

Reporting to the 1540 Committee – A Snapshot

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On 28 April 2004, the United Nations Security Council unanimously adopted resolution 1540 on non-state actors and weapons of mass destruction. It was welcomed by the UN Secretary-General, Kofi Annan, as a supplement to the non-proliferation regime.² Others regard the resolution not just as a supplement, but rather as perhaps the most far-reaching international policy re-orientation since the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) entered into force 35 years ago.³ The resolution calls upon member states to report on implementation measures they have taken or intend to take.⁴ The reports were to be submitted by October 28, 2004. While only about 50 states met that deadline, by June 1, 2005 about 120 states had reported. It is therefore now possible to perform a preliminary assessment of the reports and the measures the states took or plan to take. We begin with a brief overview of the origin and main points of the resolution.

I. Resolution 1540

Resolution 1540 is the latest initiative of the Security Council aimed at stemming the global threat of terrorism. Its adoption was motivated by a heightened sensitivity to the security of weapons of mass destruction (WMD) and the risk of non-state actor (terrorists, businesses, unauthorized state officials) acquisition of and trafficking in WMD-related items. The awareness grew significantly after the revelations in February 2004 of the nuclear proliferation network market run by Pakistani scientist A.Q. Khan.⁵ As one attempt to counter these threats the Security Council adopted the resolution. It acted under Chapter VII of the UN Charter, thus unmistakably conferring a mandatory character on the obligations.

The main obligations for UN member states are contained in operative paragraphs (OP) 1 to 3. OP1 prohibits states to provide

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² "In Larger Freedom," report of the UN Secretary-General, A/59/2005, para. 100.

³ Alistain Miller and Morten Bremer Maerli, "Nuclear Non-Proliferation and United Nations Security Council Resolution 1540," in *NUPI Policy Briefs on the Implementation of the Treaty of the Non-Proliferation of Nuclear Weapons*, April 2005, p35.

⁴ Operative paragraph 4.

⁵ For resources on the A.Q. Khan nuclear proliferation network, see http://www.carnegieendowment.org/static/npp/nuclear_blackmarket.cfm.

any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery.

To prevent any non-state actor from engaging in these acts autonomously, without state support, OP2 obligates states to adopt and enforce appropriate effective laws which prohibit the acts under their national legislation. OP3 prescribes that states take and enforce a comprehensive system of domestic controls on WMD and related materials.

The main objective of the resolution, preventing non-state actor trafficking in and acquisition of WMD, is non-controversial and indeed universally endorsed. However, important criticisms of the resolution going to both process and substance were raised in its genesis as well as afterwards.

One set of objections concerned how the resolution was negotiated. The process of negotiation stretched over a long time period. In the beginning the drafting was solely undertaken by four permanent members of the Security Council, the United States, United Kingdom, Russia, and France; the fifth permanent member, China, took a secondary role. The permanent members spent some six months working on the text of the draft resolution before the text was officially shared with the ten elected members of the Council on 24 March 2004. However, elected members of the Security Council as well as non-Council members, NGOs, and the press were aware that the text was in gestation and pushed to have input. Accordingly, consultations were held with the elected members of the Security Council, the Non-Aligned Movement (NAM), and NGOs; some of those consultations took place before the official release. Further, on 22 April 2004, an open session of the Council was held where over one third of all member states of the United Nations made statements.⁶

This form of practical, though relative, democracy was not the result of “security leaks” but rather awareness of the permanent members that the political sensitivity of the issues required input by member states and global civil society.⁷ Nonetheless, the impact of this input had been limited. Major points were not taken into account; among them the emphasis on non-proliferation to the virtual exclusion of disarmament and the problematic role of the Council as a global legislator. One developing country commented that a great effort was necessary just to get the chance to speak, only to be ignored in the end. However, some minor accommodations were made. For instance, it was proposed that there be a preambular reference to the recognition in the presidential statement of 31 January 1992 (S/23500) of the need for member states to fulfill disarmament obligations.⁸ In the final text of resolution 1540, preambular paragraph 2 contains the language of this proposal. The entire exercise will serve to intensify calls for more transparency and consultation in Security Council decision-making.

