

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 (c)

“Conduct regional analysis of implementation, with some examples of national and
regional practices and experience sharing”*

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This background paper describes the current status of implementation of resolution 1540 (2004), with particular attention to the wide variance in the extent of implementation measures taken in different regions, and outlines the implementation challenges that may explain the divergence, as well as offer some options for addressing those challenges. This will be done with the benefit of some examples from national, sub-regional and regional practices and experiences that may be shared.

A. Regional variance in the degree of implementation of resolution 1540

In resolutions 1540 (2004), 1673 (2006) and 1810 (2008), the Security Council emphasized the importance of the regional and sub-regional dimensions of the implementation of resolution 1540, while stressing the national responsibility to take appropriate effective measures. By resolution 1810, the Council encourages the 1540 Committee “to engage actively with States and relevant international, regional and sub-regional organizations to promote the sharing of experience and lessons learned in the areas covered by resolution 1540 (2004), and to liaise on the availability of programmes which might facilitate the implementation of resolution 1540 (2004).” The present background paper will focus on the wide variance in the status of implementation among the various regions with an explanation to help identify the challenges to be addressed by the Committee.

Reporting on the existing status of implementation provides an overview, which is the first step towards full implementation. The overall performance of Member States in reporting on the implementation of resolution 1540 is impressive compared with the responses to most resolutions of the United Nations. As of July 2009, 160 States have submitted first reports and over 103 States have provided additional information, some of them for the third or fourth time. These overall figures are useful in monitoring progress, but a breakdown of the performance by regions is necessary at this stage to demonstrate the need for the 1540 Committee to focus on those regions that would call for special efforts. The 32 States that have not yet submitted a first report are now mostly in Africa but there are also some in the Pacific Islands region, in the Caribbean and in Southern Asia.

In terms of implementation measures taken or underway, a comprehensive statistical picture of the status of implementation was given in Annex V of the Committee’s 2008 report to the Security Council (doc. S/2008/493). To illustrate the wide range in performance globally, by July 2008, the lower end of the implementation showed that about 60 States, i.e. almost one-third of the UN membership, had reported measures that accounted for less than 10% of the requirements of the resolution – as calculated in terms of 313 applicable cells in the Committee’s examination sheet or *matrix*. At the higher end, only about 10 States had reported having implemented over 90% of the requirements. This range encompasses both the framework legislation and the enforcement measures that States have in place. The performance of the majority of

countries falls evenly between these extremes. The statistics of the 2008 report gave a global perspective, with a breakdown not by region but by the operative paragraphs of resolution 1540, focusing on the weapons categories and the related materials, as enumerated in the resolution.

Before attempting to do a regional breakdown, we need to see if the regional groups that are conventionally used by the United Nations can be useful for assessing the state of implementation of the resolution. Five geographical regions are recognized at UN headquarters, basically for elections and other representational purposes, and may be used here at least as a broad initial framework. The regional groups are listed below, as well as the main sub-regional organizations or groupings that can be used in facilitating implementation of resolution 1540, with the cooperation of their members.

Regional groups at the United Nations

- African Group
- Asian Group
- Latin America and the Caribbean Group (GRULAC)
- Eastern European Group
- Western European and Others Group (WEOG)

Regional and sub-regional intergovernmental organizations

Africa: African Union; Arab Maghreb Union; East African Community; Intergovernmental Authority on Development (IGAD); Economic Community of Central African States (ECCAS-CEEAC); Economic Community of West African States (ECOWAS); Southern African Development Community (SADC).

Africa/Asia: League of Arab States (LAS).

Asia and the Pacific: Shanghai Cooperation Organization; Pacific Islands Forum (PIF); Oceania Customs Organisation (OCO); Association of South East Asian Nations (ASEAN); ASEAN Regional Forum (ARF) on Security of the Asia Pacific region; South Asian Association for Regional Cooperation (SAARC); Eurasian Economic Community; Gulf Cooperation Council (GCC).

Latin America and the Caribbean: Organization of American States (OAS); Andean Group; Caribbean Community (CARICOM); Central American Integration System (SICA); Southern Common Market (MERCOSUR).

Europe/Central Asia: Collective Security Treaty Organization (CSTO); Commonwealth of Independent States (CIS); Eurasian Economic Community.

Europe: European Union (EU).

Other relevant organizations: Organization for Security and Co-operation in Europe (OSCE); North Atlantic Treaty Organization (NATO).

