

Comprehensive Review on the Status of Implementation of Resolution 1540 (2004)

**Background papers prepared by 1540 Committee experts according to the document on
modalities for the consideration of a comprehensive review (S/2009/170)**

Specific Element (g)

*“Assess the existing templates, particularly the 1540 Committee matrix, in light of the
information gathered for the 2006 and 2008 reports”**

*Berhanykun Andemicael, Olivia Bosch, Ana Maria Cerini, Richard Cupitt,
Isabella Interlandi, Nicolas Kasprzyk, Petr Litavrin and Senan Muhi.*

* This background paper was prepared by the group of experts at the request of the 1540 Committee. It does not necessarily represent the views of the Committee.

A. Status of the 1540 Matrix

This background paper focuses on the current status, challenges, and possible options for the use of the 1540 Matrix by the 1540 Committee.¹ From its adoption in early 2005, the 1540 Matrix has functioned as the primary method used by the 1540 Committee to organize information about Member States. In February 2005, when the 1540 Committee and its experts began to examine the reports submitted by Member States, about 100 States (and the European Union) already had submitted information. With its mandate set to expire on 28 April 2006, the Committee and its experts had to create a process that would allow them to sift through a considerable amount of information in a few months. Moreover, this process had to be accurate, systematic, fair, and comprehensive.

The 1540 Committee guidance on reporting simply asked States to follow the structure of the resolution.² Consequently, the national reports differed significantly in the extent to which they addressed the obligations established by resolution 1540 (2004). To extract the most relevant information in the reports, the experts devised sets of questions that followed the text and paragraph structure of resolution 1540 systematically, and applied them to the data in the national reports. After the experts prepared sample matrices and conducted pilot projects to address the robustness, validity and reliability of the samples, the Committee reviewed an initial matrix template in the spring of 2005. The delegations debated and made additions, deletions, and modifications, after which the 1540 Committee adopted the basic version of the matrix template now in use.

In October 2007, the Committee inserted the following disclaimer when it sent each State a matrix based on information that the 1540 Committee had assembled:

The information in the matrices originates primarily from national reports and is complemented by official government information, including that made available to inter-governmental organizations. The matrices are prepared under the direction of the 1540 Committee.

The 1540 Committee intends to use the matrices as a reference tool for facilitating technical assistance and to enable the Committee to continue to enhance its dialogue with States on their implementation of Security Council Resolution 1540.

The matrices are not a tool for measuring compliance of States in their non-proliferation obligations but for facilitating the implementation of Security Council Resolutions 1540 and 1673. They do not reflect or prejudice any ongoing

¹ An exploration of the status, challenges, and options for the 1540 Committee regarding the Assistance Request Template, the other major template used by the 1540 Committee appears in another background paper.

² Resolutions 1540 (2004), 1673 (2006) and 1810 (2008) do not require States to submit reports to the 1540 Committee, although in each resolution the Security Council urges States to do so.

discussions outside of the Committee, in the Security Council or any of its organs, of a State's compliance with its non-proliferation or any other obligations.

Comprised of 382 fields representing the requirements of the resolution, the matrix has eleven worksheets. The first worksheet covers measures that indicate some aspect of implementation of Operative Paragraph 1 and some matters from Operative Paragraphs 5-6, 8 (a-c), and 10. These largely relate to commitments to the objectives of the resolution and relevant nonproliferation treaties. The next three worksheets address implementation of Operative Paragraph 2 on legislation and enforcement of prohibited activities related to WMD and their means of delivery. Three more worksheets concern implementation of Operative Paragraph 3 (a-b) on accounting for, securing and physically protecting WMD related materials, three more on Operative Paragraph 3 (c-d) on border security and export controls, then a final worksheet on Operative Paragraphs 6-8 (d) related to control lists, assistance, and information sharing.

Currently, the 1540 Committee has prepared a matrix for each UN Member State. The 1540 Committee reviews and approves each matrix. Each State gets a copy of its matrix, which it can choose to share as it sees fit, and which becomes the basis for dialogue between the State and the 1540 Committee. In each of the 382 fields in the matrix, the 1540 Committee denotes one of three possible responses. An "X" in any data field signifies only that the reporting State asserts that it has taken relevant measures, and has provided, or the 1540 Committee has found specific references to the applicable legal basis or executive measures as evidence of such steps. A "?" in any data field signifies that although the national report or other sources of data refers to legislation or other evidence that the State has taken a measure, the details in the references provided raise questions of pertinence or that the information suggests that the State has taken action but a copy of the legislation has not yet been located or available for consultation. Finally, a blank in any data field signifies that the State has provided no information or the 1540 Committee has not established information to enable the entry of an "X" or a "?" against that particular data field. In interpreting the 1540 Matrix, all parties must understand that an "X" does not indicate that the measure or measures taken fully implement an obligation under resolution 1540. It only indicates that the 1540 Committee and its experts have found evidence that the State has taken a measure or measures relevant to a particular field.

