

OVERVIEW OF UNSCR 1540 (2004) REQUIREMENTS

“Effective Elements of Export Control for APEC
Economies Conference”
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HIGHLIGHTS

- Adopted by unanimity on 28 April 2004 under Chapter VII of the UN Charter
- First resolution adopted by the Security Council to address WMD proliferation as global threat to international peace and security
- Imposes far reaching binding obligations on all States to take a series of steps to prevent WMD from getting into the hands of non-state actors

OBJECTIVES

- Fill the existing gaps in international law, thus preventing and deterring non-State actors from developing, acquiring, trafficking, or using WMD, their means of delivery and related materials
- Prevent and deter illicit traffic in WMD, their means of delivery, and related materials
- Enhance the capacity of all States to respond efficiently to threats posed by proliferation of WMD

OBLIGATIONS PURSUANT TO UNSCR 1540

- I. NATIONAL LEGISLATION ON PROHIBITIONS
- II. DOMESTIC CONTROLS AND ENFORCEMENT
 - 1. ACCOUNTING FOR, SECURING, PHYSICAL PROTECTION
 - 2. BORDER CONTROLS
 - 3. EXPORT AND TRANS-SHIPMENT CONTROLS
- III. CONTROL LISTS
- IV. PROMOTION AND IMPLEMENTATION OF MULTILATERAL TREATIES
- V. PROMOTION OF DIALOGUE AND COOPERATION
- VI. REPORTING

I. NATIONAL LEGISLATION ON PROHIBITIONS

- “All States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use WMD and their means of delivery” **(OP 1)**
- “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 WMD 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” **(OP 2)**

I. PROHIBITIONS UNDER INTERNATIONAL TREATIES

- **NPT**
 - **NNWS: manufacture, acquire and possess (Art. II)**
 - **NWS: transfer (Art. I)**
- **BTWC**
 - **All States parties: develop, produce, stockpile, acquire, transfer and means of delivery (Art. I and III)**
- **CWC**
 - **All States parties: develop, produce, acquire, stockpile, transfer, use and assist (Art. I)**
- **Geneva Protocol of 1925**
 - **All States parties: use of BW and CW in armed conflicts**

OBLIGATIONS UNDER RESOLUTION 1540

NATIONAL LEGISLATION ON PROHIBITIONS FOR ALL TYPES OF WMD (NBC) IN RELATION TO NON-STATE ACTORS

- **Manufacture**
- **Acquire**
- **Possess**
- **Stockpile**
- **Develop**
- **Transport**
- **Transfer**
- **Use**
- **Participate as an accomplice in**
- **Assist in**
- **Finance**
- **Activities related to means of delivery**

II. DOMESTIC CONTROLS AND ENFORCEMENT

1. ACCOUNTING FOR, SECURING, PHYSICAL PROTECTION

- All States shall:
 - “Develop and maintain appropriate effective measures to account for and secure WMD related materials in production, use, storage or transport” **(OP 3 – a)**
 - “Develop and maintain appropriate effective physical protection measures” **(OP 3 – b)**

II. DOMESTIC CONTROLS AND ENFORCEMENT

2. BORDER CONTROLS

- “Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat the illicit trafficking and brokering in such activities” (OP 3 – c)

II. DOMESTIC CONTROLS AND ENFORCEMENT

3. EXPORT AND TRANS-SHIPMENT CONTROLS

ESTABLISH, DEVELOP, REVIEW AND MAINTAIN

- appropriate effective national export and trans-shipment controls over such items
- appropriate laws and regulations to control:
 - export
 - transit
 - trans-shipment
 - re-export
 - providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation
 - establishing end-user controls
 - establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations (OP 3 – d)

III. CONTROL LISTS

- “When necessary, to pursue at earliest opportunity the development of effective national control lists” (OP 6)

IV. PROMOTION AND IMPLEMENTATION OF MULTILATERAL TREATIES

- “Promoting the universal adoption and full implementation, and, where necessary, strengthening of multilateral treaties” (OP 8 – a)
- **“To adopt national rules and regulations to ensure compliance with their commitments under the multilateral non-proliferation treaties” (OP 8 – b)**
- “To renew and fulfill their commitment to multilateral cooperation, in particular within the framework of IAEA, OPCW and BTWC” (OP 8 – c)
- “To work with and inform industry and the public regarding their obligations under such laws” (OP 8 – d)

