



## **WORKSHOP REPORT: “Implementation of UNSC Resolution 1540 at the national level: promotion of best practices and policy and technical co-ordination and co-operation”<sup>1</sup>**

On 26 and 27 March 2009, the Netherlands Institute of International Relations (Clingendael) together with the Verification Research, Training and Information Centre (VERTIC) and the Netherlands Ministry of Foreign Affairs, hosted a conference on United Nations Security Council Resolution 1540 (UNSCR 1540). The topic was how best to implement the resolution at the national level through discussions of best practices and through policy and technical co-ordination and co-operation. After a word of welcome from Dr. Jaap de Zwaan, Director of Clingendael Institute, and the opening statement by Ambassador Rogelio Pfirter, Director of the Organization for the Prohibition of Chemical Weapons (OPCW), the keynote speech was delivered by Mr. Henk Cor van der Kwast, Head of Nuclear Affairs and Non-proliferation Division of the Netherlands Ministry of Foreign Affairs. A series of discussion sessions followed these remarks with experts from international and non-governmental organizations, State officials, and members of academia and civil society.

The core objectives of the conference were:

- To promote comprehensive national implementation of the Chemical Weapons Convention (CWC), Nuclear Non-proliferation Treaty (NPT) and Biological and Toxin Weapons Convention (BTWC) as an input to the effective implementation of UNSCR1540.
- To share experience and lessons learned in the areas covered by UNSCR 1540 and to discuss how to further facilitate the effective national implementation of the resolution, including increased policy and technical co-operation and co-ordination among the weapons treaty regimes.
- To build synergies among other relevant international partners from various fora (other intergovernmental organisations, government, civil society, industry) to improve UN Member States’ mechanisms to meet challenges of WMD proliferation and terrorism.
- To enhance co-operation among the 1540 Committee and the assistance providers and facilitators for the weapons treaty regimes regarding implementation of the resolution, given the interest in non-proliferation and counter-terrorism issues.

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<sup>1</sup> This summary has been prepared by Steven Westervelt, of the Clingendael Security & Conflict Programme, Netherlands Institute of International Relations ‘Clingendael’.



- To obtain lessons learned in identifying and implementing best practices for capacity building in order to prevent non-State actors from gaining access to weapons of mass destruction.
- To develop a network of experts engaged in the implementation of relevant WMD treaties and UNSCR 1540.

The following summary addresses the key points of the seminar with the objective of serving as a basis for continuing the efforts of the participants to fulfill the objectives above. The workshop took place under the Chatham House Rule, i.e., statements by participants could be discussed outside of the workshop without attribution.

## **Opening and keynote speeches**

### ***Opening Statement , Ambassador Rogelio Pfirter (Director General of the OPCW)***

Ambassador Rogelio Pfirter opened The Hague 1540 Conference with a word of welcome to all participants and an acknowledgement of the important role that they can play in promoting the implementation of non-proliferation instruments, particularly as regards the UN Security Council Resolution 1540 and the Chemical Weapons Convention (the Convention).

He stressed that the workshop provided a special opportunity to discuss how implementing the Convention advances the objectives of Resolution 1540, and how the OPCW can enhance the promotion of effective national standards and practices in the chemical domain. Ambassador Pfirter pointed to the fact that the proliferation of weapons of mass destruction represents a global threat, and that the Chemical Weapons Convention effectively addresses this threat in the chemical domain. Although the OPCW is not an anti-terrorism agency, he noted, it has an important contribution to make in this area given the comprehensive prohibition against chemical weapons that falls within its remit. He recalled that this was also highlighted in the decision adopted by the OPCW Executive Council in December 2001.

Director-General Pfirter noted that the OPCW had made important progress in implementing the Convention in its key areas of intervention, and in attracting a very broad membership of 186 States in only 12 years of operation. Particularly, he mentioned progress in the area of destruction of chemical weapons, with two possessor States having already completed destruction of their entire stockpiles and a total of 43% of the chemical warfare agents declared being eliminated to date. He further recalled the intense activity of the Organisation in the domain of non-proliferation, in the areas of both industry verification and domestic implementation of the Convention's provisions. Similarly, he recalled the OPCW's programmes aimed to promote international cooperation in the areas of peaceful chemistry and assistance and protection against attacks with chemical weapons.

