

## UNSCR 1540 Ten Years On: Challenges and Opportunities

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Panel One: 1540 Ten Years On: Broader Issues

‘UNSCR 1540: The State of Implementation’

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Good morning. My name is Yasemin Balci and I am a Senior Legal Officer at VERTIC. VERTIC is an independent, not-for-profit, non-governmental organisation that promotes the effective verification and implementation of international agreements. As part of our National Implementation Measures Programme, we provide legislative drafting advice to interested states for the implementation of the Biological Weapons Convention (BWC), Chemical Weapons Convention (CWC), certain instruments relating to nuclear security, and UN Security Council Resolution 1540 (Resolution 1540).

As part of this panel, I have been asked to speak firstly, about the state of implementation of the international obligations in Resolution 1540, and secondly, on the way my organisation, VERTIC, has contributed to this effort as a civil society actor. I will conclude with suggestions to improve the legislative implementation of the Resolution.

### *State of implementation*

Pursuant to Article 25 of the UN Charter, UN member states have agreed to accept and carry out the *decisions* of the Security Council. These decisions therefore constitute international obligations for UN member states. Resolution 1540 contains a number of such decisions. First, states are to *refrain* from providing any form of support to non-state actors that attempt to engage with nuclear, biological and chemical weapons. Secondly, states are to adopt and enforce laws *prohibiting* any non-state actor to manufacture, acquire, possess, develop, transport, transfer or use these weapons and their means of

delivery. Finally, states have to take and enforce measures to establish domestic controls to *prevent* the proliferation of these weapons and their means of delivery.

Another decision in Resolution 1540 is that none of the international obligations in the resolution shall be interpreted as to conflict with any of the international obligations in the BWC, CWC or Nuclear Non-Proliferation Treaty (NPT). This is important, because under Article 103 of the UN Charter, obligations under Resolution 1540 would prevail over obligations derived under any other international agreement such as the BWC, CWC and NPT in the event of a conflict. There is clearly much overlap between Resolution 1540 and these other international agreements, which may explain why states have taken measures to meet their obligations under these agreements, without paying close attention to the *specifics* of Resolution 1540. However, it is in the specific aspects where we find the added value of Resolution 1540. For example, the CWC does not explicitly require chemical security measures, but Resolution 1540 does. The CWC controls scheduled chemicals but not the related equipment and technology, while Resolution 1540 does. The tendency to see Resolution 1540 as overlapping with rather than complementary to the nuclear, chemical and biological weapons treaties would also explain why the UN Security Council asked the 1540 Committee in Resolution 1977 of 2011 “to address [...] *all aspects* of paragraphs 1, 2 and 3 of th[e] resolution, which encompasses (a) accountability, (b) physical protection, (c) border controls and law enforcement efforts and (d) national export and trans-shipment controls including controls on providing funds and services [...]”.

Following this resolution from 2011, the 1540 Committee reported with regard to the implementation of paragraph, or decision, number two that 140 states had adopted measures by 2011 to prohibit the proliferation of nuclear, chemical and biological weapons, compared to just 65 states in 2006.

With regard to the implementation of paragraph or decision number 3, namely the adoption of measures to establish domestic controls, the 1540 Committee noted “an increase in the number of states that have taken steps to develop and maintain appropriate and effective measures to account for, secure and physically protect materials related to nuclear, chemical and biological weapons”. Of the three categories of weapons, most measures have been taken for materials related to nuclear weapons and the least for materials related to biological weapons. Moreover, states have generally adopted more accounting measures compared with security and physical protection measures. With respect to border control, the Committee noted that “states

have increasingly adopted integrated border management policies”. As for transfer controls, it noted that “many states have taken considerable steps towards implementing licensing procedures for the export, transit, trans-shipment, re-export and import of materials related to nuclear, chemical and biological weapons, including the establishment of national licensing authorities and intragovernmental licence review processes.”

The overall assessment seems to be that states are increasingly abiding by their obligations under Resolution 1540, but that there is a need for closer attention to all aspects of these obligations. In its meeting for the 10<sup>th</sup> anniversary of the resolution, the Security Council therefore called “upon all states *to step up* their efforts to implement resolution 1540, focusing on areas where measures taken may be strengthened, with a view to achieving *full* implementation of the resolution by 2021.”