⁶ S/PV.4950 Resumption 1.

⁷ Merav Datan, “Security Council Resolution 1540: WMD and non-State trafficking,” *Disarmament Diplomacy* (April / May 2005, no. 79, p. 48).

⁸ John Burroughs et al, Memorandum to the Security Council and other interested States, 5 April 2004, p1, <http://www.reachingcriticalwill.org/political/SC/SCresMemo.pdf>.

A related set of objections went to whether and how the Security Council should engage in what amounts to global legislation, requiring states to adopt and enforce national laws and measures in response to a global problem. Some defend the Security Council's initiative based on the necessity and urgency of action. While acknowledging the urgency, others reply that the Council could have limited its role, for example by providing that the resolution's mandatory measures were subject to expiration and encouraging the use of the primary established process of global law-making, negotiation of multilateral agreements.⁹ Even strong supporters of the resolution acknowledge its innovative character, similar to that of resolution 1373 on the suppression of terrorism: "It abrogates the Westphalian concept of state sovereignty because it forces nations to take certain actions without their consent. Thus, it is a challenge to the traditional structure of international law."¹⁰ This question is widely discussed among international lawyers and will not be further elaborated here.¹¹

Another set of objections went to the substance of the resolution. As was raised strongly both by non-nuclear weapon states and by NGOs, the thrust of the resolution, reflecting the general trend in international fora especially since the September 11 attacks, is towards preventing the proliferation of WMD, especially to non-state actors. There is little recognition of disarmament measures relating to reduction and elimination of stocks of nuclear materials and explosives and to control of biological-weapons relevant research. Yet it is widely recognized that such measures are highly relevant to preventing acquisition of WMD by terrorists and other non-state actors. There was also widespread concern about the resolution's support for the Proliferation Security Initiative. Robust in early drafts, it is muted and implicit in the final text; OP10 calls upon all states "to take cooperative action to prevent illicit trafficking." Many states did not want this provision to be understood as an authorization for interdictions not otherwise permitted by international law.

A more technical objection concerned the vagueness of the resolution's language. Although the resolution contains definitions, added to a later draft,¹² of the terms "means of delivery," "non-State actor" and "related materials," the level of precision is still far from that one achieved in the relevant international bodies. One example is the term "related materials." The Council refrained from using the term "dual-use goods" as it raises controversial issues and would have complicated the adoption and the implementation of the resolution. However, this meant that the resolution ignores the work of the Wassenaar Arrangement¹³ and the Zangger Committee;¹⁴ in both settings experts have dealt with dual-use goods for many years. While the resolution provides that its definitions are for purposes of the resolution only, some diplomats fear that resolution 1540 will have the practical effect of

⁹ *Id.* at 4.

¹⁰ Remarks of Professor Barry Kellman, Symposium on Resolution 1540 as it Pertains to Biological Weapons, Geneva, 3 December 2004.

¹¹ See for example: Stefan Talmon, "The Security Council as World Legislature" in *American Journal of International Law*, vol. 99, 2005, p175; Eric Rosand, "The Security Council as 'Global Legislator': ultra vires or ultra innovative?" *Fordham International Law Journal*, vol. 28, 2005, p542; Andres Zimmermann / Björn Elberling, "Grenzen der Legislativbefugnisse des Sicherheitsrates – Resolution 1540 und abstrakte Bedrohungen des Weltfriedens," *Vereinte Nationen*, vol. 52, 2004, p71.

¹² For the development of the definitions see Daton, *supra*.

¹³ <http://www.wassenaar.org>.

