

## Expert Group of the 1540 Committee

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**Year of Establishment:** 2005

**CTITF Working Group Membership:**

- Preventing and Responding to WMD Terrorist Attacks
- Border Management Related to Counter-Terrorism

United Nations Security Council Resolution 1540 was adopted under Chapter VII of the UN charter on April 28, 2004 to address proliferation of nuclear, chemical, and biological weapons and their means of delivery, with a focus on proliferation by non-state actors. The resolution was sponsored by the United States and the United Kingdom because they believed that existing international law did not address the threat of non-state actors acquiring weapons of mass destruction (WMDs) for the commission of a terrorist act.<sup>66</sup> Much of this concern

arose from revelations in late 2003 that the A. Q. Khan Network in Pakistan had been selling nuclear information, materials and/or technology to Iran, Libya, and North Korea and engaging with vendors and middle men, sparking fears that Al Qaida or another terrorist organization may have purchased the materials as well.<sup>67</sup>

The resolution was adopted unanimously after months of negotiations. The responsibility for implementation of resolution 1540 rests on states.<sup>68</sup> As the Comprehensive Review of the 1540 Committee points out, “effective implementation means enforcing the law, not just adopting it, and building appropriate capacities.”<sup>69</sup> As with UN Security Council Resolutions 1267 and 1373, a “committee of the whole” was established encompassing all fifteen sitting members of the Security Council, and supported by the UN Department of Political Affairs (DPA) and the UN office of Disarmament Affairs (ODA).<sup>70</sup> The 1540 Committee is composed of three subcommittees that share the task of considering national reports submitted by states. Beginning with its eighth program of work on February 1, 2009, the committee established four working groups in the following areas:

- Monitoring and national implementation
- Assistance
- Cooperation with international organizations, including Security Council committees 1267 and 1373
- Transparency and media outreach<sup>71</sup>

Several states expressed concerns about the burdens imposed by the resolution on already strained capacities and the resolution’s failure to address nuclear-weapons disarmament. Moreover, some states objected to the Security Council once again taking on a legislation role, as it had in resolution 1373 by requiring all states, under Chapter VII of the UN Charter, to take specific measures to address the threat from terrorists in their territory.<sup>72</sup> In order to assuage some states’ concerns, this resolution, unlike UN Security Council Resolution 1373, recognizes that states may require assistance in implementing the provisions of the resolution.

Among its obligations, Resolution 1540 calls upon states, for the

first time ever, to take effective measures against the proliferation of WMD and related materials, and their means of delivery. This includes refraining from providing any form of support to nonstate actors attempting to develop, acquire, manufacture, process, transport, or transfer nuclear, chemical, or biological weapons or their means of delivery; adopting and enforcing laws to prohibit such proliferations; and taking measures to control these items.

Some states also raised objections to the resolution's emphasis on nonproliferation of nuclear technologies, which they felt was not compatible with states' commitment to promote scientific and technological exchange for peaceful purposes in the Biological and Toxin Weapons Convention (BTWC).<sup>73</sup>

In August 2004, the committee set up guidelines for the preparation of national reports pursuant to paragraph 4 of Resolution 1540, which stipulated that states were expected to submit their first reports no later than October 28, 2004, documenting steps they had taken or intended to take to implement the resolution.<sup>74</sup> Of the 192 member states, fifty-nine states met the deadline, with the EU also making a submission. By April 2011, twenty-four states, mainly from the African region, had not yet reported.

Drawing from the experiences of other Security Council committees, the 1540 Committee recognized the need for independent expertise and set up an expert group, appointed by the Secretary-General and approved by the committee in May 2005. The Expert Group of the 1540 Committee has up to eight experts appointed to assist the committee in assessing states' progress in implementing Resolution 1540, by reviewing the reports submitted by states. A number of reporting states have requested technical assistance in order to meet the requirements of the resolution. In response, the committee has acted as a clearinghouse by providing a list of states' needs and details of those states and international organizations offering assistance.

