



Global Implementation of Security Council Resolution 1540 – An Enhanced UN Response is Needed

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Background

Few would dispute the continued global significance of UN Security Council Resolution 1540 in terms of its substance: seeking to prevent weapons of mass destruction (WMD) and their means of delivery from getting into the hands of non-state actors, requiring every country to take a series of legislative and regulatory steps in this direction, and linking to a wide range of other interdependent and intertwined global security and governance challenges.

The global relevance of the resolution was recently underscored in Resolution 1887, which was adopted at the conclusion of the Security Council's 24 September 2009 meeting attended by 14 heads of state and chaired by President Barack Obama. Aimed at reducing global nuclear dangers, the resolution reaffirmed the importance of global implementation of Resolution 1540, drew attention to the additional financial and political support necessary for implementation, and highlighted the need for new impetus in implementation efforts, including by ensuring effective and sustainable support for the activities of the 1540 Committee.

From the time Resolution 1540 was adopted, the binding nature of the resolution, the complexity and breadth of its requirements, and the controversy surrounding its adoption highlighted the challenges to its implementation. Yet, with the council continuing to remind all states of the urgency of the resolution's full implementation and of a long-term commitment to this end, it has yet to act in a way that reflects this same urgency, given the gravity of the threat facing the

international community. As a result, the United Nations' institutional capacity to support global implementation of Resolution 1540 has remained underdeveloped.

The United States initially opposed the creation of a council committee to monitor Resolution 1540 implementation efforts, preferring to leave this responsibility to individual member states. In the end, however, the United States found itself isolated as the overwhelming majority of council members, not to mention the wider UN membership, insisted that the creation of a committee modeled on the Counter-Terrorism Committee (CTC) was a *sine qua non* for supporting the Resolution 1540 draft text.

The council's decision to establish a committee that, in addition to serving as an implementation monitor, would engage in cooperative dialogue with states and help them find the assistance they need, was a recognition of the implementation challenges ahead.

All of this highlights the essential role that the 1540 Committee, as well as the group of experts it asked the Secretary-General to hire for support, must play. The 2006 WMD Commission report concluded that the controversial resolution "would seem to have significant potential" if the council "provides [to the committee] the necessary institutional resources for monitoring implementation and assists states in complying."¹

It is fair to say that this has not occurred.

This policy brief will address the current status of the committee and its group of experts, including enumerating some of the reasons for the present condition. It will also identify ways

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to enhance the United Nations' ability to support the work of the 1540 Committee and thus the organization's ability to support global implementation of the resolution.

The Current Status

In almost six years of existence, the 1540 Committee and its talented and dedicated group of experts have contributed to global efforts to implement Resolution 1540 in some significant ways. For example, its most important accomplishment may have been the development of a common matrix that takes stock of all legislation and measures (existing and planned), and their enforcement, to implement the resolution in all 192 UN member states. The committee has helped convene regional workshops to promote implementation of the resolution and has begun to ratchet up its efforts to facilitate the provision of technical assistance, including the preparation of templates for those requesting and offering assistance. Lacking the resources or mandate to provide assistance itself, however, the committee must continue to rely on bilateral and multilateral donors to fill the gaps, which underscores the importance of deepening cooperation with the G8 Global Partnership Against the Spread of Weapons and Materials of Mass Destruction, as well as with the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons, and other multilateral and bilateral partners capable of providing assistance in areas relevant to the resolution.

The Security Council and 1540 Committee have recognized that full implementation of the resolution will require time, sustained capacity-building efforts, and a long-term commitment to its objectives by all states. Yet, the committee continues to fall short in providing itself and its experts with the necessary mandate and tools to maximize its ability to help achieve these supposedly urgent goals.

For example, it has authorized hiring only eight experts to support its work, which reflects both the initial U.S. desires "to avoid new bureaucracy while establishing swift and, hopefully, effective measures within a system

where it [the United States] could expect to have significant leverage"² and the desires of committee members from the Non-Aligned Movement to try to limit the impact of a committee and a resolution they felt should not have involved the Security Council from the start.

The Need for More UN Involvement in Supporting Global Efforts to Implement Resolution 1540

With the increasing number of tasks the 1540 Committee is assigning to the experts, which now includes more than the already burdensome responsibility of dialoguing with 192 states and dozens of international, regional, and subregional bodies, it is clearer than ever that the current number of experts is woefully inadequate to carry out these tasks effectively. Although a "division of labor strategy"³ involving a range of stakeholders, mostly outside the UN system, is needed and is being developed to implement the resolution, it will not be sustainable over the long term unless the United Nations itself becomes more active.