¹⁴ <http://www.zanggercommittee.org>.

undermining the detailed definitions and control lists created by these bodies. The use of vague terms poses the risk of abrogating higher standards, and lays a foundation for differences in implementation.¹⁵

II. The 1540 Committee

The 1540 Committee, established in accordance with OP4 of the resolution, consists of all members of the Security Council. It is headed by Ambassador Ioan Motoc of Romania. The Committee has a two year mandate, ending in April 2006. However, it seems almost inevitable that the mandate will be prolonged, as the Committee cannot cope with its tasks in the first two years. The reports that member states submitted are reviewed by three subcommittees. When the need for clarifications or additions exists, the country is informed. In August 2005, Ambassador Motoc met with representatives of different regional groups, seeking to raise the number of reports. By October 2005 the Committee is supposed to have finished reviewing the first set of reports. Subsequently, states will be given two more months to hand in second reports with clarifications and additions to the first reports. The review of the second set of reports will take the remaining time of the first mandate of the Committee.

III. Quantitative Analysis

The analytical part of this paper is based on 48 reports submitted to the Committee by 1 June 2005.¹⁶ A chart summarizing the results of examination of the reports is an appendix to this paper. In evaluating the reports, special attention was paid to the measures that the reporting states took after the adoption of resolution 1540 to ensure their compliance. In OP4, the Security Council called upon all member states to submit reports to the Committee regarding their implementation of the resolution no later than six months after its adoption, i.e. 28 October 2004. Only 51 states met that deadline. By January 2005, 86 had been submitted; by 1 June 2005 the number had reached 119. This is a high number for the short time allowed compared with reports submitted to other bodies.¹⁷

In the 48 reports examined, states indicate that by the time of submission altogether 27 measures had been taken on 17 relevant provisions of the resolution, and 50 measures are in the planning phase. The provision as to which the most states (seven) adopted post-resolution measures is OP2. It obligates states to

¹⁵ Ben Steyn, "Understanding the Implications of United Nations Security Council Resolution 1540," *African Security Review*, vol 14(1), 2005, p. 85.

¹⁶ Reports by the following states were examined: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, Columbia, Cuba, Egypt, Finland, France, Germany, India, Indonesia, Iran, Iraq, Israel, Italy, Japan, Kuwait, Libya, Malaysia, Marshall Islands, Mexico, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Philippines, Poland, Republic of Korea, Russian Federation, Saudi Arabia, South Africa, Spain, Sweden, Switzerland, Syria, Thailand, Turkey, United Kingdom, United States, Yemen, and European Union.

¹⁷ See, for example, the reports states submitted on the implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, <http://www.undp.org/bcpr/smallarms/PoA.htm>.

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.

OP3a, which deals with accounting and security measures, is the part of the resolution as to which states have the most measures in the planning phase, namely ten.

Reporting compliance varies visibly in regard to the different provisions of the resolution. Ninety percent of the reports contain a reference to OP2 and OP3d, but OP8d regarding informing the public and industry of non-proliferation obligations and laws was mentioned in just 63% of the reports. Also the number of post-1540 measures taken by different countries vary substantially. The five most active countries report measures taken in relation to six provisions. A number of countries reported one to four measures, but 18 states, more than one third of the sample, made no reference to any measures taken after the adoption of the resolution.

IV. Measures Initiated in Response to Resolution 1540

A. Obligations under international treaty regimes, OP8

With regard to OP8 concerning implementation of multilateral treaties on non-proliferation of nuclear, biological, and chemical weapons, of the 48 reports examined, ten indicate that the states are in the process of ratifying the IAEA Additional Protocol, or they recently implemented certain obligations under the 1993 Chemical Weapons Convention (CWC), or they started fulfilling their obligations under other international treaty regimes like the Convention on the Physical Protection of Nuclear Material (CPPNM). For states that were parties to the relevant treaty regimes the obligations existed before the adoption of resolution 1540. All the states which report their recent implementation of the CWC ratified this instrument between 1994 and 1997. Now it is up to eleven years after the ratification. Though it is regrettable that it took that long for these states to take implementation steps under the CWC, it can be seen as a positive outcome of the resolution that it gave an incentive for the states to comply with their treaty obligations. Some even speak of a “boost to the OPCW’s efforts concerning national implementation of the CWC.”¹⁸ Indonesia, for example, is developing a plan of action under the CWC that is envisaged to be in place at the end of 2005. The work on this plan started before the adoption of the resolution 1540, but was accelerated after April 2004.¹⁹ Although not directly connected to the system of established treaties, resolution 1540 contributes in this way to promoting compliance with these treaty regimes.