At the same time, Director-General Pfirter also acknowledged a number of challenges that the OPCW is currently facing in the effort to ensure the full implementation of the Convention, including in the area of meeting the binding deadlines to complete destruction of all declared chemical warfare agents declared and of sustaining the effective operation of the Convention's non-proliferation regime.



Ambassador Pfirter stressed that States Parties have an obligation to ensure that prohibitions under the Convention are translated into domestic legislation that is applicable to any individual or entity operating under their jurisdiction or control. In this context, he further drew the audience's attention to the fact that obligations contained in the 1540 Resolution in the area of chemical weapons are entirely consistent with those of the Convention and that, as a consequence, full and effective domestic implementation of the Convention also enables States Parties to fulfil their obligations under resolution 1540. He recalled that the OPCW has acquired considerable experience and capacity in assisting Member States to fulfil their national implementation obligations. In this sense, the Organisation the OPCW contributes to advancing the objectives of Resolution 1540

Ambassador Pfirter closed his statement by mentioning that the workshop offered an important opportunity to initiate cooperation among partners from governments, international organisations, the 1540 Committee and relevant stakeholders from the private sector in supporting multilateral non-proliferation efforts.

***Keynote Speech, Mr. Henk Cor van der Kwast (Head, Nuclear Affairs and Non-proliferation Division, Netherlands Ministry of Foreign Affairs)***

The important and timely qualities of the conference were highlighted in the opening of the keynote speech. Mr. van der Kwast noted that, universally, lessons had been learned regarding proliferation, but that they have been diffuse. It was vital, therefore, that assistance providers seek pathways to coordination and communication. Furthermore, States themselves must do more in the implementation process as assistance-providers do not have unlimited resources to prod States towards full implementation. He added that, at the same time, requests for assistance are the responsibility of the States making them, and that it is not the operational method of the 1540 Committee to police the implementation process. States must be more pro-active to unlock the latent potential of the 1540 Committee and the broad spectrum of assistance- providing groups.

Nevertheless, the 1540 Committee should be strengthened. Mr. van der Kwast highlighted that there are too few experts, both within the Committee itself and independent experts. Also, coordination between the 1540 Committee and all other interested, assistance providers should be enhanced to keep the implementation process from becoming too nebulous. By forming synergies, the value added by cooperation could serve as a multiplier for international implementation efforts.

## **Sessions and Discussions**

***Session 1: Progress and Challenges in National Implementation of UNSCR 1540, Mrs. Angela Woodward, Chair (Executive Director, VERTIC)***

**Mr. Victor Slipchenko (Member, 1540 Committee)** stressed that full implementation of UNSCR 1540 generally requires a co-operative effort by States Parties and the 1540 Committee. Other interested parties should also be included in this effort, including academics, civil society, and non-governmental organizations (NGOs). He referenced the



2008 1540 Committee implementation report, 'Report of the Committee established pursuant to resolution 1540 (2004)', and pointed out three key points regarding the implementation process: that national reports are vitally important in helping the qualitative improvement of implementation, that capacity building must continue and states must do more towards that end, and that more time is required to build on the progress already made in implementation.<sup>2</sup>

Mr. Slipchenko discussed the elements of effective implementation. The first is improved reporting by States Parties and improved dialogue among all concerned groups. The second is to develop effective mechanisms for information sharing between the 1540 Committee, assistance providers and individual states. He called for facilitating better understandings of inter-agency dynamics. Third, better co-ordination of interested parties is necessary at the regional and sub-regional levels. In addition to organizing mutual efforts, this would also provide the forum for dialogue on lessons learned and best practices. Finally, tighter enforcement of legislation in states was called for to ensure that implementation continued past adoption of the required laws.

Mr. Slipchenko also highlighted the major challenges facing UNSCR 1540, despite tangible progress. The first was the perceived legitimacy deficit. Many states do not perceive resolution 1540 to be a legitimate legal tool. States have demonstrated a weariness against establishing legislation, as required by resolution 1540, that encroaches on their sovereignty. For example, states traditionally consider export controls to be within their ambit. However, the resolution mandates such legislation. Thus, efforts must be made to bridge the gaps between states' seeking to protect their sovereignty and the required provisions of the resolution.

