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Implementing UN Security Council Resolution 1540:

A Division of Labor
Strategy

Monika Heupel

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Carnegie Endowment for International Peace
Publications Department
1779 Massachusetts Avenue, NW
Washington, DC 20036
Phone: 202-483-7600
Fax: 202-483-1840
www.CarnegieEndowment.org

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About the Author

Monika Heupel is a visiting scholar at the Stiftung Wissenschaft und Politik (German Institute for International and Security Affairs) in Berlin, Germany. She was a visiting scholar in the Carnegie Endowment's Nonproliferation Program from November 2006 to May 2007, assessing the United Nations Security Council's approach toward terrorism and WMD proliferation. She was previously a research associate at the University of Bremen, Germany, a research associate at the German Development Institute in Bonn, Germany, and a postdoctoral fellow at the United Nations University in Tokyo, Japan. She can be reached at monikaheupel@yahoo.com.

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Summary

Resolution 1540 (2004) is the most comprehensive response of the UN Security Council to the exposure of the transnational nuclear smuggling network set up by Pakistani scientist A. Q. Khan. The resolution is exceptional in that it compels every UN member state to criminalize the proliferation of weapons of mass destruction (WMD) to nonstate actors in its national legislation and establish effective domestic controls to prevent proliferation. If effectively implemented, Resolution 1540 would make a real difference. It would make proliferation more difficult and less attractive, facilitate the dismantlement of proliferation networks, and create momentum to strengthen other aspects of the nonproliferation regime.

Effective implementation of Resolution 1540 depends on the application of a division of labor strategy. Such a strategy would be based on different actors—the relevant Security Council Committee (the 1540 Committee), international organizations and regimes, individual states, and NGOs—bringing in their comparative advantages to address the various implementation challenges.

Presently, the contours of such a division of labor strategy are becoming apparent. Yet, the slow pace of implementation does not match the urgency with which the present proliferation risks ought to be addressed.

To assure that momentum for the necessarily lengthy implementation process is created and maintained, policy makers should consider the following recommendations: The Security Council should strengthen the structural foundation of the 1540 Committee. International organizations and regimes, individual states, and NGOs should make more assistance available, target a greater circle of key risk states, and cooperate more closely with the 1540 Committee. The nuclear weapons states should take steps to reduce the asymmetries of the nonproliferation regime. NGOs and regional organizations should put pressure on advanced states to treat implementation of Resolution 1540 as a priority.

Introduction

Uncovering the transnational nuclear smuggling network set up by Pakistani nuclear scientist Abdul Qadeer (A. Q.) Khan in late 2003 has revealed dramatically that the global nonproliferation regime must be updated to counter present proliferation risks. For two decades, the Khan network had been able to provide states like Iran, Libya, North Korea, and possibly others with gas centrifuges, centrifuge production competence, and nuclear weapons designs. It is also suspected to have offered such assistance to Al Qaeda and other terrorist groups. The network's cooperation with Libya illustrates its complex functioning and vast stretch: Middlemen and corporate vendors (mostly from Western Europe) exploited loopholes in export control systems in various countries—including export control systems in Western European countries and other Nuclear Suppliers Group (NSG) members—to procure centrifuge subcomponents and manufacturing equipment. The subcomponents and the equipment were sent to Malaysia, South Africa, and Turkey, where workshops had been set up to assemble centrifuge components. From there, most of the components were sent to Dubai under false end-user certificates, where they were repacked for their final transport to Libya.¹

Following the disclosure of the A. Q. Khan network and in the wake of 9/11, the United States and the United Kingdom turned to the United Nations and began to lobby for a Security Council resolution that would impose generic nonproliferation obligations on all UN member states.² After several months of negotiations, the Security Council eventually adopted Resolution 1540, which for the first time declared weapons of mass destruction (WMD) proliferation *per se* to be a threat to international peace and security, and established universal generic nonproliferation obligations. In view of its universal reach and mandatory character, Resolution 1540 conspicuously surpasses previous generic nonproliferation arrangements, which only apply to participating states and in many cases rely on nonbinding guidelines. Most importantly, Resolution 1540 defines that

... all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery, including by establishing appropriate controls over related materials.³

In addition, acknowledging that Al Qaeda and other terrorist groups have openly announced aspirations to acquire WMD capabilities, the resolution determines that

all States, in accordance with their national procedures, shall 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.⁴