¹⁸ Scott Spence: Review Conference Paper No 13, Achieving Effective Action on Universality and implementation – The CWC Experience; April 2005, http://www.brad.ac.uk/acad/sbtwc/briefing/RCP_13.pdf.

¹⁹ Interview with Andy Rachmianto, First Secretary of the Mission to the United Nations, 07/27/05.

States also refer to the CPPNM under OP3b (“develop and maintain appropriate physical protection measures”). The convention is the only international legally binding undertaking in the area of physical protection of nuclear material. In July 2005 a Diplomatic Conference was called to adopt amendments to the convention designed to strengthen its existing provisions and expand its scope to cover, among other points, physical protection against theft of nuclear material used for peaceful purposes, in domestic use, storage and transport; and physical protection of nuclear material and peaceful nuclear facilities against sabotage.²⁰ These amendments will substantially strengthen the convention. The new rules will come into effect once they have been ratified by two-thirds of the 112 states parties of the convention, expected to take several years. The amendment process started before the adoption of resolution 1540 and was not initiated by it. Nonetheless, during these recent CPPNM negotiations the resolution was discussed from time to time in the context of ensuring that the language in both instruments was complementary.²¹ Diplomats from various states stated that although the resolution as such had no direct impact on the amendment of the CPPNM, the changed situation and awareness of non-proliferation, which is expressed by the resolution, definitely had.

B. Measures taken or envisaged under OP2 and OP3

OP2 and OP3 are the paragraphs of the resolution containing the main obligations. Correspondingly, one would expect that states would take the most measures on these paragraphs. As stated above (section III), the provisions of OP2 and OP3d were indeed most cited in the reports. However, regarding the provision as to which the most planned measures were reported, namely OP3a, only ten out of the 48 countries report measures that they are planning to take under this paragraph; only two states report measures already taken in this field. OP2 is the provision as to which the largest number of measures have been taken (seven) and planned (four states plan measures). Still, these figures are relatively low compared to the 48 reports of states examined in this study. However, this should not be seen as a sign of non-compliance. States had just six months to hand in the first report to the 1540 Committee after the adoption of the resolution and thus after learning about their obligations. For the vast majority of countries this was not enough time to negotiate, draft and adopt in their parliaments any “appropriate effective laws” as envisaged under OP2 and “effective measures to establish domestic controls” as prescribed by OP3. Furthermore, as one staff member of the 1540 Committee commented, one should not underestimate the lack of understanding of the resolution. To many states the obligations accruing from the resolution are not clear.

States’ second reports, filling in gaps of the first reports, will be an important indicator of the will of states to comply with the main obligations of the resolution. States receive after the assessment of their first reports by the 1540 Committee a matrix showing what they were expected to report about and what they actually reported on. In the next set of reports a lack of understanding of the obligations will no longer be a reason for not reporting on these paragraphs.

²⁰ <http://www.iaea.org/Publications/Documents/Conventions/cppn.html>.

²¹ Mark Gwozdecky, Chief Spokesperson and Director, Division of Public Information (MTPI), International Atomic Energy Agency.

C. Measures taken or envisaged under OP7

In OP7 of the resolution the Security Council recognized that

some States might 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.

In the reports almost every state refer to this OP and the larger states express their general willingness to meet requests for assistance. Some states make statements about regional group of states to which they will offer assistance. Thus New Zealand reports that it has together with Australia already begun discussions with some Pacific Island states about the resolution, and will be further discussing with them what type of assistance they would find useful to help them implement it.²² Norway reports that it is in the process of identifying states, primarily in Central Asia, for possible assistance regarding implementation of the Comprehensive Test Ban Treaty.²³

