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UNSCR 1540: Identity, Extension, and Implementation

United Nations Security Council Resolution 1540 has in many ways become a fixture in the global effort to curtail the spread of weapons of mass destruction since its adoption in 2004. The resolution, adopted under Chapter VII of the UN Charter, requires all UN member states to adopt laws aimed at preventing nonstate actors from acquiring weapons of mass destruction, their means of delivery, and related materials. As part of this effort, the Security Council established the 1540 Committee, composed of the member states of the council, to report on states' implementation of the resolution, to perform outreach to states regarding the resolution, and to help coordinate states' efforts to put it into practice. Thus far the council has agreed to extend the 1540 Committee's mandate only for short periods of two or three years at a stretch. The most recent mandate is set to expire on April 25, 2011.

The expiration of the committee's mandate will not affect the obligations of states under Resolution 1540. However, it does provide an opportunity to evaluate the current state of affairs regarding the resolution, and the successes and challenges of the 1540 Committee's work to date.

For this reason, the Stanley Foundation convened a roundtable discussion February 25-27, 2011, in Tarrytown, New York. Participants included officials from the UN Secretariat, permanent representatives to UN member states, representatives from various regional and subregional organizations, and nonproliferation specialists.

The participants evaluated the evolution of Resolution 1540 in terms of its implementation and changes in international perception since 2004. Participants also discussed the lessons learned from the 1540 Committee's years of work, and how its efforts could be improved. In particular, participants highlighted the value of reaching out to, and cooperating with, regional and subregional organizations in order to help their member states implement the resolution. Participants agreed that some challenges remain in communicating the importance of implementing 1540 in some regions and in better coordinating existing efforts. Lastly, the participants considered various approaches that a resolution renewing the committee's mandate could take, such as establishing the committee for a longer period.

This brief summarizes the primary findings of the conference as interpreted by the rapporteur and organizer. Participants neither reviewed nor approved this brief. Therefore, it should not be assumed that every participant subscribes to all of its recommendations, observations, and conclusions.

Evolution of Resolution 1540: Changes in Perception and Lessons Learned

Participants generally agreed that the international perception of Resolution 1540 has improved since it was adopted. While some developing countries are still skeptical of the resolution for various reasons—a lack of input in the original drafting of the resolution, the sense that the resolution is an imposition of the developed global North upon the developing South, or a sense that the Security Council should not interfere with states' domestic legislation—overall, Resolution 1540 has become an accepted feature of the nonproliferation architecture.

Participants cited several reasons for this improvement in perception of the resolution. In particular, highlighting the benefits to economic development and trade that can accrue through implementation of 1540 has opened up the discussion among developing countries in a way that was not present at the resolution's adoption. Additionally, some regional and subregional organizations have become engaged on 1540 issues, increasing the prominence of the resolution among their member states and helping to encourage implementation.

Over time, the resolution has come to be seen less as an abstract obligation on states and more as a practical fixture or touchstone for nonproliferation efforts. As an example, it was noted that implementation of Resolution 1540 was listed in the work plan of the 2010 Washington Nuclear Security Summit, which drew together the leaders of 47 countries. Some participants noted that the resolution and the 1540 Committee have increased the visibility of nonproliferation issues among higher-level policymakers, both in national governments and in international organizations. One participant noted that one of the greatest benefits of 1540 has been to help match the needs of developing countries with resources of developed ones.

Some participants stated that the 1540 Committee is evolving from an ad hoc body to a standing committee of the United Nations, with the ability to help coordinate broader nonproliferation efforts as a result of the resolution's relatively broad mandate and the ability to collect information and provide guidance. Other participants cautioned that such an interpretation overstates the mandate of the committee and the resolution, and risks embroiling the work of the committee in political questions. In general, when considering the committee's role in

the future, participants agreed that the primary focus should be how the committee can respond to the needs of member states in fulfilling the resolution. Once those functions have been identified and agreed upon, a secondary consideration would be how to adapt the capacity of the 1540 Committee to meet those needs.

Participants generally agreed that the committee should focus its work on areas where it can add value without duplicating the efforts of other organizations, such as the International Atomic Energy Agency or the Organisation for the Prohibition of Chemical Weapons. The committee could use the information it has gathered to date to identify areas under its purview where fewer or less effective measures have been taken to prevent the possible spread of weapons of mass destruction and related materials to nonstate actors.