Expand the group of experts or assign a greater role to the UN Office for Disarmament Affairs:

This could involve enlarging the 1540 Committee's group of experts to allow it to coordinate (albeit loosely) this effort. Another possibility would be to assign the tasks currently given to the group of experts to an expanded UN Office for Disarmament Affairs (UNODA). This latter move would allow for greater cooperation among those within the United Nations responsible for Resolution 1540 implementation and implementation of interlinked peace, security, and development mandates. In addition, shifting responsibility for providing substantive and analytical support to the 1540 Committee from a group of experts accountable only to the Security Council (some handpicked by the five permanent council members) to an office that is an integral part of the UN Secretariat and thus accountable to the wider UN membership might have another benefit. It could help increase the willingness of some states, which

have resented the council's tight control over the UN effort to support global implementation of Resolution 1540, to engage with the committee in a sustained and serious way, even by welcoming technical assistance–related visits from the United Nations in this area. Although such a move might in theory reduce the leverage of the group of experts in pressuring countries to act, it would also be a recognition that the council is ill suited to oversee routine, day-to-day tasks of monitoring implementation of a global framework such as Resolution 1540; to facilitate the delivery of technical assistance; or to engage with 192 states and scores of multilateral bodies and other stakeholders. In the end, the council may lack the legitimacy, technical expertise, and attention span to sustain the momentum of a long-term capacity-building program and the multitude of tasks that are involved.

Decisions regarding the 1540 Committee group of experts, such as the level of staffing and their status as UN consultants rather than as full-fledged UN staff members, were taken in the second half of 2004, after the council recognized that the allocation of 10 consultants to support implementation of the equally far-reaching but less technical global counterterrorism regime imposed by Resolution 1373 (the council's robust response to the events of 11 September 2001) was inadequate to fulfill the committee's monitoring, technical assistance facilitation, and global outreach mandates. In fact, in March 2004, the month prior to the adoption of Resolution 1540, the council abolished the CTC group of experts and created in its place the Counter-Terrorism Executive Directorate (CTED), currently comprised of some 40 permanent UN staff members, including more than 20 substantive experts.

The discrepancy in the level of UN human and financial resources devoted to supporting the regimes of Resolutions 1540 and 1373 can in large part be attributed to the fact that, unlike with Resolution 1373, U.S. policy on Resolution 1540 was directed by Ambassador John Bolton, whose disdain for international civil servants and multilateral institutions was well known even before he served as U.S. Ambassador to the United Nations.

Enhance the ability of the group of experts to facilitate delivery of 1540 Committee–related capacity-building assistance: Even without enlarging the current group of experts, creating a CTED-like body for the 1540 Committee, or integrating the group of experts fully into the UN Secretariat, steps could be taken to strengthen the ability of the committee's current group of experts to facilitate the delivery of capacity-building assistance. In this regard, there are many lessons to be learned and best practices that could be gleaned from the CTED's work over the years in engaging with donors and countries in need. Perhaps the most important lesson is that direct engagement in capitals with the experts responsible for implementing Resolution 1540 is critical. In fact, the CTED now focuses its technical assistance facilitation efforts almost exclusively on those countries that it has actually visited, believing that this approach is the most likely to generate concrete results.

Consideration should also be given to allowing the group of experts to provide legislative and export control–regulation drafting assistance directly to states. For this purpose, the committee should consider again whether to create a roster of experts from different countries, which could be called upon as needed to provide Resolution 1540–specific assistance to a country that requests it.

In addition, the committee could encourage more engagement between the group of experts and nongovernment organizations (NGOs) that deliver global assistance in fields related to the implementation of Resolution 1540 obligations in different regions around the world, the committee has so far not allowed the experts to involve NGOs in their capacity-building facilitation efforts.

In this context, the 1 October 2009 civil society session organized by UNODA in cooperation with the Stanley Foundation that was part of the 1540 Committee's three-day comprehensive review of the state of global efforts to implement the resolution is a positive development. It is a recognition by the committee of the important contributions NGOs and other civil society actors can make in supporting global efforts to implement Resolution 1540 and will hopefully lead to

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more direct engagement between the group of experts and nongovernment experts.

Allow the group of experts to provide independent analysis of the WMD terrorism threat: Sustaining global support for the implementation of Resolution 1540 will also require the 1540 Committee to allow its group of experts to provide independent analysis of the WMD-terrorism threat, highlighting different regional and subregional dimensions of the threat, something the group is currently prevented from doing. Although plenty of NGOs and states offer assessments of the WMD terrorism threat, few would be seen as having the necessary objectivity and could be relied on by the committee and its group of experts as they seek to develop priority issues and regions on which to focus. Having a “UN” analysis could enhance the credibility of the committee and the Security Council when they speak about the urgency and global nature of the threat. The analysis could be modeled on that undertaken by the Security Council’s Al-Qaida/Taliban Sanctions Committee Monitoring Team, which helps maintain global support for the council’s al-Qaida/Taliban sanctions regime. It will be difficult to convince many countries of the urgency of the threat and the need to allocate the necessary domestic resources to address it without any independent analysis to explain why the threat is not simply the possibility that al-Qaida might employ WMD in an attack against the U.S. homeland or its interests abroad, but that, for example, biological or chemical agents produced in a sub-Saharan African country with lax monitoring of any biological or chemical facilities could be used by a local insurgency group or in the context of a civil war.