Some states make detailed remarks about assistance. Canada states that its government has announced the creation of a permanent Counter-Terrorism Capacity Building Program.²⁴ Through this program, Canada will provide counter-terrorism related training, resources and expertise to partner states to enable them to prevent and respond to terrorist activity. The assistance offered mainly lies in the field of legislative drafting and legal policy assistance related to the ratification and implementation of non-proliferation and arms control-related conventions and measures related to nuclear material and biological agents.²⁵ Columbia reports that it needs “assistance in improving skills transfer and training” and “physical equipment enabling it to respond appropriately to the challenge of detecting, monitoring and prosecuting non-State actors who possess radioactive materials or weapons of mass destruction”.²⁶

The United States reports extensively on bilateral and multilateral cooperation with many countries in the field of WMD materials security and control.²⁷ However, the examples of cooperation mainly refer to projects that were initiated before the adoption of the resolution. The only new project will commence in Asia in 2005, assessing both the legislative and regulatory frameworks for criminalizing the use of weapons of mass destruction for terrorist acts, and the ability of law enforcement institutions and specialized agencies to effectively investigate and prosecute such acts.²⁸ It is striking that out of all the ways of providing assistance that are listed in the U.S. report, only one is in the framework of established

²² S/AC.44/2004/(02)/54, p. 8.

²³ S/AC.44/2004/(02)/31, p. 9.

²⁴ S/AC.44/2004/(02)/110, para 34.

²⁵ S/AC.44/2004/(02)/110, para 35.

²⁶ S/AC.44/2004/(02)/103, p. 7.

²⁷ S/AC.44/2004/(02)/5, pp. 44.

²⁸ S/AC.44/2004/(02)/5, p. 49.

international bodies: the United States will have trained 13,000 IAEA inspectors, export control officials and other nonproliferation experts by 2013. All other measures are mainly on a bilateral basis. This corresponds with the general attitude towards global treaty regimes the United States has shown in recent years.

The United Kingdom started work on its report very soon after the adoption of the resolution, in effect of means of providing assistance under OP7. It created a kind of model report which it distributed to a number of countries, and some used the model in drafting their own reports. For example, some followed the UK example of dividing the report on the OPs into categories of “action taken” and “planned/ongoing action.”

D. Reporting by some states affected by terrorism

Some states have experienced serious terrorist attacks and also are known to have terrorist groups on their territory. Ideally, these states would have shown a sincere interest in compliance with resolution 1540 and in reporting on their compliance. This has not always proved to be the case, raising questions about the political legitimacy of Security Council counter-terrorism efforts. The report of Indonesia, for example, is very short, containing just five pages, and refers only to parts of OP1, 2 and 3. It also only contains information about measures taken before the adoption of the resolution. The report does refer to, without fully describing, Indonesian Law No. 15/2003 regarding the Eradication of Criminal Acts of Terrorism, adopted after the Bali attacks of 12 October 2002. This law contains several provisions that became mandatory under resolution 1540.

Similarly, the report Yemen submitted is the shortest of all reports assessed in this study.²⁹ It consists of just five lines in which Yemen states that it does not possess any kind of WMD. This “report” was submitted only after the Chairman of the 1540 Committee reminded Yemen of its reporting obligation two months after the deadline was passed. Keeping in mind among other things the attacks on the USS Cole of 12 October 2000, several states regard the anti-terrorism measures taken by Yemen as unsatisfactory. For example, in its 2003 report, “Patterns of Global Terrorism,” the U.S. State Department states that “[t]he Republic of Yemen Government continued to cooperate with US law enforcement and to take action against al-Qaida and local extremists in 2003 However, there is still more work to be done to improve counterterrorism capabilities, including implementing a Maritime Security Strategy and increasing border security”.³⁰ Yemen did not make use of the OP7 option of requesting assistance from other states in implementing its obligations under the resolution. The same is true for Saudi Arabia, which also does not mention OP7 in its report.³¹

E. Reporting by some states of proliferation concern

The reports of some countries that pose proliferation concerns are of different nature. Some are salient in their completeness or substance. Others are rather mediocre. The report of Iran

²⁹ S/AC.44/2004/(02)/97.

³⁰ “Patterns of Global Terrorism”, Released by the Office of the Coordinator for Counterterrorism, April 29, 2004, p.70.

