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**Implementing Resolution 1540:
The Role of Regional Organizations**

Lawrence Scheinman editor

UNIDIR/2008/8

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the Role of Regional Organizations**

Lawrence Scheinman
Editor

UNIDIR
United Nations Institute for Disarmament Research
Geneva, Switzerland



UNITED NATIONS

New York and Geneva, 2008

About the cover

Cover photograph © Dean Calma/International Atomic Energy Agency, 2005

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| UNITED NATIONS PUBLICATIONS |
| Sales No. G.V.E.08.0.1 |
| ISBN 978-92-9045-190-7 |

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ACKNOWLEDGMENTS

The editor would like especially to thank Johan Bergenas for his indefatigable effort and outstanding contributions to this project from the very beginning, and to the authors of the three studies for their excellent contributions.

At UNIDIR, the editor would especially like to thank Director Patricia Lewis, for her interest in the topic and initiative in seeking support to make the study possible, and as well Kerstin Vignard and Nicolas Gérard for ensuring that both substantively and procedurally the project moved from concept to completion.

Finally, special thanks to the Government of Norway for generously funding this project.

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FOREWORD

At the dawn of the twenty-first century, the threat posed by the proliferation of weapons of mass destruction (WMD) to non-state actors emerged as a very real and serious danger to global peace and security. There is ample evidence that non-state actors, in particular terrorist organizations, actively seek out these deadly weapons. Traditional deterrence or threat of retribution will not convince terrorists to lay down their weapons and we must assume that if some terrorist organizations do acquire WMD or a radiological disperseive device, they will use it. The consequences of such an attack would be horrific and global. As a result, it is of the utmost importance to keep these deadly weapons and their precursor materials beyond the reach of non-state actors.

In 2004, to counter the WMD terrorism threat, the United Nations Security Council unanimously passed Resolution 1540 under Chapter VII of the UN Charter. If the resolution is comprehensively implemented by all states, the potential for terrorist access to these deadly technologies would diminish significantly now and for the foreseeable future. However, implementation of the resolution's provisions has, from its inception, been uneven.

In recent years, Kofi Annan, Ambassador Peter Burian (Chair of the 1540 Committee from 2006 to 2008) and others have urged greater involvement of regional organizations in security-related matters. Indeed, regional organizations are already active on security issues in their respective areas of the world. In light of Resolution 1540's implementation challenges and the track record of regional organizations in security-related matters, the United Nations Institute of Disarmament Research (UNIDIR), together with the James Martin Center for Nonproliferation Studies at the Monterey Institute of International Studies (MIIS), assembled a team of experienced scholars and practitioners with regional knowledge to examine the role regional organizations can play in facilitating implementation of Resolution 1540. This book is the result of that research and focuses on the efforts to implement the resolution in Africa, Latin America and South-East Asia and the Pacific Islands.

UNIDIR and the MIIS James Martin Center for Nonproliferation Studies have a long-standing and successful collaboration on research on nuclear

non-proliferation, nuclear arms control and disarmament and relevant educational endeavours. We are delighted to have the opportunity to work together again on what is one of the most important and solvable issues of our time. We hope that our work will provide ideas for further debate, particularly in the regional organizations that are so important in providing global security.

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CHAPTER 1

INTRODUCTION

Lawrence Scheinman

United Nations Security Council Resolution 1540 (2004) is one in a series of measures taken to address threats to the political and social order deriving from access to, or use of, weapons of mass destruction (WMD), related materials and means of delivery. It is distinct from existing treaty-based non-proliferation/arms control regimes—for example the Treaty on the Non-Proliferation of Nuclear Weapons, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction—that govern the behaviour of states party to those treaties in several respects: it covers all WMD and it reaches beyond the state and focuses explicitly on the risk that non-state actors, in particular organizations bent on undermining or supplanting civil society, might “acquire, develop, traffic in or use nuclear, chemical and biological weapons and their means of delivery.”¹ And it goes beyond existing anti-terrorism conventions that collectively impose similar though less comprehensive obligations on convention parties in that, being adopted under Chapter VII of the UN Charter, the resolution is binding on all Member States of the United Nations.

Specifically, Resolution 1540 requires that all states:

- “refrain from providing 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”;²
- consistent with national procedures, “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”;³ and

- “take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials”; developing means to account for and secure such items; developing physical protection, border, export, transit and transshipment and re-export measures and controls; and “establishing and enforcing appropriate criminal or civil penalties for violations of such ... laws and regulations”.⁴

The obligatory nature of the resolution raises the question of implementation. This is, for many states, a daunting task. As noted in an early analysis of the resolution, “This is especially true for many of the world’s developing states, some of which, even if they have the will to [implement the resolution], lack resources. States particularly affected are those which are not already parties to the relevant WMD treaties and do not therefore already have the appropriate measures in place—and those which, although parties, have not fully implemented their obligations.”⁵ Sources of support for meeting the objectives of 1540 include self-help, bilateral assistance, assistance from specialized international organizations such as the International Atomic Energy Agency and the Organization for the Prohibition of Chemical Weapons, multilateral organizations such as the Organization for Security and Co-operation in Europe, non-governmental organizations such as the Stockholm International Peace Research Institute and the Verification Research, Training and Information Centre, and regional and subregional organizations, which are the focus of this report.