V. PROMOTION OF DIALOGUE AND COOPERATION

- “All States are called to promote dialogue and cooperation to address the threat posed by proliferation of WMD and their means of delivery” **(OP 9)**
- “All States, in accordance with their national legislation and consistent with international law, are called to take cooperative action to prevent illicit trafficking in WMD, their means of delivery and related materials” **(OP 10)**

VI. REPORTING

- Calls upon all States to submit **a first report** to the Committee on steps they have taken or intend to take to implement the resolution... **(OP 4)**
- Reporting is the most important tool of informing the Security Council about national efforts to implement the resolution
- Reporting status: **124 States and one organization (EU) have submitted reports**
- The Committee has posted the reports on its web site at: **<http://disarmament2.un.org/Committee1540/report.htm>**

VI. REPORTING

NON-REPORTING STATES

- 3 UN Regional Groups contain 96% (67 out of 70) of the non-submitting states:
 - Africa (36)
 - Asia (16)
 - Latin American and the Caribbean (12)

EXAMINATION OF NATIONAL REPORTS

- The 1540 Committee was established in June 2004 and has the main task to monitor States' efforts to implement the resolution
- 2 years mandate

RESULTS AND PRIORITIES:

- Examination of first national reports using a matrix as an internal tool and of additional information which is providing by States
- Collection of additional information from IGOs web sites
- Clearing House for assistance
- Developing a legislative database – links to relevant governmental institutions and legislation
- Promoting the **OUTREACH STRATEGY** in order to facilitate further reporting and the implementation of resolution 1540

MATRIX

- Internal tool for examination of national reports
- It is shared with submitting States as an annex to the letters seeking additional information
- Characteristics of the matrix:
 - Follows the provisions of operational paragraphs of the resolution
 - Pilot matrices were tested against 15 national reports, revised, and used to produce the current matrix
 - The matrix, consisting of **382 FIELDS**, was applied in the process of examining all national reports

MATRIX PRESENTATION

- MERGED MATRIX

**MEASURES TAKEN BY STATES
(RESULTS BASED ON THE EXAMINATION OF 124
FIRST REPORTS SUBMITTED BY STATES)**

- **EVIDENCE OF MEASURES TAKEN
(AVERAGE): 70 FIELDS – 18,4%**
- **NEED FOR FURTHER CLARIFICATION
(AVERAGE): 21 FIELDS – 5,4%**
- **NO EVIDENCE IDENTIFIED
(AVERAGE): 291 FIELDS – 76,2%**
- **RANGE (IN A SINGLE REPORT):**
 - **EVIDENCE OF MEASURES TAKEN: 279**
 - **NO EVIDENCE IDENTIFIED: 375**

BORDER AND EXPORT CONTROLS

- **27 Fields** for **National Legal Framework**
- **27 Fields** for **Enforcement** (civil/criminal penalties and measures of implementation)
- **162 Fields** for **All Categories** (Nuclear, Biological, Chemical)

MEASURES TAKEN BY STATES ON BORDER AND EXPORT CONTROLS

BW, CW, NW, INCLUDING RELATED MATERIALS

- Border Control (Average)
Legislation (47,8%) – Enforcement (50,1%)
- Technical support of border control measures (Average)
Legislation (1,0%) – Enforcement (21,0%)
- Control of brokering, trading in, negotiating, otherwise assisting in sale of goods and technologies (Average)
Legislation (18,2%) – Enforcement (19,6%)
- Enforcement agencies/authorities (Average)
Legislation (7,3%) – Enforcement (42,1%)

MEASURES TAKEN BY STATES ON BORDER AND EXPORT CONTROLS

BW, CW, NW, INCLUDING RELATED MATERIALS

5. Export control legislation in place (Average)
Legislation (54,6%) – Enforcement (40,0%)
6. Licensing provisions (Average)
Legislation (40,8%) – Enforcement (13,7%)
7. Individual licensing (Average)
Legislation (12,1%) – Enforcement (1,6%)
8. General licensing (Average)
Legislation (9,2%) – Enforcement (0,0%)