³¹ S/AC.44/2004/(02)/65.

belongs to the former category. It is quite comprehensive, containing information about all operative paragraphs.³² In its report Iran states that it considers resolution 1540 to be a short-term step aimed at filling the gap in the non-proliferation regimes. It believes that the most effective way of preventing non-state actors from acquiring WMD is through the total elimination of such weapons. The country's report is silent about any post-1540 measures. Under OP8d Iran refers to the adoption of "The Law of National Implementation of the CWC." However, the work on this bill started before the adoption of resolution.

Pakistan also delivered a comprehensive report to the 1540 Committee,³³ and was one of the first countries to make a submission. The report refers to a new law, "Export Control on Goods, Technologies, Material and Equipment related to Nuclear and Biological Weapons and their Delivery Systems Act." The content of the act covers measures falling in the sphere of OP2, 3b and 3d. The act also provides the authority to administer rules and regulations framed under this legislation. This makes it easier to adjust the act to new threats. It is emphasized that the act's jurisdiction is broad, covering Pakistanis visiting or working abroad. A special oversight board may be established to monitor the implementation of the act. All of these steps can be subsumed under "lessons learned from the A.Q. Khan network."

Malaysia submitted a report with some omissions; no references to OP3a and OP3c are made.³⁴ Also, Malaysia does not report any new measures taken or planned, including only a vague statement that "Malaysia is striving to enhance its control over WMD including by enacting appropriate specific legislations and by implementing its obligations under the relevant international conventions and legal instruments to which it is a Party."³⁵ In the light of the fact that one of the businesses in the A.Q. Khan network was based in Malaysia, one could have expected a complete report and the planning of some concrete steps.

F. Reporting by the permanent five members of the Security Council

Of the five permanent members of the Security Council, only two, France and the United Kingdom, report post-1540 measures to comply with the resolution. France states that at the end of June 2004 it amended its national Order of 22 September 2001 on the manufacture, import, export, possession, transfer free of charge or in return for payment, acquisition and transport of certain biological agents which cause infectious diseases, pathogenic microorganisms and toxins. This amendment is described in the French report as measure to prevent non-state actors from getting access to WMD as prohibited under OP2.³⁶ The Order also affects end-user controls, referred to OP3d and OP6.³⁷ In addition, post-1540-measures were taken in the field of OP8d, which calls upon states to inform industry and the public regarding their obligations under the international non-proliferation regime. In October 2004 France distributed widely a brochure on dual-use, not only to companies but also to the

³² S/AC.44/2004/(02)/105.

³³ S/AC.44/2004/(02)/22.

³⁴ S/AC.44/2004/(02)/35.

³⁵ S/AC.44/2004/(02)/35, p. 8.

³⁶ S/AC.44/2004/(02)/58, p. 12.

³⁷ S/AC.44/2004/(02)/58, pp. 19, 20.

national, regional, decentralized and external public “services” concerned, which are a vital element in the state’s actions regarding small and medium-sized enterprises.

In its report the United Kingdom highlights under OP2 that post-1540 it has adopted regulations on the transfer of uranium enrichment technology. They prohibit making unauthorized disclosures concerning uranium enrichment technology, as this technology can be used to produce weapons grade uranium and has been sought by those seeking to develop nuclear weapons.³⁸ The United Kingdom also enacted post-1540 national legislation in the field of OP3a. On 1 July 2005 a set of security measures for dangerous goods transported by road became mandatory. In addition, a similar code for transport by rail will be introduced shortly.³⁹

It can be said for the report submitted by the Russian Federation that it is the most comprehensive of all evaluated reports; it makes comments regarding every operative provision of the resolution. But Russia, along with China, makes no reference to any measure taken after the adoption of 1540. The U.S. report is by far the longest, consisting of 61 pages. It refers to projects that were taken before the resolution, even dating back until 1954. The report contains detailed information about interaction among departments involved, their competencies, and the steps taken, providing examples. However, the only reference to measures taken after the adoption of the resolution is found under OP7 regarding assistance, a non-mandatory provision of the resolution (see IV(C), above).