Notwithstanding differences between Resolution 1540 and other resolutions, such as those dealing with terrorism and counter-terrorism—whether or not involving WMD, in terms of scope and legislating what states must do—it is clear that there exists a substantial degree of similarity between them in so far as their objectives of preventing, prohibiting or defending against defined activities are concerned. Resolution 1540, however, is far less explicit or attentive than are some of these other resolutions to the potential role of regional and subregional organizations in promoting or supporting implementation. It makes only one explicit reference to regional or subregional organizations in preambular language that recognizes “the need to enhance coordination of efforts on national,

subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security".⁶ On the other hand, resolutions addressing counter-terrorism give greater attention to regional organizations in moving their agendas forward. For example, Security Council Resolution 1526, passed shortly before 1540, "Urges all States and encourages regional organizations, as appropriate, to establish internal reporting requirements and procedures on the trans-border movement of currency ...",⁷ and "Urges all States and encourages relevant international, regional and subregional organizations to become more directly involved in capacity-building efforts and to offer technical assistance ...",⁸ thereby directly engaging regional and subregional organizations in implementing the purposes of the resolution.

Resolution 1566, introduced by Russia in the wake of the hostage-taking incident in Beslan that cost the lives of hundreds of students and teachers, specifically referenced Resolution 1540 and:

[called] upon relevant international, regional and subregional organizations to strengthen international cooperation in the fight against terrorism and to intensify their interaction with the United Nations and, in particular, the CTC [Counter-Terrorism Committee] with a view to facilitating full and timely implementation of resolution 1373 (2001);

[requested] the CTC in consultation with relevant international, regional and subregional organizations ... to develop a set of best practices to assist States in implementing the provisions of resolution 1373 ... , [and]

[directed] the CTC, as a matter of priority and, when appropriate, in close cooperation with relevant international, regional and subregional organizations to start visits to States ... in order to enhance the monitoring of the implementation of resolution 1373 (2001) and facilitate the provision of technical and other assistance for such implementation⁹

Why focus on regional and subregional organizations? First and foremost, as then Secretary-General Kofi Annan noted in his July 2006 report to the Security Council and General Assembly on cooperation between the United Nations and regional and other organizations,¹⁰ regional and subregional institutions have over time become accepted and important partners in assisting the United Nations, and other international institutions,

in combating threats to peace and security. More specifically, taking note of efforts to prevent access by non-state actors to WMD-related materials and technology, “including in the context of the implementation of Security Council resolutions 1540 (2004) and 1673 (2006)”, Annan asserted that “further progress can be achieved through United Nations interaction with regional and other intergovernmental organizations ... to strengthen States’ national capacity to implement their obligations”¹¹ under those resolutions. Today, regional and subregional organizations are engaged in addressing problems such as cross-border crime, the threat from terrorism and the proliferation of small arms and light weapons. There are clear linkages between these issues and the concerns at the heart of Resolution 1540. A strong case can be made that, in taking steps to meet the challenge posed by WMD, states will also strengthen themselves to confront the challenges these other issues pose to security: many of the measures necessary to meet the threat posed by WMD are relevant to more conventional challenges to national security, and regional and subregional organizations can help to ensure that the steps taken by their members are compatible, effective and mutually reinforcing.

Second, regional and subregional organizations tend to have a high degree of political legitimacy and enjoy a high level of confidence among their members. These organizations consist of states that have voluntarily joined together on the basis of shared values, interests, history, experience and objectives, thus offering a greater prospect of achieving agreement and consistency regarding how to address, implement and sustain a mandate that is binding on all of them. While the United Nations also enjoys legitimacy and confidence among its members, a number of states, among them Brazil, India, Pakistan and South Africa, raised questions about the legislative nature of 1540, and the appropriation by the Security Council of authority and powers normally associated with sovereign states. Given that such questions have been raised, enlisting the active support of regional and subregional organizations to endeavour to ensure that their members take appropriate steps to meet the objectives of 1540, and to assist them directly or indirectly in doing so to the extent possible, is both logical and essential. It should be in the interest of these organizations that none of their members turn out to be a weak link in the regional or global chain aimed at addressing the threat of non-state actors gaining access to WMD, which if used would have security implications from which no state or region could escape.