Some participants emphasized the need to preserve the nonpolitical nature of the resolution and stated that 1540 should not be drawn into the larger debate over the pace of nonproliferation efforts versus the pace of disarmament efforts. Others pointed out that even if general and complete disarmament were one day achieved, the danger of dual-use goods allowing nonstate actors to develop weapons of mass destruction (WMD) would remain a threat, and therefore the importance of Resolution 1540 goes beyond the traditional disarmament debate.

Structure and Work of the Committee

With regard to the structure of the 1540 Committee, participants generally agreed that the introduction of the four working groups (Transparency and Outreach, Assistance, Implementation, and Cooperation with Regional and International Organizations) has been a substantial benefit. Some participants noted that the working groups have helped foster a cooperative approach to the implementation of the resolution and raised the committee's profile.

The conference considered the current status of states' reports on measures taken to implement the resolution, the collection of which has been one of the committee's main activities. Participants noted that fewer than thirty states have not submitted a report on implementation to the committee. Many of these countries are smaller developing countries which, some participants stated, lack the capacity to submit a report. One participant pointed out the tendency in national reports to focus on laws and

regulations that a country has promulgated to address the threat. Few reports provide details on actual implementation.

Participants generally agreed that reporting can impose a burden on smaller states and that the process could be improved by providing for more feedback from the committee following the submission of a report. However, some participants cautioned that it is outside the committee's current mandate to evaluate a state's report. Despite this observation, it was generally agreed that the committee should transition from an information-gathering phase to an evaluation and assistance-matching one.

One participant remarked that reporting is not an end in itself; rather, the object of the reports is to create a discussion within governments about nonproliferation and to identify areas in which action could be taken to lower the risk of proliferation.

Several participants raised the importance of continued awareness building, particularly in developing countries. For some states this would mean building awareness of the resolution, its obligations, and the threats it is aimed at preventing. For states that may perceive the threat of WMD terrorism as a problem for developed countries, one participant mentioned that the indirect threat posed by the significant contraction in worldwide trade likely to follow from such an attack could be persuasive. Another noted that even developing states are sensitive to the threat of domestic terrorist attacks, and pointed out how much worse such an attack could be in a country that lacks the infrastructure to respond adequately to an attack utilizing weapons of mass destruction.

Even states that are aware of the resolution could benefit from guidance from the committee on how to implement it more effectively. Both awareness raising and the evaluation of existing measures can take place in a regional context, but participants generally agreed on the need to approach states while being aware of their individual priorities. That is, awareness raising, evaluation, and the sharing of best practices will all benefit from an approach that focuses on the needs of the recipient rather than the needs or demands of the international community.

One participant described the benefits of implementing Resolution 1540 as threefold: as a shield,

as leverage, and as an enabler. Implementation serves as a shield against the risk (and the political repercussions) of inadvertently hosting part of a proliferation network in a state. Implementing the resolution can also provide leverage for addressing other threats, as more effective border controls have implications for arms and narcotics trafficking. Lastly, it can enable a state to acquire a nuclear power industry, for example, by putting in place some elements of the regulatory infrastructure that such an industry requires. Participants were largely in agreement that emphasizing the economic development benefits of 1540 implementation is an important way to begin a conversation about the resolution in states that are dealing with competing priorities and limited resources. In that vein, participants noted a regional workshop held in Kenya that focused on biological safety and security and public health—in particular, pathogen security, national and regional disease surveillance, and response mechanisms to an outbreak. Such discussions should also be part of the security-development continuum.

Continuing Challenges Facing Implementation

Some participants outlined several of the objections some developing states have regarding Resolution 1540, including lack of input in drafting a resolution that is binding on all states. In this regard, 1540 was contrasted with voluntary treaties such as the Nuclear Non-Proliferation Treaty, or Security Council resolutions that address an imminent threat. In addition, some participants noted the lack of feedback that states receive from the committee following the submission of a report. Compiling an accurate report is a significant undertaking, requiring input from numerous agencies and a significant expenditure of time and energy. The lack of feedback not only makes it difficult for the state to identify areas where implementation could be more effective but also contributes to “reporting fatigue.”

Participants acknowledged the legitimacy of these observations. Some participants stated that the lack of feedback between the committee and member states can partially be attributed to a lack of effective communication. Regional workshops are held frequently, with representatives from the committee often present, along with representatives of international organizations and donor countries. These workshops provide an opportunity for states and representatives of the

committee to discuss implementation issues, and to match their needs with programs offered by other states, if states take advantage of the opportunity. States can also learn about each other's efforts at these workshops—one participant reported that the Thai government was unaware of the recent enactment of Malaysia's export-control law until the subject came up at a regional workshop. The UN Office of Disarmament Affairs has held seventeen such meetings. The one-off nature of these workshops was noted as a weakness of this approach.