The second was that whilst UNSCR 1540 has recorded some success in implementation, the tools for co-ordinated action are still lacking, which complicates efforts and makes it difficult for States to justify taking action. Related to this is the insufficient clarity in a number of key provisions of the Resolution and the consequent inability of States and other parties to act. Thus, low priority is accorded to the process of implementation. Ultimately, this hinders capacity to implement UNSCR 1540. Additionally, it was pointed out that a critical lack of experts exists to share knowledge and best practices. Therefore, capacity building will continue to suffer as long as this dearth exists. Finally, obstacles internal to the 1540 Committee were pointed out, notably the need to reach consensus before decisions are made, which often results in prolonged discussions that are not always the most effective use of time.

**Mr. Thomas Wuchte (United States UNSCR 1540 Co-ordinator)** highlighted that UNSCR 1540 is an opportunity and not a constraint on States. It has been helpful in establishing legislation in some countries. Also, though stemming from unintended consequences, UNSCR 1540 has become critically important as a recognized standard in raising non-proliferation effectiveness through capacity building. He observed that there is wide international agreement now on the intent of the Resolution; and added that joint regional efforts are good examples of how the international community is manifesting a positive

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<sup>2</sup> United Nations 1540 Committee, 'Report of the Committee established pursuant to resolution 1540 (2004), S/2008493 (8 July 2008)

approach towards UNSCR 1540. However, he stressed that the provisions of the Resolution must be turned into practical actions.

Mr. Wuchte pointed out that robust implementation of UNSCR 1540 should be a positive event, and that Resolution 1810 (2008) empowered the 1540 Committee to continue providing assistance. However, the limited number of experts has an impact on how much technical assistance can be provided to those requesting it as the Committee is currently organized. Mr. Wuchte explained that these limitations, coupled with the consensus requirement among 1540 Committee members may necessitate regional/intergovernmental organizations and NGOs playing an even more active role in the implementation process. This is not a constraint. It is a tangible example of how UNSCR 1540 provides opportunities for international cooperation in non-proliferation.

In general, it was pointed out that implementation is a long-term process. Mr. Wuchte described the Caribbean Community (CARICOM) efforts as an excellent example of facilitating implementation of UNSCR 1540. Some states have implemented non-proliferation legislation into anti-terrorism legislation, whilst others have made concerted efforts to identify insufficient non-proliferation legislation in their judicial systems. This example demonstrates that for the non-proliferation process to be most efficient in terms of time and money, organizations such as CARICOM who have adopted a regional approach will be important actors in the implementation process over the long-term.

Finally, Mr. Wuchte called for all States to continue to support posting their implementation matrices online. This was not designed to be a shaming mechanism, but to give a better picture of the status of international implementation of UNSCR 1540. He stated that not all of these matrices are available on the 1540 Committee's website. He was supportive of quick action of this situation because, as stated earlier, greater transparency overcomes perceived legitimacy concerns. By posting matrices on the website, there is more perceived transparency in the non-proliferation process, thus boosting its legitimacy.

**Discussion:** During the discussion participants asked how the 1540 Committee handles assistance requests without getting overburdened. It was acknowledged that this is a problem but that the Committee deals with the issue by trying to identify what implementation support the requesting States need. Mr. Slipchenko also highlighted the existence of an assistance template, which is filled out by the requesting State and distributed to the appropriate assistance-providers which are ready to co-operate in their areas of expertise.

### ***Session 2: Lessons from National Implementation of the CWC and the Article VII Action Plan, Dr. Peter van Ham, Chair (Clingendael Institute)***

**Ambassador Santiago Oñate (Legal Adviser, OPCW)** explained that Article VII requires certain provisions of the CWC to be translated into national law. He noted that an absence of a deadline for legislation to be in place after a State joins the CWC has led to its slow national implementation. He further explained that the OPCW's Technical Secretariat assists States to develop legislation in line with key provisions of the CWC, such as criminalization, controls on transfers, and a National Authority. He confirmed that this assistance is an ongoing process, even if it is a slow one.