Furthermore, Resolution 1540 established a Security Council Committee—the 1540 Committee—and summons all states to report to the Committee on the measures they take or intend to take to implement the resolution. In a follow-up resolution, the mandate of the Committee was expanded to promoting the implementation of Resolution 1540.⁵

If effectively implemented, Resolution 1540 would make a real difference. Effective domestic controls, at least in key states, would render proliferation of WMD, their means of delivery, and related material more difficult. Besides, higher risk of exposure and prosecution would make participation in and cooperation with proliferation networks less attractive. Moreover, national legislation that outlaws nonstate actors' involvement in WMD-related operations would facilitate dismantling proliferation networks. Finally, effectively implementing Resolution 1540 would create momentum that could be used to advance and strengthen other aspects of the global nonproliferation regime. Yet, the actual effect of Resolution 1540 depends on the “if effectively implemented” clause. In fact, implementing Resolution 1540 faces major challenges: Most states lack sufficient capacities and expertise to implement the resolution without external assistance. What is more, most states, even though they support the obligations devised in Resolution 1540 in principle, are unlikely to treat implementation as a priority.⁶ Consequently, if Resolution 1540 is to make a difference, the challenges to effective implementation need to be comprehensively addressed.

In light of the huge challenges to effectively implementing Resolution 1540, this paper recommends a division of labor strategy to manage the inevitably lengthy implementation process. Such an approach would be based on different actors bringing in their comparative advantages to address the various implementation challenges. The core competences of the 1540 Committee are to engage every UN member state in a confidence-building implementation dialogue and facilitate the provision of assistance to states in need of such assistance. However, being a tiny body and a Security Council Committee, the 1540 Committee is unable to address other fundamental implementation challenges. International organizations and regimes, individual states, and nongovernmental organizations (NGOs), by contrast, possess capacities and expertise to provide implementation assistance. Moreover, they have greater leeway to set priorities for such assistance, address the deeper legitimacy questions that undermine implementation, and pressure advanced states to treat implementation as a priority. Hence, a division of labor strategy would concentrate the various tools necessary to comprehensively manage the manifold implementation challenges.

Taking stock of the current approach to managing implementation of Resolution 1540, the contours of such a division of labor strategy become apparent. The 1540 Committee has embarked upon embedding every UN member state in a cooperative implementation dialogue and made efforts to facilitate

the provision of assistance. Various international organizations and regimes, individual states, and NGOs have started to address at least some of the challenges that the 1540 Committee cannot handle itself. Yet, the slow pace of implementation does not match the urgency with which the present proliferation risks ought to be addressed. Thus, to ensure that momentum for the necessarily lengthy implementation process is created and maintained, consider the following four recommendations:

1. The Security Council should strengthen the structural foundation of the 1540 Committee.
2. International organizations and regimes, individual states, and NGOs that possess the capacities and expertise to provide assistance to states in need should make more assistance available, target a greater circle of key risk states, and cooperate closer with the 1540 Committee.
3. The nuclear weapons states should take steps to reduce the asymmetries of the nonproliferation regime.
4. NGOs and regional organizations should pressure advanced states to make domestic implementation of Resolution 1540 a priority.

The Difference Resolution 1540 Would Make

Resolution 1540 establishes several far-reaching generic legislative and technical obligations. Because the resolution has been adopted under chapter VII of the UN charter, implementation is binding for every UN member state. Although similar nonproliferation resolutions have established binding obligations regarding concrete threats to peace and security—sanctions against Iraq, for example—Resolution 1540 is the first one to determine generic nonproliferation obligations. The resolution binds every state to develop and enforce effective domestic controls to prevent the proliferation of WMD, their means of delivery, as well as related materials, with domestic controls referring to physical protection measures in production, storage and use, as well as border, export, and transshipment controls.⁷ Furthermore, the resolution requires every state to criminalize various forms of nonstate actor involvement in WMD-related activities in its domestic legislation and, once in place, to enforce such legislation.⁸

By virtue of its universal scope and mandatory nature, Resolution 1540 marks a clear departure from previous nonproliferation arrangements and adds a novel layer to the nonproliferation regime. Before the resolution was adopted, the nonproliferation regime was based on many partly overlapping arrangements, none of which established universal mandatory obligations. On the one hand, there were conventions and treaties, which constituted mandatory obligations for their members. The Convention on the Physical Protection of Nuclear Materials (CPPNM), for instance, provides for specific domestic controls and criminalization of specific activities related to nuclear proliferation, but is only binding for its members. Likewise, the restrictions on trade in chemicals, which

are defined in the Chemical Weapons Conventions (CWC), are only incumbent on CWC members. On the other hand, the nonproliferation regime featured several informal consensus-based regimes that define guidelines for their participants. The NSG, the Zangger Committee, and the Australia Group have established guidelines for the export of nuclear, biological, and chemical items. Similarly, the Missile Technology Control Regime (MTCR) has established guidelines for the export of unmanned WMD delivery systems.