A third, related consideration is that regional organizations can play an important role in achieving a common understanding and interpretation of steps necessary to take to ensure that their members work together to close gaps in 1540 implementation and to remedy inconsistencies that, if left unchecked, could undermine the common good of the member states and the broader international community. In particular, regional and subregional organizations can assist members in identifying needs, capacity-building, resource assistance, cost sharing and the like, and in assuring that actions taken by their members are mutually reinforcing. They are in a stronger position than global institutions to assess how effectively the measures taken by their members are being implemented, and to take initiatives to help remedy deficiencies.

In short, authority, legitimacy and confidence are all issues in play and regional organizations are one way—an important way—to address them. They enjoy legitimacy among their members who freely joined them and who benefit from the resources these organizations have at their disposal, and they have authority deriving from the mandates granted by their member states. Because of these attributes regional organizations are in a position to direct and assist member states in a variety of ways that might be seen as intrusive if coming from a global organization or a powerful out-of-region state whose direct involvement might be interpreted in neocolonial terms. Indeed, it has been noted that for some states—particularly in the developing world—anti-terrorism, especially in conjunction with WMD, is not their problem, but a problem of the United States, or any advanced industrial western state more generally, and they should not be put in the position of being drawn into facing such challenges. Regional organizations that include members with a more global perspective can help to bridge the differences between local issues and those of the broader international system.

Over the past several years, in line with the remarks above by Annan, there has been progressive recognition of the relevance and value of regional and subregional organizations in the area of peace and security, with particular reference to Resolution 1540. One conclusion of a workshop organized by the governments of Chile, Germany and Norway on promoting fuller implementation of national non-proliferation controls, including obligations contained in Resolution 1540, was that while implementation of national controls is a national responsibility, priorities should be set by national governments and regional organizations and that it can be easier to discuss

and set priorities and to deal with national controls in regional rather than in bilateral or universal forums.¹² Resolution 1673, which extended the mandate of the 1540 Committee until April 2008, underscored the importance of cooperation with relevant organizations, including international, regional and subregional organizations in particular, with respect to facilitating implementation of 1540. This is consistent with Security Council recognition of the important role that regional and subregional organizations play in peacekeeping, peace-building and the fight against terrorism and illicit weapons¹³—a point reaffirmed and expanded upon in Resolution 1810 of 25 April 2008, which further extends the mandate of the 1540 Committee until 2011. While not explicitly addressing 1540, the Security Council urged regional and subregional organizations to support counter-terrorism activities, which implicitly would include the objectives of 1540. In the course of the discussion, France underscored several areas where increased cooperation between the Security Council and regional and subregional organizations would be beneficial, especially in preventing access by non-state actors to WMD.

Other examples of recognition of the importance of regional and subregional organizations to promoting and implementing Resolution 1540 could be offered, but the point of their relevance and importance is sufficiently made in the remarks cited above. A considerable amount of activity involving global, regional and subregional entities has taken place over the course of the past several years with respect to small arms and light weapons, conventional terrorism and the like. This leads to the obvious question of the degree of their success in meeting their objectives, and whether the experience of dealing with non-WMD activities offers lessons for pursuing the WMD agenda in regions where such issues, particularly in relation to non-state actors, are not seen as a high priority matter. The challenges of terrorism and illicit trafficking are presumably as applicable in one sector as in another—be it small arms and light weapons, drugs, or chemical, biological and nuclear materials—and what is done to address one challenge is largely applicable to the other. Does that make it easier to implement specific 1540 objectives in regions where WMD are seen as “their” problem, rather than simply “ours”? Are methods and practices transferable between the two arenas of concern?

While other organizations, in particular the Organization for Security and Co-operation in Europe, are involved in substantial ways in assisting states—particularly their members and partners—in meeting the objectives

of Resolution 1540, and in so doing help to set standards to which others should adhere, the following chapters deal with the experience of regional and subregional organizations in three regions in the southern hemisphere: Africa, Latin America, and South-East Asia and the Pacific Islands. In part they were selected either because of the limited nature of reporting by their member states to the 1540 Committee as required by the resolution, because of perceptions within those regions that the challenges that drove the Security Council to issue Resolution 1540 were not relevant to them—that WMD proliferation or chemical, biological or nuclear terrorism (in contrast to conventional terrorism) was a problem elsewhere and not in their neighbourhood, that other challenges were of greater significance, such as poverty, small arms and light weapons, or HIV/AIDS—or some combination thereof. What role did or could regional and subregional organizations play in capturing their members' attention and energy and beginning to invest them with a sense of ownership of the problems posed by the prospect of non-state actor access to WMD or related materials, the presence of illicit trafficking by criminal elements, the use of their homeland as transit points for the transfer of such items, and the like? What are the opportunities and the limits for regional and subregional organizations to make a difference?