Russia and the United States are major powers with global interests that prior to the adoption of resolution 1540 or the September 11 attacks were well aware of the need to prevent proliferation and WMD terrorism. Accordingly, like other large countries, they have legislation, regulations, and other measures addressing key provisions of the resolution. This may explain in part their failure to report measures initiated in response to the resolution. Nonetheless, due to the political sensitivity attaching to the nuclear-armed permanent five imposing rules on the rest of the world and the need to set an example, one would have thought they would have made every effort to take new steps.

V. Reporting regarding disarmament

Among disarmament leaders in recent years have been the countries of the New Agenda Coalition, Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa, and Sweden. Not surprisingly, in their reports they stressed the importance of disarmament. Mexico notes that, in an individual capacity and within the coalition, it is continuing to promote the full implementation of the principles of irreversibility, transparency and verification of nuclear arms control and disarmament.⁴⁰ In the very first part of its report, even before referring to the operative paragraphs of the resolution, Sweden states that it has a long tradition of strong support of disarmament and non-proliferation and is committed to multilateral approaches to

³⁸ S/AC.44/2004/(02)/3, p. 7.

³⁹ S/AC.44/2004/(02)/3, pp. 9,10.

⁴⁰ S/AC.44/2004/(02)/87, p. 6.

meet the threats of proliferation of WMD.⁴¹ For Brazil, a consistent and sustainable long-term international strategy must be necessarily followed by concrete measures in the field of disarmament; it is convinced that only the complete elimination of WMD can ensure that these weapons will never fall in the hands of non-state actors.⁴² Egypt prefaces its report with the statement that the “best method to ensure that [WMD] may not be acquired by terrorist groups or non-State actors ... is for the international community to follow a path that ends in ridding the world of weapons of mass destruction.”⁴³ However, Egypt’s report does not offer comprehensive information on the implementation of the operative paragraphs of the resolution. South Africa, also a disarmament advocate, does not stress this topic in its report,⁴⁴ but expressed in another context its fear that resolution 1540 will have a negative impact on the disarmament agenda.

New Zealand delivered a very comprehensive report in which it refers to all paragraphs and reports on measures it took in relation to OP3a and OP7. The country excels in stressing the connection of resolution 1540 and disarmament. In the first sentence regarding OP1 New Zealand recalls its policy that “all weapons of mass destruction should be eliminated, and that this elimination should be verified and enforced through robust legally binding multilateral disarmament instruments.”⁴⁵ In relation to OP9 New Zealand states that non-proliferation is a problem that can not be seen out of context but has rather to be addressed comprehensively: the “most effective non-proliferation moves we could make collectively would be to ensure and enhance compliance with the NPT in all its aspects including nuclear disarmament and a Fissile Material Cut-Off Treaty with strong verification provisions“. New Zealand also highlights in relation to OP8d the role that NGOs can play in disarmament and non-proliferation education.

When it comes to disarmament, the reports of the permanent five contain fewer references than those of the New Agenda countries. China’s 17 page report nowhere mentions the word “disarmament.” The Russian Federation refers only to two legal acts that regulate the implementation of the Chemical Weapons Convention. France states that it favors initiating negotiations in the Conference on Disarmament on a Fissile Material Cut-off Treaty. Other substantial references to disarmament and its relationship to non-proliferation cannot be found in the report. The United Kingdom states that it “has long promoted the universal adoption and full implementation of main multilateral disarmament and non-proliferation treaties and will continue to do so.”⁴⁶ The U.S. report lacks reference to disarmament measures applicable to the United States and rather emphasizes its efforts to ensure progress on non-proliferation and compliance with arms control agreements by other countries. The report notes that the United States has worked to ensure that non-proliferation is a topic of discussion in various fora, including the Conference on Disarmament. The report also cites section 403 of the Arms Control and Disarmament Act, which requires an annual report to be submitted to the Department of State that identifies each and every question that exists with

⁴¹ S/AC.44/2004/(02)/41, p. 2.