Resolution 1540 not only differs from previous nonproliferation arrangements on paper but can make a decisive difference in the real world. First, effective domestic controls at least in key risk states—states from which WMD, their means of delivery, and related materials are likely to be proliferated as well as states through which such items are likely to be transferred—would make proliferation more difficult.⁹ If at least key states had effective domestic controls in place, it would be more difficult both for states and nonstate actors to obtain WMD-related items, transit them through third countries, and deliver them to their final destination. In particular, criminalization of nonstate actor involvement in proliferation would provide some legal foundation for the U.S.-led Proliferation Security Initiative (PSI) and, therefore, strengthen efforts to interdict suspicious shipments in national and territorial waters.¹⁰ Clearly, had the key states used by the Khan network had effective domestic controls in place and had interdiction been more prevalent, the network would have faced greater challenges when cooperating with Iran, Libya, North Korea, and possibly other state and nonstate actors. For instance, had physical protection measures and export controls been more effective in countries like Germany and the Netherlands, it would have been more difficult for individuals to obtain and export centrifuge subcomponents and manufacturing equipment. Had controls been more effective in countries like Malaysia, South Africa, and Turkey, it would have been more difficult to set up workshops to assemble centrifuge components. Finally, had transshipment control in countries like the United Arab Emirates been more effective, it would have been more difficult to furnish the centrifuge components with false end-user certificates to cover up delivery to their final destinations.

Second, effective implementation of Resolution 1540 would make proliferation less attractive for figures like A. Q. Khan, as well as the corporate vendors and middlemen he cooperated with to provide WMD-related items. Detection would be more likely if at least key risk states established effective domestic controls. Proliferation activities would be more costly if key risk states had outlawed nonstate actor involvement in WMD-related operations in their national legislation. Furthermore, effective domestic controls in key states would also make it less attractive for states seeking WMD capabilities to cooperate with proliferation networks. Indeed, greater danger of exposure might deter states from procuring WMD, their means of delivery, or related material through proliferation networks.

Third, if at least key states adopted and enforced national legislation that criminalizes the involvement of nonstate actors in WMD proliferation, it would be easier to dismantle proliferation networks once their operations are unearthed. When Resolution 1540 was adopted in spring 2004, no state had such legislation in place. Accordingly, some individuals who proliferated dual-use items through the channels of the Khan network did not break any laws and therefore could not be indicted. When Resolution 1540 was adopted, most states lacked the necessary administrative preconditions to be able to enforce the nonproliferation-related legislation they already had in place. In particular, sharing information between different states and extraditing suspects did not work very well. Consequently, although several countries have initiated legal proceedings against individuals they suspected to have been involved in the Khan network, only some suspects have been convicted.¹¹

Last, the dynamics that would be initiated by implementing Resolution 1540 would advance other ideas on how to strengthen the nonproliferation regime, which have been brought up over the past years. For instance, committed implementation of Resolution 1540 could strengthen efforts to negotiate universal mandatory minimum standards for domestic controls.¹² Likewise, it could create momentum for the negotiation of a norm that would obligate states to report export and import of WMD-related material as well as means of delivery.¹³ Moreover, effective implementation would invigorate endeavors to make nuclear proliferation an international crime.¹⁴ Finally, if imposing generic binding obligations on all UN member states through the Security Council proves its value, this approach also could be applied to other nonproliferation-related endeavors. Indeed, the approach could be taken to make each of the aforementioned norms incumbent on all UN member states.

The Need for a Division of Labor Strategy to Achieve Implementation

The drawback of the ambitious nature of Resolution 1540 is that implementation is equally ambitious. Indeed, the far-reaching obligations laid down in the resolution demand a great deal from every single state. Therefore, if Resolution 1540 is to make the difference it has the potential to make, the challenges to effective implementation need to be consistently and coherently addressed.