After the First Review Conference, the OPCW decided that the level of CWC implementation was unsatisfactory. To overcome this, an Action Plan with specific goals and actions was adopted to accelerate implementation. Ambassador Oñate confirmed that there has been a tangible sense of movement and that UNSCR 1540 has had a positive influence on the way States approach national implementation..

Ambassador Oñate shared lessons arising from over 100 technical assistance visits, and underlying the importance of implementation as a political act as well as a technical and legal matter. He noted that foreign ministries often have a difficult task in convincing their governments to draft legislation to implement the CWC. He stressed that finding ‘issue champions’ in national legislatures could help build urgency for implementing the CWC. Issue champions are those individuals who are able to make political inroads towards implementation. Finding such effective individuals, it was claimed, could be done through awareness-raising workshops, including those with parliamentarians. An additional lesson was that a comprehensive approach to implementation proves to be quite effective, though it must always take into account the political context of the country receiving assistance as the legislative challenges are likely to vary. Ambassador Oñate concluded by noting that the implementation process is open-ended, and that once laws are established, capacity must be continually improved for the enforcement of the new laws.

**Dr. Ralf Trapp (Disarmament Consultant)** stressed that the biggest challenge with assistance is that States need to adopt a viable national strategy for implementation to ensure that the technical assistance they receive to support it will be effective and meaningful. Furthermore, assistance is only useful when the requesting State requests specific assistance, rather than a general request to the Technical Secretariat. That presupposes an internal assessment of the situation and needs of the requesting State. He stressed that when States have specific requests, this helps to push implementation ahead and ensures that they have ownership of the process. Funding and appropriate staffing can only do so much, but for implementation to be viable States must be willing and able to play a major role in the process. Enhancing State leadership on these issues, he argued, can be achieved through a national champion in the executive branch, who can keep the issue of implementation near the top of the political agenda.

Dr Trapp noted that, once the issue has been prioritized at the national level external actors (the OPCW or other States Parties) can develop viable assistance offers that address these real needs. Dr Trapp stressed that this is a challenge because States often request assistance without an understanding of what they really need, other than broad-based assistance. Assistance requests are the beginning of a dialogue, a prelude to implementation, to identify how a State will benefit from technical expertise and assistance. National leadership is needed to take command of the issue and to expedite the implementation process.

Dr Trapp pointed out that the forms of technical assistance with the most utility are tailored and sustainable. Such assistance generally includes several steps, including awareness-raising within the government, finding ways to get ‘issue champions’ to relate implementation to the national agenda and marshal resources, and hosting seminars and conducting technical assistance visits. All of this takes time. Dr Trapp added that in order for these efforts to remain sustainable, States must not be required to ‘over-report’, as this can lead to

implementation fatigue and sap political momentum. A common standard (agreed criteria) for reporting on all aspects of implementation was called for. Tailored and sustainable assistance will only arise as a result of strong co-ordination among all interested parties. It was pointed out that the 1540 Committee, the OPCW, and other interested groups are not in competition, but, rather, they are all working towards goals that are mutually reinforcing. Liaising, either informally or formally, would greatly augment implementation efforts by all parties, thus leading to tailored and sustainable assistance.

**Discussion:** During the roundtable discussion, participants raised the issue of incorporating implementation of the CWC and UNSCR 1540 into counterterrorism legislation. The response was that this may lead to unwieldy legislation, and that it would be difficult to identify issue champions. However, it was noted that in some States this may be a possibility. It was added that preparing implementation legislation with counter-terrorism elements depends on the local context.

Participants also discussed whether other non-proliferation processes could be tied to the implementation of UNSCR 1540. The response was that this would be ideal given that other instruments, such as the CWC, enjoy a high level of legitimacy. However, it was stressed that there is no silver bullet for implementation. Again, implementation across regimes, including UNSCR 1540, depends greatly on the circumstances of the requesting States.

