

UN Security Council Resolution 1540: Implementation Challenges

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1. UNSCR implementation: what it entails

Resolution 1540 requires states to introduce strict controls over sensitive WMD materials on their territory, to keep it out of the hands of terrorists and other malicious actors. It specifically addresses the non-state gap in the non-proliferation regimes, all of which have tended to focus on state-based threats rather than non-state actors. In addition to taking steps to prevent access to materials, the resolution compels states to penalise any individual or organisation that engages in illicit WMD activities.

Early on, a number of states questioned whether the resolution was actually necessary, because other WMD conventions and agreements, to which they were already party, already cover WMD. Others questioned whether it was relevant to them individually, as small or developing states, because they didn't have significant quantities of sensitive WMD materials on their territory. They saw it as an unnecessary burden that they couldn't afford, which was being imposed on them by states that possessed far more of the dangerous materials. But these attitudes have changed. There's a realisation that the threat of WMD terrorism is global, and any weak link anywhere is a problem for the state in question, its neighbours, the region, and potentially the world. The threat of WMD terrorism obviously can't be eliminated, and it has to be kept in perspective. But it does exist, and this is more widely accepted than it once was.

To help reduce the dangers, the resolution requires states to take specific steps. Here, I'm going to quote from the resolution, so that I don't miss any of the three key obligatory areas:

- Operative paragraph two obliges states to “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 engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them.”
- Operative paragraph 3 (a) and (b) requires states to “develop and maintain appropriate effective measures to account for and secure [WMD] items in production, use, storage or transport” and to “develop and maintain appropriate effective physical protection measures.”

- Finally, operative paragraph 3 (c) and (d) obliges states to “develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in [WMD]” and “establish, develop, review and maintain appropriate effective national export and trans-shipment controls over [WMD] items.”

The resolution also obliges member states to report to the Security Council on the steps they have taken, or plan to take, to implement its provisions. It also encourages them request assistance in the areas where they have capacity challenges, because help is available.

A key point about the resolution and its implementation is that it’s intended to be an on-going process – not a box that can be ticked and then ignored. Drafting and enacting legislation is only part of the picture – as important in the implementation process is the enforcement of that legislation. Each state is responsible for enforcing its own laws on its own territory. It literally can’t be left to other states or international organisations to do the enforcement because no such mandate exists in international law.

Beyond these domestic obligations, the resolution also encourages states to engage in international outreach, dialogue, assistance and cooperation to assist other states in the implementation process, and to report on their activities in these areas too. Part of the goal is to encourage states to share their experiences of implementation, focusing on lessons learned and effective practices.

2. How implementation is proceeding in Asia

So how is implementation proceeding in Asia? It’s not an easy question to answer, due to the extent and complexity of the information-gathering process that’s involved. But national and NGO reports, as well as matrices and annual implementation reviews by the Security Council’s 1540 Committee, do help.

There’s some good news: for example, Asia has a high level of reporting. Unlike other regions (Africa in particular) most states in Asia have submitted at least one national report to the 1540 committee, although these vary tremendously in detail. Only two states have yet to submit a report. These are North Korea and Timor-Leste. There are still obligations to be fulfilled in this area though – in 2011, the 1540 Committee asked states to provide additional information, including actions plans on how their intend to implement their 1540 obligations. No action plans have been submitted by states in Asia yet. This is something that could be highlighted in the next ARF meeting.

Other good news is that in terms of implementation, Australia and New Zealand both have an excellent record. Not only have they enacted and enforced their own legislation, they have been assisting other states in the region to do the same. Both can be said to be implementing the resolution in the spirit that was intended, given that neither produces large quantities of WMD materials (New Zealand, for example, is one of the few countries in the region that doesn't even possess a nuclear research reactor). Yet both countries are upholding their obligations as a service to their own populations, but also as a public good to the international community.

