

## **IAEA International Conference on Nuclear Security**

Statement by  
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Resolution 1540 (2004): A comprehensive approach to preventing non-State actors from using weapons of mass destruction

The United Nations Security Council adopted unanimously resolution 1540 in 2004 at a time of concern about the threats of proliferation of weapons of mass destruction (nuclear, chemical and biological weapons) and their means of delivery. The UNSC expressed grave concern about the threat of terrorism, and the risk that non-State actors may acquire, develop, traffic in or use weapons of mass destruction.

In this light, the Security Council used its authority under Chapter VII of the Charter of the United Nations to obligate Member States to take steps intended to prevent these threats from being realized. Resolution 1540 (2004) is comprehensive. It addresses nuclear, chemical and biological weapons and their means of delivery as well as specified materials, equipment, and technology that could be used for their design, development, production, or use (called “related materials” in the resolution).

Key features of the resolution are the obligations on Member States to:

- Adopt and enforce effective laws that prohibit non-State actors from engaging in specified actions, in particular for terrorist purposes, with respect to weapons of mass destruction, for example, their development, possession, manufacture or use.
- Adopt laws that prohibit attempts by non-State actors to engage in these acts, be an accomplice in them, or assist or finance them.
- Establish a wide range of appropriate and effective domestic measures with respect to materials related to weapons of mass destruction, including measures that account for, protect and secure such materials; prevent their illicit trafficking; and control their export, transit, trans-shipment and re-export.

It is easy to see that Resolution 1540 has direct relevance to nuclear security. Of particular salience, for example, are the requirements to secure and protect nuclear material; prevent its illicit trafficking; and control the export of nuclear material and related materials.

In regard to export controls, to make them work, the Resolution calls on Member States to adopt effective national export control lists. In the nuclear area, the definition of related materials is rich enough to include all of the items on both Part 1 of the Guidelines of the Nuclear Suppliers Group for the export of nuclear material, equipment and technology as well the items on Part 2, dual-use transfers.

Since this session is on international legal instruments, I would like to make some observations about the relationship between resolution 1540 and other international legal instruments directly relevant to nuclear security, the Nuclear Non-Proliferation Treaty (the NPT), the Convention on the Physical Protection of Nuclear Material and Facilities (the Physical Protection Convention), and the International Convention on the Suppression of Acts of Nuclear Terrorism (the Nuclear Terrorism Convention).

To begin, let me observe that elements of resolution 1540 are unique, including:

- Focus on non-State actors both to prevent proliferation and to prevent terrorists' use of WMD;
- Requirement to implement effective measures to account for, secure, and protect "related materials" and to control their export; and
- The Security Council's use of its authority under Chapter 7 of the UN Charter to make the obligatory measures in the resolution binding on all Member States.

Let's look at the first, the focus on non-State actors. Resolution 1540 obligates States to prohibit non-State actors to manufacture, acquire, possess, develop, transport, transfer or use nuclear weapons. How does the coverage correlate with the NPT and the Physical Protection and the Nuclear Terrorism Conventions?

For one, with respect to non-State actors, the NPT makes no explicit reference to them. And where the prohibitions required for non-State actors are included in the two other instruments, they are contingent. The Physical Protection Convention addresses the manufacture, acquisition, possession and transfer of nuclear weapons but only if the action "causes or is likely to cause death or serious injury to any person or substantial damage to property or to

Before I turn to the implementation of resolution 1540, I hasten say that despite their specific scopes the international instruments I referred to earlier complement each other in reaching the common goal of ensuring effective nuclear security.

Let me turn now to the implementation of resolution 1540, which established the 1540 Committee to monitor its implementation. The Committee [has just completed][is completing] a Comprehensive Review of its implementation over the past five years, and I would like to share with you some of the main themes that have emerged.

The context of the review is important to keep in mind. Unfortunately, we have seen a relentless increase in acts being perpetrated by terrorists with the use of WMD, a matter of grave concern. The alarming use of chemical weapons by terrorists in Syria also makes real a more troubling threat. If terrorists had the opportunity and capability, they would not shirk from using a weapon of mass destruction.