### ***Session 3: Lessons from National Implementation of the NPT, Mrs. Angela Woodward, Chair (VERTIC)***

**Ambassador Sergey Batsanov (Director, Geneva Office, Pugwash)** pointed out that in the context of the NPT, there is little discussion of national implementation. He attributed this to the fact that there is no highly effective co-ordination mechanism between the NPT and the IAEA; the IAEA is not directly responsible for implementation of the NPT. The IAEA's implementation programme evolved over time and the OPCW and other bodies could take note of these. Above all, the manner in which the IAEA has broadly approached non-proliferation related issues is useful. Other bodies should seek to develop broad-based approaches to providing implementation support. Ambassador Batsanov suggested that the 1540 Committee should also consider wider issues than the ones in the provisions of the Resolution such as mechanisms for co-operation that are already in place, and then building on those. This obviates the need to establish new mechanisms and has the additional effect of bringing all assistance providers closer together. It was stressed that applying a new treaty to the non-proliferation situation is difficult, but that there is a basic architecture that can be utilized to provide added value for all actors.

Ideally, practical implementation should be facilitated by interaction among those assistance providers working in a country or region, to address the State's institutional and legislative deficits. Ambassador Batsanov provided as an example UNICRI and its involvement in projects aimed at helping regional bodies improve implementation in an effective and tailored way. The possibility of regional "expert centres" is something that should be explored. Centralized knowledge is shared through such centres, which can then work effectively in their regions. This is guided by their local knowledge and an understanding of the context of States in their implementation processes.

Finally, it was noted that identification of gaps in national legislative frameworks is a critical, early step towards effective implementation. It was argued that if implementation is weak within a country, it serves to weaken the entire process as a whole. Therefore, the shortcomings must be identified and dealt with. Again, the best means for doing so is through a strategic networking of assistance providers and the State agency with the strongest ability to lead the implementation effort.

**Ms. Lourdes Vez Carmona (Senior External Relations and Policy Officer, International Atomic Energy Agency)** described the strengths of the IAEA's comprehensive approach, including the level of detail in national legislation. She stressed that assistance providers should keep this in mind when helping States to draft implementation legislation. While there are different requirements for radiological and nuclear materials, the legislation governing enforcement of their safeguards shares common elements. These include the regulatory authority, licensing and inspections procedures, enforcement, and criminalization. She stated that assistance between requesting states and the IAEA should match; states must know what they require and the IAEA must provide the appropriate response. She stated that an effective means of ensuring this is the case is training local experts in the requesting states. They could then help identify the field of expertise needed by the IAEA. This would streamline the assistance process by cutting down time spent on identifying which specific challenges need to be met.

It was further stressed that the impact of UNSCR 1540 on the implementation of the NPT has been mixed. Some issues, such as legislative assistance, strengthening States' mechanisms for export controls, raising standards of physical protection, and upgrading border controls are already within the ambit of the NPT. This has led to redundant efforts. Strong coordination among non-proliferation organizations is necessary to ensure that efforts are mutually supporting and not working at cross purposes.

**Discussion:** A participant asked how the IAEA responds to assistance requests from the 1540 Committee and whether there exist other means of building co-operative frameworks. In response, it was stated that no requests have been sent to the IAEA from the 1540 Committee – although there were several in the process of being transmitted. Furthermore, the IAEA often receives vague requests from States (similar to those received by the 1540 Committee), which hinders co-operation among assistance providers and between providers and States. The bottom line, it was stressed, is that communication must be augmented and legislative assistance providers should remain constantly aware that there are others involved in the process who can advance mutual goals.

#### ***Session 4: Lessons from National Implementation of the BTWC, Mrs. Angela Woodward, Chair (VERTIC)***

**Mr. Richard Lennane (Head, BTWC Implementation Support Unit, UNODA)** described the common objectives of UNSCR 1540 and the BTWC. Both seek to strengthen national regimes proscribing and preventing biological agents from being used as terrorist tools, while encouraging the development of peaceful applications using biological agents.



The considerable challenges and lessons from efforts to implement the BTWC efforts were discussed. The first is the evolving biological weapon threat. As technology advances, it becomes easier to store, transport, and create destructive biological capabilities. Second, the universalization of the BTWC lags behind the NPT and CWC. There are serious disparities in implementation of the BTWC among States, and its implementation lags behind the CWC and NPT. Finally, provision of assistance is limited in the absence of an international organization. It was noted that there are simply not enough experts to assist the number of States that lack appropriate and effective legislation.