To meet these ambitious obligations, every state requires certain capacities and expertise. Yet, when the resolution was adopted, most UN member states neither possessed adequate financial and human resources nor had sufficient legal and technical competences to implement such demanding obligations. Developing and transitioning countries especially lacked the necessary capacities and expertise to establish domestic controls and adopt and enforce appropriate legislation as required by Resolution 1540. In particular, Sub-Saharan African countries faced technical problems with compiling a report of their

intended steps to implement Resolution 1540. Furthermore, some states encountered difficulty in understanding what the resolution precisely required them to do.¹⁵ Some states, like Yemen for example, were under the misconception that because they did not possess nuclear, biological, or chemical weapons, the obligations in Resolution 1540 did not apply to them.¹⁶

Even though almost all states support the obligations defined in Resolution 1540 in principle, implementing the resolution has rarely been a priority. Various considerations have accounted for this: Developing and transitioning states face more immediate problems, such as poverty and disease, and therefore were little inclined to divert scarce resources for implementing nonproliferation obligations. Advanced Organisation for Economic Co-operation and Development (OECD) states were confronted with the dilemma that some requirements established in Resolution 1540 conflicted with the interests of their export industries and intelligence agencies. Some states, for example India, New Zealand, and Pakistan, opposed the way in which the obligations originated and argued that the Security Council overstepped its authority when it imposed generic mandatory obligations. Such obligations, they suggested, should instead be agreed upon in a convention or a treaty. Also, Iran and other states criticized that Resolution 1540 did not provide for concrete disarmament obligations for the nuclear weapons states but rather constituted another instrument to impose restrictions on nonnuclear weapons states. Finally, some states, such as Cuba, were concerned that the United States could use the resolution as a tool to selectively punish “bad actors.”¹⁷

In view of its demanding obligations, it is unrealistic to expect Resolution 1540 to be effectively implemented without making ample assistance available and improving states’ commitment for implementation.¹⁸ The 1540 Committee obviously does not have the ability to manage implementation on its own. By virtue of its mandate and its authority as a subsidiary body of the Security Council, the 1540 Committee is in a position to play a unique and indispensable role in the implementation process. Yet, due to its light structural foundation and the political constraints it faces, its latitude is limited. Other relevant actors—international organizations and regimes, more representative UN bodies, individual states, NGOs—do not necessarily encounter the same structural and political constraints and therefore have the ability to address implementation challenges that the 1540 Committee cannot address. Thus what is needed is a division of labor strategy in the context of which the 1540 Committee and other relevant actors bring to bear their comparative advantages to further the effective implementation of Resolution 1540.

The 1540 Committee has been mandated to examine the national implementation reports and promote implementation. More precisely, the Committee is to pursue the “ongoing dialogue ... [with] States on the full implementation of Resolution 1540”; furthermore, the Committee is invited to “explore with States and international, regional and subregional organizations experience-

sharing and lessons learned... and the availability of programmes which might facilitate the implementation of Resolution 1540.”¹⁹ Based on its mandate and within its structural and political limits, the 1540 Committee is therefore suitable to provide two specific contributions to effectively implementing Resolution 1540. First, the Committee is in a unique position to build confidence and engage every UN member state in a cooperative implementation dialogue. In the framework of such a dialogue, the Committee can help states understand what the resolution requires them to do and what their capacity gaps are. It can raise awareness among all states of the value of Resolution 1540 and in doing so foster long-term commitment for implementation. Second, the 1540 Committee has the ability to facilitate the provision of assistance. Subject to states submitting meaningful implementation reports, the Committee can assess states’ assistance needs. It can encourage international organizations and regimes, individual states, and NGOs to make assistance available. Finally, provided that actors that offer assistance are willing to cooperate closely with the 1540 Committee, it can act as a clearinghouse and forge contact between states that want for specific assistance and actors that have the ability to offer such assistance.

Although the 1540 Committee’s strength is its potential to engage all UN member states in a sustained confidence-building implementation dialogue and facilitate the provision of assistance, there are several areas in which the Committee depends on the contribution of other relevant actors. The 1540 Committee itself cannot address four principal challenges: First, because it is merely composed of representatives of the fifteen Security Council members and a handful of additional experts, the Committee obviously does not have the necessary capacities and expertise to provide legislative, technical, and financial assistance to states. International organizations and regimes, individual states, and NGOs, in contrast, do possess capacities and expertise to make assistance available. Indeed, international organizations and regimes as well as individual states have already assisted states in establishing domestic controls and enacting nonproliferation-related legislation long before Resolution 1540 was adopted.

