or “proliferation financing” do not actually appear in resolution 1540. They are included only in three successor resolutions, 1977 (2011), 2325 (2016) and 2366 (2022). Second, these three successor resolutions also reference “guidance of the framework of the Financial Action Task Force (FATF)”.

On the first point, why did the Security Council introduce the terms “proliferation finance” or “proliferation financing” only into successor resolutions, and not resolution 1540 itself? Were they intended as general references to the prohibitions on funding or financing activities of non-State actors as set out in operative paragraph 2 of resolution 1540? Or references to controls on funding or financing that States must have in place under operative paragraph 3 (d), even though restricted to export and trans-shipment? Or both?



Or perhaps they reflected the influence of FATF’s separate work on proliferation finance at the time, even though this was orientated towards Security Council targeted sanctions, rather than resolution 1540 activity-based controls.⁴

The terms “proliferation financing” or “proliferation finance” are not defined in a UN context, nor used elsewhere by the Security Council. They do not appear in Security Council sanctions resolutions on the Democratic People’s Republic of Korea (DPRK) (1718 (2006) and successor resolutions), nor those on the Islamic Republic of Iran (1737 (2006) and successor resolutions, now terminated, and 2231

(2015)). Nor are they used by the General Assembly.⁵ FATF has published two definitions (in guidance documents dated 2010⁶ and 2021⁷), but neither would appear to constitute a definition formally approved by FATF. Many States use their own definition.

Counter-proliferation financing has developed into an integral element of the international community’s toolbox to combat WMD proliferation. However, in the absence of a common definition, different States focus on different aspects of the threat and their collective actions are probably less effective than they might be. The 2022 Comprehensive Review was arguably a

4 FATF’s first publication on proliferation financing was a Proliferation Finance Typologies Report (2008); FATF’s revised Standards of 2012 included a requirement (Recommendation 7) to implement UN Security Council WMD-related targeted financial sanctions, available at <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html>.

5 For example, General Assembly resolution 32/84 of 1977 defines WMD but includes no reference to financing.

6 Paragraph 28, FATF, Combating Proliferation Financing: A Status Report on Policy Development and Consultation, February 2010.

7 Footnote 7, FATF, Guidance on Proliferation Financing Risk Assessment and Mitigation, June 2021.

missed opportunity by the 1540 Committee to agree on a definition to further bolster collective efforts to combat WMD proliferation.

FATF'S POTENTIAL ROLE

The second important point illustrated by the Table is that FATF guidance is referenced in three of the successor resolutions. FATF uses peer reviews to assess how well States meet FATF standards. The results are public, and States make great efforts beforehand to ensure legislation is in place and effectively enforced. Unfortunately, FATF's proliferation finance requirements are limited to Security Council targeted financial sanctions on the DPRK and exclude the financing or financial services requirements of resolution 1540.

Under the FATF Mandate of 12 April 2019, FATF Ministers committed to further action to strengthen the global response to WMD proliferation financing.⁸ Such action might take two forms: first, and ideally, FATF would modify

its standards to include the need to implement the proliferation finance requirements of resolution 1540. Second, FATF could publish a guidance document on implementation of resolution 1540 proliferation finance requirements.⁹ The Security Council has laid the groundwork for such a document: preambular paragraphs of resolutions 1810 (2008), 1977 (2011), and 2663 (2022) reference "guidance of the framework of the Financial Action Task Force (FATF)" (see the Table). The Security Council also encourages international organizations to "highlight the obligations of resolution 1540 (2004) in their model legislation and/or guidelines, where appropriate, pertaining to instruments under their mandate relevant to the resolution".¹⁰

There is a strong case for FATF to start work now on such a document. Under the next round of peer reviews scheduled to start in 2025, States will be assessed on a new requirement to conduct proliferation financing national risk assessments (Recommendation 1). Even though "risk"

will be restricted to Security Council targeted financial sanctions on the DPRK, the new requirement should encourage States to reassess their overall approach. A FATF guidance document would help ensure such reassessment covered resolution 1540 proliferation finance requirements.

CONCLUSION

Despite the importance of counter-proliferation financing for combating WMD proliferation, the Committee's 2022 Comprehensive Review did not identify significant improvements in this area of resolution 1540 (2004) in comparison with the 2016 Comprehensive Review. Committee action in this respect is unlikely before the next Comprehensive Review scheduled for December 2027. In the meantime, FATF offers the best prospects for strengthening international efforts to combat proliferation financing threats. A good start would be the publication of FATF guidance on effective implementation by States of the proliferation finance requirements of resolution 1540 (2004).

8 Paragraph 9 of the FATF Mandate Approved by the Ministers and Representatives of the Financial Action Task Force, 12 April 2019, Washington, DC, available at <https://www.fatf-gafi.org/en/the-fatf/mandate-of-the-fatf.html#accordion-ffd0cfcabc-item-a5fb5ae357>

9 Several FATF guidance documents relate to proliferation finance sanctions but none deals specifically with resolution 1540.

10 Paragraph 25 of S/RES/2325.