Resolution 1540 is designed to prevent such an outcome, which, under these unfortunate circumstances makes it more important than ever to see a world in which it is implemented effectively by all Member States.

Let me first describe where we are.

A significant point is that resolution 1540 (2004) is recognized today as an important element of the international non-proliferation regime. Support for its implementation is world-wide. At the open consultations held by the 1540 Committee in June 2016, almost sixty Member States made statements supporting implementation of the resolution. In addition, the African Union; the Commonwealth of Independent States; the Organization of American States; and the Organisation for Security and Cooperation in Europe made statements supporting implementation of the resolution at these consultations. The League of Arab States and the ASEAN Regional Forum have also issued statements supporting implementation of resolution 1540 (2004).

With respect to implementation we could state that the status of implementation is improving. More improvement is needed, but I expect to see it continue at a steady pace. One reason for my confidence is that global participation has increased. The number of non-reporting States has been reduced to 17 from 25 in the last 5 years. The trends in recorded measures of

implementation are positive, and the development and adoption of resolution 1540 voluntary National Implementation Action Plans is on the increase.

Support at the regional level, particularly through cooperation with regional and sub-regional organisations, has proven to be a useful way to improve assistance for the implementation of resolution 1540. Examples are in Africa and among OSCE Participating States. The African Union decided in 2013 to request the Commission of the African Union “to further promote and enhance the implementation of resolution 1540 (2004) in Africa.” This was quickly followed by a significant increase in implementation.

The efforts of the Organization for Security and Cooperation in Europe have led to a high level of measures recorded by OSCE Participating States on the implementation of resolution 1540 (2004).

Of importance is that Member States benefit from these efforts by the support available from a wide array of assistance programmes being conducted by Member States and international, and regional organizations. In the nuclear area IAEA is the pre-eminent organization, and its co-operation with the Committee has been excellent.

While I recognize the progress that has been made, let me not be seen to be looking through rose-coloured glasses. The rate of progress confirms that accomplishing the objective of full implementation of the resolution is a long-term task. It will require continuous efforts at national, regional and international levels, and continuing support will also be required from other components of the United Nations and relevant international, regional and sub-regional organisations and other arrangements.

We must keep in mind that the specifics of States influence implementation. There is a variation in economic and industrial capacities. In the nuclear area, some specifics are quite pronounced and easy to measure. Does a State have a comprehensive safeguards agreement or a small quantities protocol in force? Does it have a nuclear power program or not? It should be no surprise that these specifics affect rates of implementation.

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Let me turn to the way forward, focusing on the nuclear area. What is to be done?

1. The proliferation of weapons of mass destruction and their means of delivery continues to constitute a threat to international peace and security, and the Committee should enhance its efforts to promote the full implementation of resolution 1540 (2004) by all States;
2. The resolution notes that some States may require assistance and States in a position to do so could be encouraged to offer assistance where appropriate. It would be valuable if States with the capacity to do so could once again be encouraged to contribute to the UN Trust Fund for Global and Regional Disarmament Activities for support of resolution 1540 on a voluntary basis;
3. Such States should work closely with the Committee in the development and design of proposed assistance projects, as well as to finance projects, including through the IAEA, to facilitate the prompt and direct response to assistance requests;
4. The Committee could adopt a more focused and targeted approach on specific issues of implementation as identified by the Committee. As noted above, the specifics of States will influence this decision, and some are easily identified in the nuclear area;
5. The Committee could develop, jointly with the IAEA, assistance projects to support States upon their request in fulfilling their 1540 obligations.

Let me conclude.

There is much to be done. In the area of nuclear security, the IAEA plays an indispensable role; and cooperation with the Committee needs to continue and, indeed, should be strengthened.

But let it be stated, the responsibility for implementation of resolution 1540 rests with States, in particular, in their legislatures, government ministries and agencies. However, international and regional organizations and civil society, including, notably, industry, have a role to play in supporting governments towards effective implementation of resolution 1540.

If we are to combat effectively the threat that non-State actors will engage in acts involving WMD, no one can stand aside.