Second, as a subsidiary body of the Security Council, the 1540 Committee cannot prioritize in which states to concentrate implementation because this would presuppose consensus among the Security Council veto powers on what states would be key risk states.²⁰ In the long run, universally implementing Resolution 1540 is certainly desirable. Given the vast demand for implementation assistance, however, it makes sense for the short term to concentrate assistance on those states where implementing Resolution 1540 would make the greatest difference.²¹ For the short term, it is therefore particularly important that states that possess strong nuclear, biological, or chemical export industries, like Germany, for example, establish effective physical protection measures and export controls. Likewise, it is also particularly important that states with intense port traffic, like the United Arab Emirates for example,

enact and enforce effective transshipment controls. Compared with the 1540 Committee, international organizations and regimes, individual states, and NGOs have far greater leeway in prioritizing assistance to states they consider key risk states. In fact, the focus of many of the existing assistance programs on Russia and other successor states of the former Soviet Union demonstrates that setting priorities on key risk states already is an integral part of many assistance programs.

Third, the 1540 Committee cannot address deeper legitimacy problems of Resolution 1540, in particular, and the nonproliferation regime, in general, which weaken many states' readiness to treat implementation as a priority. On the one hand, the Committee cannot respond to the criticism that the obligations established in Resolution 1540 should not have been imposed by the Security Council but rather arranged in a convention or a treaty. However, to create a greater sense of ownership for Resolution 1540, plenary bodies of international organizations and regimes could adopt declarations in support of the resolution. Also, the UN General Assembly and the UN Conference on Disarmament could serve as fora for the negotiation of conventions and treaties, which cover some of the obligations determined in Resolution 1540. On the other hand, the 1540 Committee is no appropriate body to make the nuclear weapons states act upon their disarmament commitments as per Article VI of the Non-Proliferation Treaty (NPT) or prevent the United States and the other nuclear weapons states from applying double standards in dealing with nonnuclear weapons states or states outside the NPT. Yet, the nuclear weapons states can obviously decide on their own to take credible steps toward disarmament and apply the same standards to their allies and to "bad actors."

Finally, the 1540 Committee is restrained in terms of pressuring states to fully commit to implementing Resolution 1540. Pressuring states that lack the capacities and expertise to implement the resolution is certainly of limited value and might even be counterproductive. However, pressuring advanced OECD countries that possess sufficient capacities and expertise but do not make implementation a priority can achieve desired results, particularly if one considers that OECD countries are the principal exporters of WMD-related items. Due to the composition of the Security Council and the 1540 Committee, it would be unnatural for the Committee to pressure states such as the United Kingdom, which has been remarkably slow in taking the necessary steps for implementing Resolution 1540. Unlike the 1540 Committee, other relevant actors do possess the leverage to put pressure on advanced states. NGOs can target states' concern for their reputation by exposing which advanced states underachieve with respect to implementing Resolution 1540. Also, strong regional organizations, particularly the European Union (EU), have instruments at their disposal to pressure their member states.

The Emerging Division of Labor Strategy

Nearly three years after Resolution 1540 was adopted, a division of labor strategy is emerging. The 1540 Committee has embarked on a mission to engage every state in a bilateral dialogue and is making efforts to facilitate the provision of assistance to states that need it. International organizations and regimes, individual states, and NGOs have begun to address some of the challenges to effective implementation. Yet, despite these efforts and the progress made, many challenges have not been comprehensively addressed and the pace of implementation has been slow. There is still a mismatch between the magnitude of challenges and the efforts made to address them.

The 1540 Committee

Since its inception in late 2004, the 1540 Committee has taken steps to reach out to all states with confidence-building measures and facilitate capacity-building. One focus of the Committee and its experts has been to communicate why it was important that every state implement Resolution 1540 and what precisely the resolution required every state to do. The Committee liaised with member states' missions in New York and contact points in the capitals to foster commitment for implementation and to clarify ambiguities.²² The Committee addressed individual letters to every UN member state in which it outlined why universal implementation was fundamental and in the interest of every state.²³ The Committee posted guidelines on its website to help states understand how to cooperate best with the Committee's staff and experts.²⁴ In addition, the Committee organized and attended conferences and workshops to raise awareness of the difference Resolution 1540 would make if effectively implemented, to help states comprehend what the resolution precisely required them to do, and to convince states to reach out for implementation assistance if needed.²⁵

Although the 1540 Committee's efforts to raise awareness for the value of Resolution 1540 and clarify ambiguities have had noticeable effects, the weak structural foundation of the Committee has proven to be an obstacle. The limited personnel and the small number of affiliated experts have clearly constrained the Committee's capacity. The Committee's short lifespan—the Committee had initially been set up for two years; in 2006, its mandate had been renewed for another two years—has weakened its credibility when promoting long-term commitment on the part of the UN member states for ultimately universal implementation.

