

The United Nations Security Council (UNSC) Resolution 1540: How Effective Is Its Implementation?

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What is UNSC Resolution 1540?

- Precedents:
UNSC Resolutions 1373 (2001)
and 1377 (2001)
- Adopted on April 28, 2004.
- The latest in a series of internationally-directed, concrete measures aimed at:
 - Preventing Weapons of Mass Destruction (WMD) proliferation
 - Preventing and countering terrorist acquisition and use of these deadly weapons
- United Nations (UN) Member States are required by international law to have laws and enforcement capacity for nonproliferation export controls and the protection and control of sensitive materials.



The 1540 Committee

- The Committee was set up under Operative Paragraph (OP) 4 to monitor the implementation of UNSC Resolution 1540.
- During two years the 1540 Committee will meet to report to the Security Council (SC) on member states' progress toward enacting the required export control laws and procedures to enforce them.
- The 1540 Committee consists of representatives from each member of the SC, along with any outside experts hired by the UN to help the Committee.
 - Chairman: Mihnea Ioan Motoc (Romania)
 - Vice-Chairmen: Benin, Philippines and United Kingdom.
 - Members of the Committee:
 - Algeria, Argentina, Benin, Brazil, China, Denmark, France, Greece, Japan, Philippines, Romania, Russian Federation, United Kingdom, United Republic of Tanzania and United States.

The Report System

- Did countries report within six months?
- Ambiguity in the time frame of the reporting system.
- OP 4 Report must describe country's effort to comply with UNSC Resolution 1540's first three OPs.
- If UN Member States do not interpret "call upon" as an obligation to report to the 1540 Committee, then any final report to SC will be incomplete and, therefore, not represent the "state of global efforts."
- If UN Member States interpret OP 4 to mean that the October 28, 2004 date is flexible then the 1540 Committee will face immediate challenge of losing time while waiting to receive the data to complete its work and fulfill its mandate.

What Information Do Member States Report?

- OP 1 → report that it does not support non-state actors that may seek to acquire WMD technologies or delivery systems.
- OP 2 → provide details of its materials protection and export control laws and regulations.
- OP 3 requires:
 - Member States to enact a full set of controls to account for (OP 3a) and protect (OP 3a & 3b) WMD-related technologies, along with relevant delivery systems.
 - Member States to establish a full set of institutions, procedures, personnel, and equipment to control border and port facilities (OP 3c), monitor brokering activities (including financing – OP 3c).
 - Member States to conduct intelligence checks on end users (OP 3d), scrutinize transits/transshipments (OP 3d), and levy criminal or civil penalties for violations (OP 3d) – the word or is exclusive, the word and would warrant both criminal and civil penalties.

How Comprehensive and Effective is the Information Reported by Member States?

- Reports may merely list the appropriate laws that are already on the books and that are applicable to export controls and materials safeguards. This list is predictable since most members are members of the Nuclear Nonproliferation Treaty.
- Reports may also list the laws passed upon accession to the Chemical Weapons Convention and the Biological Weapons Convention.
- If a country decides to list only the laws, it will still provide little information on their effectiveness and comprehensiveness.
- In this case, the 1540 Committee will have to do considerable research in order to analyze whether Member States have indeed complied with UNSC Resolution 1540.
- If a state provides minimal information, the 1540 Committee may be able to identify Member States that can, by virtue of their experience in the area of export controls and materials accounting and protection, provide resources and recommendations to those that are relatively new to the field (OP 7).

Are Safeguards, Laws and Border Controls Enough?

- High resources required:
 - Export controls and materials safeguards are best conceptualized and built as a system.
 - Likewise, the establishment of a viable legal basis for export controls or materials safeguards requires institutions to staff, manage, and implement the laws.
 - Procurement of equipment to perform nuclear, chemical, and biological control.
- UNSC Resolution 1540 directs Member States to develop such systems but does not provide the resources.
- Even if national control lists are created and adopted, enforcement of export controls remains a difficult process.

How to Guarantee Outreach?

- UNSC Resolution 1540 acknowledges that some states may need help with establishing these systems, and it invites more experienced states to provide their own national resources to help end shortcomings.
- It doesn't provide a mechanism for doing so and doesn't establish a reporting mechanism on such efforts.
- Guarantee outreach through training programs
 - Best practices workshops
 - Design basis threat workshops
- Implementation through safeguards agreements and arrangements with foreign partners.

How to Measure Success?

- The UNSC Resolution 1540 will not implement itself.
- SC must work assiduously to persuade Member States to embrace its letter and spirit.
- SC must dedicate diplomatic and outreach resources through their UN missions and diplomatic posts around the globe.
- 121 countries (+ 1 non-member) reported → 61 by October 28, 2004
- Real benchmark of success → building and implementing export controls and materials protection, accounting, and safeguards.
- The 1540 Committee should establish a central database of national-level assistance programs:
 - International and nongovernmental organizations have instituted outreach programs but these programs vary from country to country.
 - Without a centralized repository, Member States with needs may not know where to seek the resources to meet those needs, while members that have resources may not be allocating their resources where they can be of the greatest help.
- UNSC Resolution 1540 → opportunity to promote the internationalization of norms and procedures concerning control over the trade in WMD and delivery system technologies.