In time, the 1540 Matrix also became the basis for informed dialogue between the 1540 Committee and individual States, including evolving as a format that States used in preparing reports to the 1540 Committee. Through the matrix, the 1540 Committee informs each State what evidence the Committee has considered, such as when it recently sent each State the current version of its 1540 Matrix. Unexpectedly, some States used the matrix a basis for inter-agency or inter-ministerial dialogue, as States coordinated their efforts across the many parts of government with a role in implementing the resolution, especially by helping governments to identify steps they have taken already, and where the resolution obliged them to take additional measures. The 1540 Committee also believes that the matrix can foster cooperation

among States and between States and international organizations, as well as help States develop plans for implementation, but evidence of these behaviors remains incomplete.

B. Challenges

Although unchanged since the insertion of the disclaimer in 2007, the 1540 Committee views the 1540 matrix as a “living” tool, subject to the information needs of the 1540 Committee as it pursues its mandate. The 1540 Committee faces at least five areas of challenge in using the existing matrix that may call for alterations in its design, scope, or other features.

1. *Complexity.* With its many fields and the breadth of its topics, the complexity of the 1540 matrix mirrors the complexity of UNSC resolution 1540 (2004) itself. At some level, the resolution itself has an irreducible measure of complexity. It has, for example, multiple obligations, with equal weight given to each. It purposefully bridges gaps between and within the existing nuclear, chemical, biological, and missile nonproliferation regimes. Consequently, it seems unlikely that any single individual or agency as part of their or its experience would have at hand, without considerable guidance and collaboration, all the information needed to complete the matrix accurately. Many States clearly have little or no expertise in certain substantive facets of the resolution, making it difficult to respond. Other States may, from their perspective, have too few bureaucratic resources to dispense on reporting to the 1540 Committee against the array of competing reporting requirements, much less against fulfilling other national goals. Almost from the beginning, the 1540 Committee became aware that most States submitted reports that vastly understated the number of measures they had in place or intended to take that went toward implementation of the resolution. As noted in the disclaimer, the 1540 Committee looked to other sources of information made public by each State to compile a more accurate and comprehensive matrix for that State. The complexity of the resolution and, accordingly, the matrix ensures that obtaining the most complete picture of measures States have taken or intend to take will constantly challenge the capabilities of the 1540 Committee and States.
2. *Time.* The 1540 Matrix makes it easy to distinguish whether a State does or does not have a measure in place relevant to fulfilling the obligations of the resolution. Parallel to the challenge of standards, however, the matrix serves less well in marking when a State enhances existing measures to meet obligations of the resolution. Although such information will appear in the matrix, it has no special designation. At least in part this stems from the original purpose of the matrix to identify *if* a State had a relevant measure in place, not *when* a State had taken the measure. After this initial snapshot of the status of implementation emerged and States began to take measures in response to the resolution, effective assessment of the impact of the resolution and the work of the 1540 Committee requires more of a movie than a single picture.

3. *Implementation.* The strength of the 1540 Matrix rests in its systematic handling of different legislative measures. In most instances, even the “enforcement” columns in the matrix denote the existence of legislative penalties. This follows from the type of information that appears in the national reports, where States mainly described their legislative measures. Compiling information on legislation was a critical first step in understanding the status of implementation of the resolution. Implementation, however, goes beyond the existence of legislative measures to include the execution and enforcement of those measures. Over time, States have begun to provide the 1540 Committee with more evidence on implementation, such as the number of export licenses or prosecutions related to prohibited activities, yet the current matrix does not have special fields for that kind of information, nor even indicate that such data would help the 1540 Committee determine the status of implementation of the resolution.

4. *Standards.* The 1540 Committee does not to assess the extent to which any measure it identified as relevant to a particular matrix field against standards of practice, “best” or otherwise, much less conclude whether a particular measure did or did not fulfill an obligation. In the main, this follows the dictate of the resolution, which specifies that States determine what constitute “appropriate effective” practices. Responding to many requests from national participants at its outreach activities, and to its mandate to promote experience sharing, the 1540 Committee now points to standards set by international bodies in Annex XVII of its report of July 2008. However, the 1540 Committee does not set nor endorse specific standards, has no model laws, nor approves analogous benchmarks, so the 1540 Matrix often does not reflect the extent to which relevant measures by States meet international standards in a particular field, or the extent to which those standards address the specific obligations of the resolution, which makes reporting on the extent of compliance a challenge for the 1540 Committee. In several fields, moreover, minimal or no widely-shared standards existed at the time of the resolution, and in some instances do not do so now. Consequently, the matrix does not highlight where States have cooperated to develop and adopt new standards. Moreover, where the resolution speaks to gaps in the nonproliferation regimes, establishing standards to meet obligations under the resolution may well exceed the mandates of existing international bodies. As the 1540 Committee has its own obligation to promote implementation of the resolution, doing so where few or no standards exist creates a special challenge for it.