#### *VERTIC’s contribution as a civil society actor*

In Resolution 1977 of 2011, the Security Council encouraged the 1540 Committee, at its discretion, to draw also on relevant expertise of civil society and the private sector. For my organisation, this reflected practice, as we have been engaging with states since 2008 with regard to their legislative implementation of various CBRN instruments. For any interested state, we provide free legal advice on the drafting of national legislation that will meet the obligations in the BWC, CWC, certain instruments relating to nuclear security and Resolution 1540. We are able to give our legal advice for free because of the support of our funders, which includes the Foreign Office’s Strategic Programme Fund.

There are five components of our work. First, similar to Resolution 1540, we operate across a broader spectrum by covering all CBRN weapons and materials. We engage with states in awareness-raising workshops to better stakeholders’ understanding of the requirements of the Resolution as well as the CBRN treaties. For those states that are not party to particular treaties, we encourage them to join in order to support the global norms against these weapons. For example, we have recently worked on universalization with Angola, Nepal and Myanmar.

Secondly, we conduct legal analyses of a state’s legislation. Our legislation surveys gather all relevant pieces of legislation in order to assess to what extent a state’s legislation meets the requirements under the

CBRN treaties and Resolution 1540. States can read and consider our legislation surveys in addition to their 1540 matrices.

Thirdly, we provide legal advice on the drafting of national legislation. Our legislative drafting advice covers the adoption of correct definitions; comprehensive prohibitions; measures relating to jurisdiction and participation in offenses; international transfer controls; safety and security measures; and legislative enforcement. For example, we have recently worked with Colombia and Mongolia on their bills for the BWC and the biological weapons-related provisions of Resolution 1540, and with a Caucasus state on both their biological and chemical weapons-related legislation.

Fourthly, we have also worked with a number of states on their development of a National Action Plan for the implementation of Resolution 1540 as part of our collaboration with the Organization for Security and Co-operation in Europe (OSCE). By sharing the results of our legislation surveys, we highlight the legal gaps and/or qualitative issues within their laws, so that these states have a better understanding of their implementation needs. The Former Yugoslav Republic of Macedonia and Colombia, for example, mention us specifically as an assistance provider in their 1540 National Action Plans.

Finally, we have developed some tools to guide states through their implementation efforts. As one example, our ‘Legislative Guide to National Implementation of UN Security Council Resolution 1540’ is available on our website in all UN languages as well as Portuguese, and hard copies of the English version are distributed at this event. The Legislative Guide identifies and organizes in one document the model laws, implementation kits and handbooks that have already been developed by the IAEA, OPCW, VERTIC and other legislative assistance providers to assist states in implementing the international CBRN instruments.

#### *Improvements to implementation*

From a legislative point of view, to achieve the goal of full implementation by 2021, the focus should now be on the specifics of Resolution 1540 and the details in and the comprehensiveness of states’ legislation. Many states are aware of Resolution 1540 and its goals. However, they continue to face obstacles in implementing the Resolution due to a lack of resources and expertise or a lack of interministerial

cooperation. The Security Council therefore recognized during Resolution 1540's 10<sup>th</sup> anniversary meeting that these states *continue* to require assistance and that such assistance should be enhanced.

Enhanced assistance would require closer cooperation with the various assistance providers. For example, states should be able to discuss within one workshop the 1540 matrix with the 1540 Experts, other relevant documentation with international organisations such as the IAEA and the legislation surveys prepared by VERTIC. This would give states a clearer picture of their implementation needs as well as the availability of the assistance to meet them.

Finally, to overcome national implementation challenges, states should actively make use of the tools available to them. Handbooks, guides and references have been prepared by the 1540 Committee, international and regional organizations, individual states and non-governmental organisations which provide useful information. During workshops, these tools could be given a more detailed reading in order to take the discussions on the implementation of the Resolution to a more technical and concrete level.

Thank you for your attention.