Regional breakdown of implementation

The global picture of the status of implementation of resolution 1540 is given in the report of the Committee to the Security Council as of July 2008 (doc. S/2008/493). The tables and graphs in annexes II, IV and V provide the status of reporting and of substantive implementation. However, no regional breakdown was done at that time. Annex V shows the extent of implementation globally, as identified through the measures taken by States and reflected in their matrices. The bars in the graph may be converted to a qualitative scale as follows:

Less than 30 of 313 matrix cells filled, or 2-10% = ***low implementation rate***

Up to 100 cells filled, or 10-30% = ***average implementation rate***

Up to 180 cells filled, 30-60% = ***high implementation rate***

Up to 300 cells filled, or 60-90% = ***very high implementation rate***

According to this qualitative scale, how did the regional groups perform? By rearranging these numbers and percentages compiled from country matrices, the following picture emerges when clustered into the regional groupings.

Africa: Using this qualitative scale, the implementation rate of three-fourths of the African Group remains low, with a majority of the African States rating very low, in part because many of them are non-reporting States, whose matrices have been prepared from meager information available in official websites and public documents. The notable exceptions are the performances by one State in Southern Africa, rating very high, and by the Northern African States, rating average.

Asia: As regards the Asian Group, although the rate of reporting is high, about three-fifths of the States rate low in terms of implementation measures taken while the rest rate above average. Notably, four States in East and South Asia rate high or very high in the scale used. But the overall performance rate is weighted downwards largely because of the low implementation rate in the Pacific Islands region and in parts of Southern Asia.

Latin America and the Caribbean: The reporting record is high, but the rate of implementation of measures is still low in about four-fifth of the States of this region; the rest have rated average or high in our scale. Again, the overall performance rate is weighed down by the low performance rate in most of the Caribbean and the Central American States.

Eastern Europe and WEOG: The States in these groups have all submitted first reports, and also additional information. The status of their implementation of the resolution is above average and in a few cases very high. To facilitate further progress, a refinement of approach is needed for future analysis.

Further refinement for future regional analyses requires a closer look at the component groups for a breakdown of the implementation data according to the organizations or other arrangements involved. For example, EU Members are part of two different UN regional groupings, yet they are subject to common regulations. Another example is that the CIS membership comprises States from the Eastern European Group and the Asian Group. The African Group and the Latin America and the Caribbean Group, however, reflect more easily the membership of their respective regional and sub-regional organizations.

B. Challenges and regional practices

Most of the States in all the regions reported a high degree of ratification of the main international non-proliferation instruments. Under some constitutional systems (e.g., some CIS countries and many French-speaking countries), such ratification would automatically provide the basis for using those instruments as domestic framework law. Thus, for most States the first task is to ensure that their domestic legislation covers the requirements of the ratified treaties but the challenge is to ensure that the coverage meets also all the requirements of resolution 1540 and also ensures that adequate enforcement measures are put in place. Most legislations and measures predate resolution 1540 and thus require a thorough review.

All the regional groups share the challenge of filling more gaps in the enforcement side of their matrices, but there is a wide range in the extent of the gaps from region to region, as there is variance in the magnitude of the challenges. An examination of the matrices and the information from the comments made by country representatives at outreach events suggests the following challenges for the various regions:

(a) **Low implementation regions**: First, the lack of first reports from over 30 States despite intensive outreach efforts remains a challenge to be resolved, especially in the case of Africa where a new approach is needed to amplify the partly filled matrices prepared for them by the Committee and its experts with their cooperation. The often cited issue of national priorities and lack of capacity needs to be the focus of a new approach. A second point: over 80 States in Africa, Asia and Latin America and the Caribbean are yet to submit additional information to build on their first reports. Many of the first reports have provided limited or only general information on framework legislation, and even less information on enforcement measures. The sub-regions concerned are mainly in sub-Saharan Africa, the Pacific Islands, the Caribbean and Central America. The regional approach, which focused on awareness raising and explanation of the reporting process, has been useful in explaining the legitimacy and relevance of the resolution, but seems not as sufficient as a sub-regional approach in

soliciting new information. Is it enough merely to intensify efforts or to add a thematic focus? How best can tailored bilateral dialogue be supplemented by using sub-regional organizations as facilitators? What type of follow-up effort is needed?

(b) **Asian region:** This geographical region poses a serious challenge. Sub-regional workshops organized during the past two years on 1540 issues in Central Asia and the Caucasus, South-East Asia and the ASEAN Regional Forum (ARF), as well as in South Asia and West Asia have made some headway in identifying issues of common interest in preventing non-State actors from acquiring WMD-related materials. However, a major challenge remains how to prevent trafficking in WMD-related materials, which requires strengthening the systems of accounting for, securing and physically protecting those materials. Can the 1540 Committee assist in promoting coordination between national efforts and initiatives at the bilateral, sub-regional or international levels? Regarding capacity-building, the issue remains how to identify and meet special needs of States, large or small.