Participants described other challenges facing the committee, such as a lack of coordination among the group of experts, the sometimes *pro forma* nature of states' reports to the committee, and the continuing need to raise the perception of relevance of the resolution in some states and regions. It was generally accepted that developing states do not necessarily lack political will to implement the resolution, but the capacity to address implementation issues in the face of other priorities such as small-arms and drug trafficking. Sustaining the successes of the resolution and the committee into the future was also noted as a challenge to be addressed.

Regional Approaches to Implementation

There was widespread consensus among the participants that regional and subregional organizations have been very important in advancing implementation of Resolution 1540 and that the committee should continue to emphasize their role.

Participants noted that regional organizations can provide high-level attention to the issue (such as a secretary general or deputy secretary general of an organization), focused regional workshops and sustained follow-up efforts, knowledge of regional nuances and constituencies, and a framework for both horizontal and vertical cooperation. They can also help to identify needs among their members. Doing so can also remove some of the political sensitivity that might be perceived if a developed country or group appeared to dictate or strong-arm a developing state with regard to its implementation efforts.

Regional organizations can also play a crucial role in developing regional standards or best practices, drawing on their members' experiences. Since determining best practices at the level of the 1540 Committee might appear overly political or beyond the committee's mandate, regional organizations

could take a lead role here. The importance of assistance and experience sharing among developing countries was also emphasized.

Participants noted the importance of broadening and deepening the regional and subregional approach. Some regional organizations have no relationship with the 1540 Committee. Others are looking for guidance from the committee, or for a more durable and systematic relationship between the two. In general, information sharing could benefit from a more structured approach, rather than the ad hoc, personality-based status quo.

Participants discussed the additional benefits of capacity building, in the regional and national context, beyond directly addressing a particular implementation shortfall. Capacity-building efforts can also increase the visibility of 1540 among policymakers, engage policymakers and the bureaucracy, and help groom champions for 1540 implementation. One participant described the change in his region following capacity building as "an era shift."

Renewal of the Committee

The conference considered many different proposals for the resolution renewing the 1540 Committee's mandate, but there were numerous common threads. The wording of the resolution should offer guidance without micromanaging the work of the committee, allowing room to build on past successes. The utility of preambular language in this regard was highlighted. Participants agreed that the renewal resolution should welcome regional organizations' activities with regard to 1540.

Participants broadly agreed that the duration of the renewed mandate is a critical issue, and that the renewal should be for a longer period than those provided for in previous resolutions. A longer mandate will enable other organizations to put in place more systematic relationships with the committee. Participants largely agreed that a ten-year mandate coupled with a five-year review period would be suitable. Some participants noted a few challenges related to a longer mandate, including coordinating the work of the experts committee and finding a mechanism to keep non-Security Council members engaged in the committee's work and importance. Participants noted that there are six-month reviews of the three UN counterterrorism committees, including 1540, but that these reviews are highly formal and do not provide much opportunity for

discussion or debate. Instead, participants generally agreed that the chair of the 1540 Committee could convene regular open meetings on a theme or geographic area, focusing on 1540 implementation.

Some participants also suggested that language encouraging horizontal contacts between regional organizations on 1540-related topics would be helpful. On a related point, other participants noted that the resolution could encourage the committee to reach out to outside experts and civil society generally. Others spoke to the importance of diversifying the expertise among the group of experts. In particular, the need to transition from an exclusively technical group to one that has some knowledge of governance (especially in the developing world) is important as the role of the committee shifts to implementation.

Some participants suggested that the committee should focus on areas where fewer or less effective measures have been taken to address Resolution 1540. In particular, the committee should not duplicate the efforts of the International Atomic Energy Agency or the Organisation for the Prohibition of Chemical Weapons. The fields of biological weapons and materials, and means of delivery of WMD, were cited as areas where the committee's work could add value.

Other participants noted that if the committee is to take on a clearinghouse role—that is, helping to match state's needs with donor-state programs—the resolution should endorse this. The resolution could also give direction to the committee with regard to its analytic role—that is, if the committee is to draw conclusions from the matrices it has accumulated from states since 2004. Participants generally agreed that finding a way to promulgate best practices will be an important step for the committee.