The other focus of the 1540 Committee has been to facilitate the provision of legislative, technical, and financial assistance to states that lack sufficient capacities and expertise to implement Resolution 1540 independently. The Committee's experts analyzed the implementation reports all states were requested to submit to assess the specific capacity needs of individual states. It has established a database on its website, which grants every state access to relevant

legislative documents made available by other states.²⁶ It has called upon international organizations, regimes, and individual states to make assistance available to states that wanted assistance. It has posted a directory on its website that gives an overview of what international organizations, regimes, and states offer or have already provided what forms of assistance.²⁷ Finally, the Committee made efforts to act as a clearinghouse and allocate states that needed specific assistance with actors that offered such assistance.

The 1540 Committee's capacity-building efforts have had noticeable results but several obstacles have prevented the Committee from being more effective. Again, its light structural foundation has barred the Committee from taking a more proactive approach. In addition, the Committee had difficulty in assessing states' assistance needs because it had to rely predominantly on the reports all states were called upon to submit to learn about the progress of implementation. By December 2006, fifty-eight states had yet to submit their first report. Moreover, many of the reports that have been submitted lacked substantive information.²⁸ Some countries in Sub-Saharan Africa, for instance, merely noted the report that South Africa had submitted would apply to them as well. On top of that, it has proven extremely difficult for the 1540 Committee to act as a clearinghouse and assign states in need of assistance to actors that can provide such assistance. Beside the dearth of meaningful reporting, many states' preference to decide themselves, and in some cases even keep to themselves, to whom they provided assistance undermined the Committee's efforts to act as an assistance broker.²⁹

Other Relevant Actors

International organizations and regimes, individual states, and NGOs have made efforts to address some of the implementation challenges the 1540 Committee cannot address itself. Their main focus has been on making legislative, technical, and financial assistance available to states that lack the necessary capacities and expertise to implement Resolution 1540. Several international organizations including the International Atomic Energy Agency (IAEA) and the Organization for the Prohibition of Chemical Weapons (OPCW) have provided assistance in the framework of capacity-building programs they already had in place before Resolution 1540 was adopted. Regional organizations such as the European Union and the Organization for Security and Cooperation in Europe (OSCE) have made use of existing programs to provide legislative and technical assistance relevant to implementing Resolution 1540. Individual states—in particular the United States and other OECD states—have offered bilateral assistance, much of it in the framework of informal multilateral arrangements such as the G8-led Global Partnership against the Spread of Weapons and Materials of Mass Destruction.³⁰

When making assistance available, international organizations, individual states, and NGOs have set priorities and frequently concentrated their assistance

on states whose implementation efforts they deemed most urgent. The EU's Tacis Nuclear Safety Programme, for instance, has been specifically directed to the states of the former Soviet Union in Eastern Europe and Central Asia.³¹ Likewise, the OSCE has launched a program to provide legislative and technical assistance with respect to border control–related issues to Southeastern European states.³² The Global Partnership, through which much of the bilateral state-state assistance has been channeled, focuses on the destruction, disposition, and protection of WMD and related material in Russia.³³ Furthermore, NGOs have started to develop capacity-building programs that concentrate on key states. With support from the Nuclear Threat Initiative, the Center for Strategic and International Studies (CSIS)-led Strengthening the Global Partnership Project is targeted at building support for projects in the former Soviet Union in the framework of the G8-led Global Partnership.³⁴ The Center for Nonproliferation Studies (CNS) is facilitating capacity-building related to implementing Resolution 1540 in Central Asia and the Caucasus.³⁵ The Stimson Center has launched a project that explores the expansion of the Cooperative Threat Reduction Program from the successor states of the Soviet Union to the “Next One Hundred” relevant states.³⁶

The capabilities of international organizations, regimes, individual states, and NGOs to furnish legislative, technical, and financial assistance certainly have not been exhausted. Most offers and requests have been rather generic so that the actual pairing of offers and requests has proven difficult. There has been a mismatch between the type of offers and requests, with requests focusing on training, resources, and financing and offers focusing on the provision of expertise.³⁷ Furthermore, while prioritizing implementation assistance to the states of the former Soviet Union, Russia in particular, makes perfect sense given the legacies of the Soviet Union WMD program, other key risks have not received the attention they should have received.