Highlighting this problem, “many participants in various activities designed to promote awareness and implementation of... [Resolution 1540], however, have noted that either their government or parliament did not understand the extent of their involvement in the production, consumption or trade in WMD proliferation-related items.”⁴ Several asked the expert group for this kind of information about their own state.⁵ One of the committee’s experts wrote that “raising awareness of these concerns among all states,

particularly among those that need assistance, should increase support for greater implementation. Understanding the extent to which any state has ties to the production, consumption or trade in [Resolution] 1540-related items should also help the committee and those offering assistance to work more effectively and efficiently.”⁶

Enhance outreach to highlight the linkages between effective implementation of Resolution 1540 and addressing other national priorities in the security and development fields: Finally, combating WMD terrorism is not a top priority to many countries in regions such as Africa, Southeast Asia, and the Pacific. Many view it primarily as part of a “Western-imposed” agenda, particularly when the pressure for doing so is coming from the Security Council. Thus, sustaining global support for Resolution 1540 implementation will require highlighting the broader benefits to states when they implement the resolution; the positive side effects or benefits that capacity building related to the implementation of Resolution 1540 will have in terms of addressing other pressing needs of some countries, particularly those in the global South; and how better export controls can lead to more secure trade and thus stimulate more economic activity.

The 1540 Committee cannot rely exclusively on regional outreach workshops to do this as it does not allow for the country, and often situation, specific messaging that will be needed to achieve this objective. Sustained engagement between the committee’s group of experts and national officials in capitals is a missing piece of the equation. As previously mentioned, however, these experts, unlike those that support the council’s efforts to monitor implementation of Resolution 1373 as well as the council’s al-Qaida/Taliban sanctions regime, are largely prevented from undertaking this sort of activity.

Conclusion

Ironically, the United States, the country whose president came to the UN General Assembly in September 2003 and called on the Security Council to adopt the measure that became

Resolution 1540 and reiterated its importance five years later in a final speech to the world body, was never willing to take the lead in ensuring that the committee, and the wider United Nations, itself had the necessary mandate and resources to maximize the global body's contribution to global implementation efforts. Partly because of these shortcomings, the ability of the 1540 Committee and the United Nations to spearhead a global implementation effort has been compromised, with one expert having described it as “feeble, to the point of negligence.”⁷

The establishment of a “voluntary fund [within UNODA] to help provide the technical support and expertise to support implementation of Resolution 1540,” something that the new administration has recently said it would make a “meaningful contribution to...once it is

established,”⁸ would be a step in the right direction to giving the global institution the resources it needs to assume a more active role in furthering global efforts to implement the resolution.

Enhancing the capacity of the United Nations to support these global efforts should not stop there, however. If the council is serious about “reinforcing its commitment to effective and sustainable support for the 1540 Committee's activities,” as stated in Resolution 1887, then it should also take into serious consideration some of the ideas contained in this policy brief, for example, expanding the number and mandate of the experts supporting the committee, transforming the group into a CTED-like body, or fully integrating them into the UN Secretariat's wider disarmament and nonproliferation activities.

Notes

¹ Weapons of Mass Destruction Commission, “Weapons of Terror: Freeing the World of Nuclear, Biological and Chemical Arms,” 2006, p. 55, http://www.wmdcommission.org/files/Weapons_of_Terror.pdf.

² Olivia Bosch and Peter van Ham, “Global Non-Proliferation and Counter-Terrorism: The Role of Resolution 1540 and Its Implications,” in *Global Non-Proliferation and Counter-Terrorism: The Impact of UNSCR 1540*, ed. Olivia Bosch and Peter van Ham (The Hague: Clingendael Institute, 2007), p. 5.

³ Monika Heupel, “Implementing UN Security Council Resolution 1540: A Division of Labor Strategy,” *Carnegie Papers*, no. 87 (June 2007), http://www.carnegieendowment.org/files/cp87_heupel_final.pdf.

⁴ Richard Cupitt, “Non-Paper on Developing a Methodology for 1540 Assistance Engagement,” 27 August 2008, p. 1 (copy on file with author).

⁵ Ibid.

⁶ Ibid.

⁷ Mark Fitzpatrick, “Nuclear Black Markets: Can We Win the Game of Catch-Up With Determined Proliferators?” (testimony before the House Committee on Foreign Affairs Subcommittees on the Middle East and South Asia and Terrorism, Nonproliferation and Trade, 27 June 2007), <http://foreignaffairs.house.gov/110/fit062707.htm>.

⁸ Remarks by Ambassador Alejandro Wolff, U.S. Deputy Permanent Representative to the United Nations, during the Comprehensive Review of Resolution 1540, 30 September 2009, <http://usun.state.gov/briefing/statements/2009/september/130100.htm>.

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