Participants discussed the proper role of the committee in analyzing the information it has collected and providing feedback to states, and whether the committee should set priorities in its efforts to bolster implementation. Participants noted that some of this work is already being done and recalled a 2008 report of the committee on the subject. The United Nations also provides feedback to member states at regional workshops, where states' matrices are discussed. Participants noted that there is a gap between states' perception of the level of feedback and what the committee is actually doing, and cited a

failure of communication. The role of civil society in possibly overcoming this gap, through outside experts and additional meetings, workshops, and contacts, was noted.

Participants discussed the benefits and challenges arising from the present structure of the committee, with a rotating chair, four working groups, and a group of eight experts. In particular, a lack of continuity arising from the rotating chair was noted, along with a lack of coordination between the experts and the committee. In this light, the creation of a coordinator position for the committee was discussed. The coordinator would serve as a central link between the committee and the group of experts, helping to direct the experts' work and develop consensus among them. Other participants highlighted the potential for a coordinator to serve as a liaison between the committee and other organizations. Participants generally agreed that a coordinator would be beneficial for the committee's work but emphasized that the coordinator should in no way encroach on the role of the committee's chair.

Other participants pointed out that not all ideas for improvement need to be enshrined in the Security Council's resolution. Some could be outlined in the committee's program of work once the council has given general direction.

Participants generally agreed that the collection of best practices could be done by regional organizations, or even by individual member states. This information could be forwarded to the 1540 Committee, which could disseminate it without officially endorsing it. This approach would facilitate the spread of information without drawing the committee into a political debate over which practices should be upheld as a global standard.

Participants also generally agreed on the importance of civil society in helping advance the implementation of Resolution 1540. Outreach to civil society should not be limited to think tanks and similar nongovernmental organizations, but should also include industry groups.

Recommendations advanced during the discussions include:

- The mandate of the committee should be renewed for a longer period, perhaps up to ten years, with a thorough review after five years, in order to

facilitate coherence between the committee and member states.

- The renewal resolution should avoid being too prescriptive, allowing room for the committee to develop its own plan of work.
- Additional specificities on communication between the committee and member states must be made in order to provide feedback, share information, and serve as matchmaker between assistance providers and recipient countries.
 - Meaningful and sustained engagement of non-council members with the committee will be critical in maintaining interest and buy-in from all UN member states.
 - One way to ensure continued engagement is by instituting a series of open meetings convened by the chair of the committee. Each meeting could focus on a different specific theme or region.
- The 1540 Committee experts could be diversified in terms of specialization, particularly in the field of governance and regional expertise, in order to help the committee assist states in implementing the resolution.
- The appointment of a coordinator for the committee could prove beneficial, particularly if a longer mandate is agreed upon. A coordinator could provide institutional memory and liaise between the committee, the experts, and the four working groups.
- Priorities could best be determined through consultation with countries and implemented through the committee's program of work.
- Greater feedback by the committee to member states would be beneficial for all parties involved. Some participants suggested there be a consistent forum or mechanism for countries to discuss issues with one another and the committee. The committee should offer feedback to member states on the required country reports in order to enhance communication and better facilitate implementation.
- Governments should better coordinate, rationalize, and leverage assistance beyond traditional nonproliferation programming in order to stretch scarce funding and be more responsive to the higher priority concerns of requesting partners.

- Greater focus on South-South cooperation on implementation of the resolution should be encouraged.
- Regional workshops could convene not only donor and recipient countries but also draw upon regional and subregional organizations, nongovernmental representatives, and the private sector to provide their expertise and services to countries.
- Regional organizations can help develop regional standards to provide their member states guidance.

A focus on capacity building in states would do more than just address the gaps in countries' infrastructure. If done effectively, it would also create buy-in by countries that may have otherwise been unlikely candidates to be regional champions.

Conclusion

The renewal of the 1540 Committee's mandate in April 2011 could mark a turning point in the committee's work. States see a demand for a longer mandate for the committee, to allow its work and its institutional relationships with other organizations to develop in a more systematic way. The possibility of a ten-year mandate, or longer, calls for an evaluation of the committee from 2004 to the present, and for the consideration of measures to improve its work. In renewing the mandate, the Security Council could consider ways to streamline communication between the committee and UN member states, whether and how the committee should evaluate states' implementation of the resolution, and whether the committee should help match states facing capacity problems with states that have resources or experience to share. In so doing, the council should attempt to build on those aspects of the committee that have proved fruitful, such as its working groups, its relationships with regional organizations, and its prominence among nonproliferation experts and leaders.

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