Some effort has been made to address some of the deeper legitimacy questions raised in conjunction with the resolution. During the negotiations on the draft of the resolution, the United States as the main sponsor took unusual measures to involve non-Security Council members in the negotiation process. Nevertheless, many states complained that extensive generic obligations like those defined in Resolution 1540 should have been agreed upon in a convention or a treaty, which would have left it to every state to resolve whether it wants to be bound by the obligations or not.³⁸ In the wake of the adoption of Resolution 1540, several plenary bodies of international organizations and regimes have therefore adopted declarations in support of the resolution to create a greater sense of ownership for the resolution among their members. The OSCE member states, for instance, have adopted a decision in which they declare their support for effective national implementation of Resolution 1540.³⁹ Similarly, the Nuclear Suppliers Group's Plenary Meeting has issued a statement in which it approved the eminent function of

Resolution 1540.⁴⁰ Furthermore, the UN General Assembly has adopted and opened for signature the International Convention for the Suppression of Acts of Nuclear Terrorism, which covers some of the requirements laid down in Resolution 1540.⁴¹

Although efforts have been made to respond to the critique that the Security Council overstepped its authority when adopting Resolution 1540, there have been no similar efforts to respond to the critique that the resolution does not obligate the nuclear weapons states to seriously act upon their disarmament commitments. Since the adoption of Resolution 1540, none of the nuclear weapons states has taken further steps toward disarmament. None of the nuclear weapons states, except for the United Kingdom, has even begun to explore what steps would be required to achieve complete disarmament.⁴² Moreover, plans by the U.S., British, Chinese, and Russian governments to modernize their nuclear weapons capabilities not only conflict with the disarmament clause of the NPT but also run counter to Resolution 1540, which at least encourages the nuclear weapons states to fulfill the arms control and disarmament agreements they are party to. Finally, nuclear rhetoric—like French President Chirac’s threat to consider a nuclear response to a terror attack on French soil—runs counter to the norm of reducing the role of nuclear weapons in national policies.

Equally, since Resolution 1540 was adopted, no substantive steps have been taken to allay concerns that the resolution might be used in particular by the United States as a tool to take action against some selected states. As yet, the resolution has not been used to single out and corner selected states. In the absence of standards according to which intentional noncompliance could be assessed and of effective monitoring mechanisms to expose noncompliance, punishing any state for noncompliance is difficult. However, the discriminatory proceeding of the United States with respect to other nonproliferation-related issues since the adoption of Resolution 1540 has highlighted once more that the United States applies double standards when dealing with different states. The U.S.-India deal, which provided for nuclear cooperation between the two countries despite the fact that India did not agree to international safeguards for all its nuclear facilities, has made it especially clear that the United States proceeds differently against different states.⁴³

Finally, advanced states that have been remarkably slow to implement Resolution 1540 have so far not been confronted with substantive pressure to treat implementation with the necessary urgency. NGOs have up to now not turned toward pressuring advanced states that exhibit a disappointing domestic implementation record. Rather, they have focused on convincing advanced states to provide more assistance to states that want for sufficient capacities and expertise to implement Resolution 1540. Equally, the European Union, which has the prerogative to effect its member states’ domestic politics than any other international organization, has not yet pressured its member states.

The Way Ahead

Given the slow pace of implementation, efforts to facilitate implementing Resolution 1540—both on the part of the 1540 Committee and on the part of the various other relevant actors involved—obviously need to be stepped up: The provision of assistance to key risk states but also to other states that require implementation assistance needs to be enhanced and refined. The widespread reluctance on the part of the UN member states to commit to implementation fully needs to be addressed more comprehensively.

The structural foundation of the 1540 Committee should be strengthened. A more potent 1540 Committee would be better prepared to engage every UN member state in a long-term confidence-building implementation dialogue and motivate and facilitate contributions by other relevant actors to address the various implementation challenges. Efforts to strengthen the 1540 Committee should focus on the following recommendations:

- **The Security Council should increase the personnel of the 1540 Committee.** Additional personnel and experts would help the 1540 Committee work more closely with states in terms of assessing their capacity needs, facilitating the provision of assistance, clarifying ambiguities, and promoting the usefulness of Resolution 1540. Stronger human resources would buttress the Committee's ability to motivate international organizations, regimes, individual states, and NGOs to make assistance available and act as a clearinghouse for assistance. The Counter-Terrorism Committee (CTC) and its Executive Directorate (CTED), which had been established to oversee and promote implementation of the Security Council's generic counter-terrorism resolution superscript could serve as a model for an invigorated 1540 Committee.
- **The Security Council should establish the 1540 Committee as a permanent body.** An open-ended or at least explicitly lengthened mandate would help the 1540 Committee devise a long-term strategy to guide its short-term action. It would send out a credible message that the Committee views implementing Resolution 1540 as a long-term undertaking and is durably committed to facilitate implementation. Again, the CTC and the CTED could serve as a model.