(c) **Latin America and the Caribbean:** in terms of normative guidelines and organizational structures this region is well disposed for the implementation of the resolution and there is consensus within the OAS organs and special bodies to facilitate implementation in those countries with least capacity to do so. One possible challenge is how best the OAS Inter-American Committee Against Terrorism (CICTE), as retooled to accommodate the WMD dimension after 2004, can facilitate the task of the 1540 Committee to persuade and assist individual States in the region to update or supplement existing counter-terrorism legislation and enforcement measures. A second challenge is how to coordinate the CICTE initiatives with the role of the sub-regional bodies (MERCOSUR, Andean Group, SICA and CARICOM).

(d) **CIS members:** All those States have in place laws and administrative acts regulating their non-proliferation obligations, but some States have not yet established domestic framework laws and enforcement measures to meet the requirements of resolution 1540 to prevent non-State actors from acquiring WMD-related materials. Steps are under way to draft model laws for all CIS members on counter-terrorism, on control of trafficking in radioactive materials and on terrorist financing, and also to prepare guidelines for harmonization of legislation on chemical and biological security and safety. This endeavor is a major challenge as is the task of removal of certain nuclear material from some CIS member States, especially in Central Asia.

(e) **EU members:** The rate of implementation within the EU, which is above average, varies from country to country. While the EU regulations and directives are binding instruments for EU Members covering a large part of the requirements under resolution 1540, such as export controls of dual use items by all EU members, the law enforcement activities and punishments for violations fall under the responsibility of each State. As in all other regions, on the basis of information contained in the matrices, the enforcement aspects could be further enhanced. An area that could be explored is the

sharing of information on further progress made by States since the submission of the first EU report to the Committee in 2004.

C. Lessons learned and options to address challenges

Recognizing that the full implementation of resolution 1540 is ultimately the responsibility of Member States, how can the 1540 Committee facilitate this task for States by engaging the regional and sub-regional organization of which they are members? What lessons can be applied from region to region?

1. **Technical advice:** For non-reporting States and those having difficulty in identifying more information to report or in planning new legislation, a tailor-made approach is needed to facilitate assistance, going beyond the outreach efforts. For example, the funding of an expert (or experts) dedicated to the implementation of resolution 1540 to assist a sub-regional grouping, merits serious consideration. It has been used successfully within the PIF and, with some modification, within CARICOM, with funding and expertise from a certain Member States. The concept of “model legislation” for countries in a sub-region might be worth considering, given similarities of legal traditions or similarities of problems, etc. If funds are provided, the CARICOM formula might be of interest in sub-Saharan Africa, utilizing the sub-regional organizations in eastern, western and central Africa as facilitators.

2. **Drafting exercises:** Going beyond explanatory workshops and supplementary country-specific dialogues, sub-regional workshops might benefit from simulation exercises in drafting country matrices, mock-up action plans and assistance requests. As an immediate follow-up to a workshop, a more extensive drafting exercise might be considered for representatives of the relevant ministries of the host country, some of whom may have participated at that workshop or at earlier ones.

3. **Regional security norm:** The idea of regionalizing security by adopting a regional security norm has been used originally by the OAS Committee on Hemispheric Security and also by the OAS/CICTE, initially focused on counter-terrorism. In Asia this concept also guides the work of the ASEAN Regional Forum, which is increasingly addressing 1540 issues. In order to ensure a balanced approach in facilitating implementation of counter-terrorism and non-proliferation requirements, also relevant are the obligations under nuclear-weapon-free-zone organizations in these regions. The evolving inter-organizational coordination in these regions in the context of security concerns of States merits close attention, with possible lessons for other regions and sub-regions. What can the 1540 Committee do to facilitate exchange of experiences, particularly as they relate to national implementation of resolution 1540?

4. **Model laws:** The process among the CIS member to harmonize legislation and draft model legislative provisions relating to resolution 1540 may have useful lessons for other regional bodies. How can the 1540 Committee facilitate the exchange?

5. New outreach activities:

(a) Workshops in additional regions: As no region has yet achieved full implementation of resolution 1540, what kind of outreach events would be needed, including where considerable measures have been taken, such as the Western Europe?

(b) Country-specific workshops: The experience of other organizations suggests the usefulness of such workshops for national officials (with the participation of officials from States in the sub-region, as appropriate). The purpose would be to identify needs, consider priorities and explore legislative options (e.g., workshops on 1540 in Kyrgyzstan, 2007; Uzbekistan, 2009).

6. Reports or information from regional organizations: Since the 1540 Committee has found the 2004 report of the EU useful, it may wish to encourage regional organizations to consider providing reports or any information on their programmes or practices which are of particular relevance to the implementation of resolution 1540.