5. *Non-State Authorities.* The resolution obligates “all States” to implement the resolution and to report to the 1540 Committee on steps they have taken or intend to take in doing so. In practice, the 1540 Committee has interpreted “all States” to mean “all UN Member States.” Many important economies, however, do not fall neatly into that category. While the European Union does not constitute a UN Member State, it does establish law and policy on several key aspects of the resolution for its 27 Member States. As many other States wish to coordinate their policies and practices with the European Union, its law often becomes a *de facto* standard for much of the international community. While it has cooperated closely with the efforts of the 1540

Committee, including submitting a report in 2004, the 1540 Committee treats it as an international organization rather than a law-making, semi-sovereign body, and has not approved a matrix for the European Union itself, despite its areas of competency and authority. At an opposite pole, several special administrative regions and territories or colonies have autonomous economic or other policies relevant to implementation of the resolution, but the 1540 Committee must rely on the submissions of the sovereign entity, which may or may not have even have the authority to collect, much less know, relevant information for completing the matrix. Somewhere in between one also can identify states that do not belong to the United Nations. If the authorities in these economies do not implement the resolution, then terrorists or criminals may find a safe haven for their enterprises. Understanding what measures these non-state authorities have taken, and using the matrix to organize that information, presents a challenge to the 1540 Committee.

C. Alternatives to Deliberate during the Comprehensive Review

To meet these challenges, as well as the overall mandate of the 1540 Committee, a range of actions merit consideration in the comprehensive review:

1. *Reduce the complexity of completing the 1540 Matrix without losing essential information.* Although understanding the status of implementation of the resolution requires the collection of complex data, the 1540 Committee could simplify the process of completing the matrix in several ways. It might, for example, provide more guidance and assistance to States on the types of evidence it finds best suited for certain matrix fields. In some instances, the evidence in one field depends upon the evidence in another, and the matrix might direct States to complete the matrix accordingly (for example, if States do not use control lists, then whether they update their control lists does not apply). The 1540 Committee could develop a web-based format and generally find ways to make the matrix more user-friendly, particularly for updating information. In addition, the 1540 Committee could link entry of information into the matrix to other more user-friendly databases, which could reduce the overall burden of information collection on the 1540 Committee and on States (for example, creating a process by which information entered into the matrix automatically updates the legislative database and vice-versa).
2. *Introduce the element of time in the 1540 Matrix.* Simply adding a “date of measure” column to the 1540 Matrix will not suffice technically or conceptually. Technically, States often have multiple measures related to any specific field of entry and measures have more than one date that might prove useful (e.g., for legislation, the matrix could refer to dates of passing, promulgating, or entry into force). More important, the matrix should reflect the purposes for which the 1540 Committee and the international community wants to measure time. Understanding the time it takes most States to take a particular action in relation to another, for example, could have a profound effect on carrying out and evaluating assistance programs.

3. *Refine the elements regarding evidence of execution and enforcement of legislative measures into the 1540 Matrix.* At the same time it simplifies the process of completing the 1540 Matrix, the 1540 Committee can reflect on how to include different types of evidence on implementation that States have begun to report. It may also consider if it wishes to obtain new types of substantive information, and how to use the matrix to do so with minimal burden on national authorities.
4. *Improve integration of standards of international bodies into the 1540 Matrix.* Evidence of adherence to different codes of conduct, guidelines, and similar standards often overlap with particular fields in the matrix. The 1540 Committee already uses ratification of some international conventions and treaties, for example, as evidence of a legislative framework for some prohibitions in the 1540 Matrix, and has begun to cross-tabulate the obligations of a wider variety of such treaties, conventions, agreements, and codes with different elements of resolution 1540. The 1540 Committee could use the matrix to identify efforts by States to develop or adhere to international standards related to the implementation of the resolution. This would not only allow the 1540 Committee to give credit to States when they augment their current practices to meet international standards, it can also highlight experiences related to establishing and implementing new or emerging international standards that States may wish to share.
5. *Work with States and international organizations on implementation of the resolution by non-state authorities.* The 1540 Committee may deliberate the value of the preparation of a 1540 Matrix for entities that exercise significant autonomy in practices and policies related to the resolution. In doing so, it would need to identify the limits on sovereignty competence exercised by these authorities, and how to promote implementation of the resolution even in territories where the legally binding nature of the resolution may not apply.