Other relevant actors should better exploit their capacities and competences to address the implementation challenges that the 1540 Committee cannot address:

- **International organizations, regimes, individual states, and NGOs should improve the provision of implementation assistance.** Other relevant actors should exhaust their capacities and expertise and make more

legislative, technical, and financial assistance available. Providing sustained assistance is necessary to ensure that momentum for universally implementing Resolution 1540 can be created and maintained. Assisting high-risk states should continue to be a priority. Yet, such prioritized assistance should be extended beyond Russia and former Soviet Union successor states. Finally, actors that make various forms of assistance available should coordinate their actions more closely with the 1540 Committee. The Committee and its experts should be informed of all assistance provided. Moreover, once its structural foundation is strengthened, the Committee should assume the role of a clearinghouse and connect states in need of assistance with actors that offer such assistance. Again, the CTC and the CTED, which serve to a greater extent as assistance brokers, could be a model.

- **The nuclear weapons states should reduce the asymmetries of the non-proliferation regime.** The perception of the nonproliferation regime as asymmetrical is one factor that undermines many states' commitment to seriously engage in implementing Resolution 1540. The nuclear weapons states should therefore take more credible steps toward disarmament and refrain from modernizing their nuclear weapons arsenals. All nuclear weapons states should follow the example of the United Kingdom and explore what concrete steps would be necessary to achieve full disarmament. All nuclear weapons states should sign the Comprehensive Test Ban Treaty and devalue the use of nuclear weapons in their rhetoric. Finally, rules should be equally enforced against all states irrespective of their relation to Security Council veto powers.
- **NGOs and regional organizations should put pressure on advanced states.** Pressure should be put on states that possess sufficient capacities and expertise to implement 1540 but on account of conflicting interests have as yet been slow implementers. NGOs should make use of their room for maneuver and their specific channels of influence and put pressure on advanced states by targeting their concern for their reputations. Regional organizations that have relevant instruments at their disposal should use them to pressure their member states. In particular, the European Union, with its extensive rights to intervene in the domestic politics of its member states, should explore ways to increase the performance of its advanced member states with respect to implementing Resolution 1540.

Conclusion

Failure to boost existing efforts to address the various challenges constraining effective implementation of Resolution 1540 would miss an opportunity to strengthen the nonproliferation regime. We would be left with a regime that has proven to be blatantly inadequate to counter present proliferation threats.

Considering the continued threat posed by the remnants of the A. Q. Khan network and other proliferators, a gap-ridden and overburdened nonproliferation regime is clearly nothing the world can afford. A laissez-faire approach toward implementing Resolution 1540 would send a dangerous message. To states needing assistance, it would send the message that actors who are able to provide assistance do not consider their implementation efforts to be particularly important. To states that possess sufficient capacities and expertise to implement Resolution 1540 but nevertheless fail to coherently act upon their obligations, it would send the message that there are few negative consequences to deliberate noncompliance with nonproliferation obligations. Lastly, ignoring the slow pace of implementation not only would make it much harder for the Security Council to impose binding generic obligations on all UN member states in other issue areas, but also would also damage its overall authority.

Resolution 1540 is no magic bullet, even if effectively implemented. Yet, it would make proliferation more difficult and less attractive, and would help dismantle proliferation networks. The dynamics that sustained implementation of the resolution could be used to advance other steps to strengthen the nonproliferation regime. The United States is among the countries that would profit most from effective implementation of Resolution 1540 and a strengthened nonproliferation regime. At the same time, the United States is the country best qualified to address many of the challenges undermining effective implementation of Resolution 1540. Not only is the United States already the greatest assistance provider, but it also could do the most to address the deeper legitimacy issues undermining the resolution's implementation. It is therefore not only in the United States's own interest but also its special responsibility to put the same effort it has put into lobbying for the adoption of Resolution 1540 into comprehensively addressing the various challenges that have as yet thwarted the resolution's effective implementation.

Notes

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