MEASURES TAKEN BY STATES ON BORDER AND EXPORT CONTROLS

BW, CW, NW, INCLUDING RELATED MATERIALS

9. Exceptions from licensing (Average)
Legislation (21,2%) – Enforcement (0,8%)
10. Licensing of deemed/export visa (Average)
Legislation (1,6%) – Enforcement (0,8%)
11. National licensing authority (Average)
Legislation (32,8%) – Enforcement (5,6%)
12. Interagency review for licenses (Average)
Legislation (20,7%) – Enforcement (1,6%)

MEASURES TAKEN BY STATES ON BORDER AND EXPORT CONTROLS

BW, CW, NW, INCLUDING RELATED MATERIALS

- Control lists (Average)
Legislation (44,3%) – Enforcement (4,0%)
- Updating of lists (Average)
Legislation (30,3%) – Enforcement (1,9%)
- Inclusion of technologies (Average)
Legislation (40,3%) – Enforcement (5,6%)
- Inclusion of means of delivery (Average)
Legislation (36,8) – Enforcement (2,4)

MEASURES TAKEN BY STATES ON BORDER AND EXPORT CONTROLS

BW, CW, NW, INCLUDING RELATED MATERIALS

17. End-user control (Average)
Legislation (23,9%) – Enforcement (8,9%)
18. Catch all clause (Average)
Legislation (20,5%) – Enforcement (2,4%)
19. Intangible transfers (Average)
Legislation (8,4%) – Enforcement (0,8%)

MEASURES TAKEN BY STATES ON BORDER AND EXPORT CONTROLS

BW, CW, NW, INCLUDING RELATED MATERIALS

20. Transit control (Average)
Legislation (29,0%) – Enforcement (15,3%)
21. Trans-shipment control (Average)
Legislation (10,5%) – Enforcement (2,6%)
22. Re-export control (Average)
Legislation (15,8%) – Enforcement (3,5%)
23. Control of importation (Average)
Legislation (46,8%) – Enforcement (30,4%)

MEASURES TAKEN BY STATES ON BORDER AND EXPORT CONTROLS

BW, CW, NW, INCLUDING RELATED MATERIALS

24. Control of providing funds (Average)
Legislation (6,5%) – Enforcement (5,6%)
25. Control of providing transport services
(Average)
Legislation (1,9%) – Enforcement (3,0%)
26. Extraterritorial applicability (Average)
Legislation (7,3%) – Enforcement (3,7%)
27. Other (Average)
Legislation (12,1%) – Enforcement (9,7%)

MEASURES TAKEN BY STATES ON BORDER AND EXPORT CONTROLS

- Information for industry

Average: **56%**

- Information for the public

Average: **38%**

- Control lists – items
(goods/equipment/materials/technologies)

Average: **57%**

ASSISTANCE

- *The Security Council...*

7. "Recognizes that some States may require assistance in implementing the provisions of this resolution within their territories and invites States in a position to do so to offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions" **(OP 7)**

- Technical **ASSISTANCE** for implementing the provisions of UNSC Res. 1540 (2004) is a **LONG TERM ISSUE**

OFFERS OF ASSISTANCE

- **(42)** States make offers of assistance or have assistance in place already related to the implementation of UNSCR 1540, based on the examination of all **124** reports submitted.
- **(37)** of these States make offers of or have programs in place for direct (country-to-country) assistance.
- In **(31)** reports, one can identify detailed data on offers or programs in at least one category of type, scope, region, or subject.

REQUESTS FOR ASSISTANCE

- **(32)** States have requested assistance in implementing UNSC Resolution 1540 (2004), based on the examination of all 121 reports submitted
- **(24)** of these States have made specific requests that the experts could specify by **TYPE** (training or expertise), **SCOPE** (legal or implementation), or **SUBJECT** (physical protection or export controls)

Making a Difference

- Comments and Suggestions WELCOME
 - Direct Comments and Suggestions to
 - Fax: +1 212 457 4045
 - E-mail: **1540experts@un.org**
- For more about the 1540 Committee visit the Committee's web site at **<http://disarmament2.un.org/Committee1540/index.html>**