⁴² S/AC.44/2004/(02)/17, p. 3.

⁴³ S/AC.44/2004/(02)/88, p2.

⁴⁴ S/AC.44/2004/(02)/102.

⁴⁵ S/AC.44/2004/(02)/54, p2.

⁴⁶ S/AC.44/2004/(02)/3, p. 14.

respect to compliance by other countries with their arms control, non-proliferation, and disarmament agreements with the United States. Generally, the U.S. report does not acknowledge the interdependence of non-proliferation and disarmament, emphasized by New Zealand among others.

VI. Conclusion

It took the 1540 Committee a long time, until the beginning of 2005, to establish itself and start substantive work. At the end of its two-year mandate in April 2006 its task will not be completed; it will just have assessed the second set of state reports. There is a common understanding among involved actors that a renewal of the mandate is necessary and inevitable. In its second term the Committee will be in a position to assess whether inadequate reporting stem from a lack of understanding or capacity, or if it, more disturbingly, reflects a lack of will to cooperate with the Committee. Beyond reporting issues, the more difficult question can be asked: are states in compliance with the resolution? If not, what steps are to be taken to achieve compliance? At the moment it is too early to ask such questions, especially as there is no common understanding among states regarding what the resolution requires. Finally, when and where compliance is achieved, the bottom-line question will need to be addressed: has it made a significant contribution to preventing WMD terrorism? At this point, it can be said that there has been a high level of state participation in reporting, and that the resolution has inspired at least a modest increase in activity relevant to preventing WMD terrorism, particularly in complying with existing requirements of treaty regimes and in cooperating with other states. The second series of state reports will hopefully confirm these trends and in addition reveal far more vigorous implementation of 1540 requirements.

	submission	new legal instruments under OP 1	new legal instruments under OP 2	Accounting and security measures, OP 3a	Physical Protection measures, OP 3b	Border control, OP 3c	Law enforcement efforts, OP 3c	Export and "trans-shipment" controls, OP 3d	reporting obligation, OP 4	relation to other regimes, OP 5	National control list, OP 6	Implementation assistance, OP 7	universal apotion and full implementation of treaty regimes, OP 8a	National rules ensuring compliance with multilateral treaties, OP 8b	Cooperation with IAEA, OPCW and BWC, OP 8 c	Inform industry and public, OP 8d	dialogue and cooperation on non-proliferation, OP 9	Cooperative action to prevent illicit trafficking in WMD, OP 10	PSI	pages
Philippines	28-Oct-2004	x	x	x	x				P	x	x	x								14
Poland	27-Oct-2004	x	x	x	T	x	x	x	x	x	x	x	x	x	x	x	x	x	x	39
Republic of Korea	27-Oct-2004	x	P	P	T	x	x	P	x	x	x	x	x	x	T	x	x			10
Russian Federation	26-Oct-2004	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	16
Saudi Arabia	1-Nov-2004	x				x							x		x					3
South Africa	31-Jan-2005	x	x	x	x	x	x	x			x	x	x	x	x	x		x		13
Spain	26-Oct-2004	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	9
Sweden	28-Oct-2004	x	x	P	x	P	x	x	x	x	x	x	x	x	x	x	x	x	x	9
Switzerland	22-Oct-2004	x	x	x	x	x		x			x		x						x	3
Syria	14-Oct-2004	x	x	P	P	x		x			x	x	x	x	x					5
Thailand	5-Nov-2004	x	x	P		P		x			P	x	x	P						5
Turkey	1-Nov-2004	x	T	x	x	x	x	x			x		x	x	x				x	5
United Kingdom	29-Sep-2004	x	T	P	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	19
United States	12-Oct-2004	x	x	x	x	x	x	x			x	P	x	x	x	x	x	x	x	61
Yemen	29-Dec-2004																			1
European Union	28-Oct-2004		x	x	x	x	x	T			T	x	x		x				x	16

Information based on the data given in the reports available until 01-Jun-2005

P : a new step is planned

T : a new step has been taken

x : the OP was mentionend, but no step has been taken after the adoption of the resolution