There are other important areas of progress, too. The accounting and control of nuclear material has improved in Asia, as has the physical protection of nuclear facilities, and nuclear materials in transport. There's still a long way to go in these areas, but they have improved. More states in Asia have also signed up to the relevant non-proliferation and counter-terrorism conventions, and are taking more opportunities to engage in collaborative efforts, including drawing on international assistance to help meet their 1540 obligations. These include the IAEA IPPAS missions, which have increased significantly since 2004, including in Southeast Asia.

A number of factors have assisted in progress:

- The attention that has been drawn to 1540 obligations by CSCAP and the ASEAN Regional Forum. Without these efforts, it would have been much harder for the resolution to gain the acceptability and legitimacy that it's gained;
- The work that various international organisations and states (especially the US and EU) have done to help states reduce WMD dangers, including by helping them build their own capacity to deal with them. On the nuclear side, the Obama's administration's summit process has been especially significant;
- The approach of the 1540 committee, which has been consultative from the beginning, resisting any pressure or temptation to adopt an enforcement mandate. The committee and its group of experts emphasise collaboration, transparency and equal treatment, which has helped build the legitimacy of the resolution, if not the sense of urgency that some have advocated.

But there's some bad news, too. While reporting is strong, and implementation is improving in some areas, there are also some big gaps in Asia. Some of these gaps we know about through national reports. Others we know via experts and third-party reporting activities, such as the work of various sanctions committees. I should emphasise again here that the 1540 committee itself is not a sanctions committee – it doesn't investigate or prosecute alleged violations of non-proliferation obligations. It monitors implementation, but it can't visit a country uninvited, and the information it has access to is incomplete. So the gaps that exist are probably much bigger than we realise, although the ones set out in the 1540 Committee's 2011 comprehensive report are still quite striking.

For political reasons, the reports of the 1540 Committee rarely mention the names of states in their assessments, but we know some of the weak points from other sources.

- Across Asia, there are significant gaps in measures covering biological materials, means of delivery, national control lists, and the financing of proliferation activities.
- The Financial Action Task Force identifies four states in Asia (Indonesia, Myanmar, North Korea, and Thailand) among 17 on its black list. These are states that are consistently failing to squeeze the financing of terrorism. Brunei, Cambodia, the Philippines and Vietnam are among the 22 states on its grey list.
- Legislation controlling the transport of illicit WMD transactions is also weak across the region.
- In common with much of the world, there are also major gaps in enforcement. Where states have accelerated the introduction of legislative frameworks, few are catching and punishing violators. This problem is highlighted in 1540 committee reports, which provide figures showing the gap between legislation that has been passed, and legislation that has been enforced. China is among the many states that are struggling with enforcement.

3. How implementation could be improved

Poor capacity, competing priorities, and in some remaining cases, a lack of political will can help explain patchy implementation of 1540 in Asia and around the world. But it's important to acknowledge that even many technologically advanced states that have strong WMD controls sometimes struggle with implementation challenges. It isn't easy, especially where controlling dual-use items is concerned. More than anything else, this highlights the need for international cooperation, so that expertise can be shared. 1540 is the perfect of example of a collaborative exercise, in which countries and organisations can help each other address mutual vulnerabilities in the interests of the global public good.

A number of steps would help speed up implementation:

- First, more states could focus on identifying areas where they would benefit from international assistance, and submit specific requests to the 1540 Committee.
- Second, reporting needs to be seen as an ongoing process. The more information the 1540 committee has about steps that are being taken, and challenges that states face, the better it can perform its task.

- Third, states should be encouraged to invite in-country visits from the 1540 committee experts, who are willing to assist states in assessing their needs. Numerous countries in Europe and the Americas are making use of this opportunity, but as far as I'm aware, none in Asia have done so.
- Fourth, more states in Asia could engage in bilateral, subregional and regional information sharing, focusing on sharing experiences of lessons learned and effective practices. Some of this does happen (for example in the CSCAP and ARF context, and the Asian export controls seminars), but more is needed.
- Fifth, states need to develop ways to work with and inform industry and the public about 1540 obligations, WMD challenges, and steps they can take to help in 1540 implementation. The ASEAN Secretary General has been engaging in some of these activities – for example, highlighting 1540 at an ASEAN banking conference in KL last December. More of these types of initiatives are needed.

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