Resolution 1810 (2008), which extended the committee's mandate for the second time, urged the committee to strengthen its role in providing technical assistance through "such means as assistance,

templates, actions plans, or other information submitted to the 1540 Committee.”<sup>75</sup> In 2010, the committee adopted revised procedures for responding to requests for assistance, including distributing the request within one week to the appropriate donors and acting as an informal matchmaker between states and donors.<sup>76</sup> Experts supporting the 1540 Committee brief the Working Group on Assistance every two months on the progress made by states and the extent to which their requests for assistance have been met.<sup>77</sup>

As country reports reflect a range of capacities in fulfilling the obligations of the resolution, the Expert Group developed a matrix with 382 fields representing the requirements of the resolution for each state. The experts have used a range of available information, including national government reports, official government reports and other information made available by intergovernmental organization to perform assessments of states’ counterterrorism capabilities using matrices. The matrix system has helped the committee to identify areas where there are gaps in enforcement in order to facilitate technical assistance in those areas. In the spirit of transparency, and with the consent of states, the matrices are posted on the committee’s website where respective countries can review and respond by supplying additional or up to date information to the committee. According to the 2009 background papers prepared by the Expert Group as part of the Comprehensive Review on the Status of Implementation of Resolution 1540, “the Matrix has become the basis for informed dialogue between the 1540 Committee and individual States, including evolving as a format that States use in preparing reports to the Committee.”<sup>78</sup>

However, feedback from member states documented in the *Comprehensive Review of the Status of the Implementation of Resolution 1540 (2004)*, indicated that some states found the matrix system overly complex and called for the development of a more user-friendly matrix.<sup>79</sup>

The 2009 background papers prepared by the expert committee also illuminate a number of challenges facing the 1540 Committee. One significant challenge is the wide variety of approaches adopted by states to fulfill their obligations under Resolution 1540, especially

since the 1540 Committee has been unable to explore sufficiently the differences between these approaches.<sup>80</sup> Moreover, states determine on a national basis what constitutes “appropriate” and “effective” practices, and the committee does not create specific standards, although it does encourage states to share experiences and lessons learned. In addition, the committee’s limited ability to monitor the impact of Resolution 1540 on states’ execution and enforcement of laws has led some to criticize the committee’s reporting system for promoting “paper compliance,” arguing that an arrangement that ensures greater accountability is needed.<sup>81</sup>

Indeed, the final paper for the comprehensive review, which drew on discussions over three days of open meetings from September 30–October 2, 2009, offered several recommendations to help address various challenges and facilitate states’ implementation of Resolution 1540. They include: increasing outreach efforts (such as country visits); enhancing the facilitation of technical and legal assistance; and strengthening cooperation with regional, subregional, and multilateral institutions, among other recommendations.<sup>82</sup>

As a member of the CTITF focused primarily on preventing the proliferation of weapons of mass destruction, the 1540 Committee is a core member of the CTITF Working Group on Border Management Related to Counter-Terrorism as well as the Working Group on Preventing and Responding to WMD Terrorist Attacks. In its capacity as a member of the Working Group on Preventing and Responding to WMD Terrorist Attacks, the Expert Group of the 1540 Committee works to enhance coordination and information exchange with other UN entities and relevant international organizations such as the International Atomic Energy Agency (IAEA) and the Organization for the Prohibition of Chemical Weapons (OPCW), both of which are co-chairs of this working group. As a member of the Working Group on Border Management, the Expert Group helps to provide guidance to member states on counterterrorism border-control measures.

On April 20, 2011, the Security Council unanimously adopted Resolution 1977 (2011), which reaffirms Resolution 1540 and calls on states to implement measures to address the serious challenge and threat posed by the proliferation of weapons of mass destruction and

their means of delivery, in particular by nonstate actors. Security Council Resolution 1977 extends the mandate of the 1540 Committee for a period of ten years, until 2021. The Security Council thus recognizes that full implementation of Resolution 1540 by all states is a long-term task that will require continuous efforts at national, regional, and international levels.