The BTWC therefore relies on a network model. At the center is the Implementation Support Unit (ISU) which liaises with a number of interested international and non-governmental organizations, industry, academia, other members of civic society and, of course, States. The lessons drawn from this model were the need for flexibility in implementation efforts, continued efforts in strengthening national legislation and in raising awareness of the BTWC and its implementation, and seizing opportunities for co-ordination, marshalling resources, and sharing information. It was concluded that using a network model among all assistance providers is a prudent approach. Implementation of non-proliferation provisions requires flexibility and innovation, something which can be enhanced through an informal network. It was stressed that, while co-ordination is important, an equally important factor is for agencies to be aware that other parties are working towards similar goals.

**Mr. Scott Spence (Senior Legal Officer, VERTIC)** provided important lessons from VERTIC's National Implementing Measure's Project (NIM). The Project consists of common and civil law legal experts who undertake comprehensive analyses of States' legislation for implementation of the BTWC. Based on this analytical work, VERTIC is able to provide direct legislative assistance to a requesting State at no cost. On-site support comes in the form of legislative drafting assistance and co-operation on preparing national implementation action plans. Mr. Spence underlined that VERTIC's assistance continues through approval and adoption of implementing legislation for the BTWC.

The Project's success, Mr. Spence said, provides a strong example of how non-governmental organizations can play a vibrant and, indeed, critical role in aiding the implementation process. However, it was made abundantly clear that more needs to be done to include these valuable actors. He said that international organizations do not always interact with NGOs as often as would be preferable. He added that this is not the result of any competition, but expressed concern that this does little to ensure that all interested parties are working towards mutual goals.

Finally, he pointed out that a short turnaround time for providing assistance is critical. This means minimizing the time from a State's request for assistance to providing it. He added that VERTIC is able to provide assistance within a short period from when the initial request is received. Mr. Spence added that turnaround time could be improved by all assistance providers if they shared information with each other and reached out to 'issue champions' in requesting States. It was suggested that this sort of comprehensive, broad-based approach could expedite the assistance process.

**Discussion:** A question was raised as to whether turnaround time could feasibly be improved. In response, it was suggested that large and complex co-ordination mechanisms were not



necessary and could actually slow turnaround time (institutional inertia). Government-industry co-operation and assistance provider communication could be done informally, ideally in conjunction with ‘issue champions’ in the requesting State. This would diminish the time spent identifying where the requesting State’s problem are. By marshalling expertise, response time could be further improved.

***Final Discussion and Policy Recommendations for Enhanced Policy and Technical Co-operation and Co-ordination for Implementation of UNSCR 1540, Mrs. Angela Woodward, Chair (VERTIC)***

The following conclusions arose from the final discussion on policy recommendations for enhanced policy and technical co-operation and co-ordination for implementation of UNSCR 1540:

- It would be highly desirable to maintain and enhance informal co-ordination among the weapons treaty regimes’ assistance providers and the 1540 Committee and its experts.
- It would be highly desirable to synchronize assistance efforts, to the extent possible, to ensure effective use of limited resources and to bolster States’ implementation efforts .
- It would be desirable to improve turnaround time for providing assistance so that States will have ownership of their implementation process; this will also affirm the legitimacy of UNSCR 1540 and its implementation and raise the profile of the Resolution.
- State plans for implementation should be shared with all interested parties, ideally on the 1540 Committee’s website. While it is important to share results, sharing future implementation goals and procedures will promote further discussion about best practices and assistance efforts.
- Solutions for implementation in requesting States must be tailored to their national circumstances. While communication and co-ordination are important, ultimately the political context of the State will determine the success of the implementation process. Issue champions should be sought and their willingness to work with implementation assistance providers should be exploited.

Generally, the participants agreed that the diversity of stakeholders in the non-proliferation process is positive. However, in order for these stakeholders to be complementary, they should bear in mind that there is an array of possible partners to ensure that outcomes are not only effective, but mutually beneficial.