Notes

- ¹ Security Council, UN document S/RES/1540, 28 April 2004, pre. para. 8.
- ² *Ibid.*, op. para. 1.
- ³ *Ibid.*, op. para. 2.
- ⁴ *Ibid.*, op. para. 3.
- ⁵ Gabriel Oosthuizen and Elizabeth Wilmschurst, *Terrorism and Weapons of Mass Destruction: United Nations Security Council Resolution 1540*, Chatham House, Briefing Paper BP 04/01, September 2004, p. 6.
- ⁶ Security Council, UN document S/RES/1540, 28 April 2004, pre. para. 10.
- ⁷ Security Council, UN document S/RES/1526, 30 January 2004, op. para. 5.
- ⁸ *Ibid.*, op. para. 25.
- ⁹ Security Council, UN document S/RES/1566, 8 October 2004, op. paras 6–8.

¹⁰ United Nations, *A regional–global security partnership: challenges a opportunities, Report of the Secretary-General*, UN document A/61/204–S/2006/590, 28 July 2006.

¹¹ *Ibid.*, para. 45.

¹² Workshop on National Non-proliferation Controls, New York, 27 March 2007. See Chair’s Summary at <www.7ni.mfa.no/Activities/Activity+reports/070327+New+York/Chair+summary.htm>.

¹³ See Security Council, UN document SC/9163, 6 November 2007.

CHAPTER 2

RESOLUTION 1540 IN LATIN AMERICA AND THE ROLE OF THE ORGANIZATION OF AMERICAN STATES

Monica Herz

INTRODUCTION

In this chapter the prospects for the implementation of Resolution 1540 in Latin America are discussed. The normative and institutional conditions for the resolution to have an impact in the region are discussed and the role that the Organization of American States (OAS) may play in this context is presented. The argument departs from the well-established supposition that regional institutions should play an important role in managing security issues and that they are most effective when working in cooperation with more universal institutions such as those within the UN system.

The horizontal proliferation of weapons of mass destruction (WMD) has been on the international agenda since the end of the Second World War and the spread of industrialization, the process of decolonization and regional tensions have generated further concern regarding this. But until the end of the Cold War the threat posed by the proliferation of WMD originated from state actors. Since the mid-1990s the linkages between terrorism and WMD have been on the agenda of great powers—states are no longer the sole source of concern. This movement, prompted by the changing nature of global terrorism, by the availability of technology and resources on the international market and by the use of chemical weapons by terrorists on the Tokyo underground in March 1995 sets the political and military context for the debate and decision on Resolution 1540.

In Latin America, after the nuclear rapprochement between Argentina and Brazil and the consolidation of the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Tlatelolco Treaty), the WMD non-proliferation regimes were understood as part of a web of institutions provided by the international system to which national

governments chose to adhere. Although attempts to reform existing institutions remain on the agenda of a number of actors, the pattern established since the 1990s is one of acceptance of these multilateral institutions. This reality is a positive base for implementation of 1540 but obviously a paradigmatic change involving the incorporation of concern with non-state actors raises several questions.

Although only Colombia has accepted the wider framework of the “war on terrorism” according to the policies of the Government of the United States, Latin American countries cooperate on a bilateral basis with the United States and with European countries in fighting terrorism and take part in multilateral initiatives on international and regional bases. Thus we have a second positive point of departure for the implementation of 1540. Nevertheless the resolution requires actions from states that move beyond the exchange of information and the adoption of surveillance mechanisms or training methods. Thus issues of institutional capacity and norm legitimacy are raised.

This chapter argues that the OAS, among other institutions, can play a role in supporting the implementation of 1540 and that a regional effort in this direction is a piece of the larger puzzle that should allow this resolution to have an impact. This argument is based on the fact that the organization moved toward greater activism in the 1990s, establishing a role in the security sphere. In this context the traditional defence of the principle of state sovereignty acquired a more flexible meaning. On one hand the increasing role of confidence-building measures in the relations among the countries of the hemisphere indicates significant room for the expansion of this practice so as to generate a more robust compliance guarantee regarding WMD. On the other hand the consolidation of a regime for the protection of democracy in the Americas in the 1990s testifies to the capacity of the OAS to play a role in regime compliance. Given the legitimacy and institutional requirements for implementation of 1540 this regional forum may play a complementary role.

CONDITIONS FOR IMPLEMENTATION IN LATIN AMERICA

Latin American countries have forsworn WMD and the region does not represent an important threat to the non-proliferation regimes today. Adherence to arms control treaties and organizations is widespread and

adherence to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (CWC) and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (BTWC) is nearly universal. The annexes to this chapter present a general picture of the relationship between the countries in the region and the conventions, treaties and organizations that form the WMD non-proliferation regimes.

Latin America produced in 1967 the first regional treaty that prohibits nuclear weapons in a populated area of the world, the Tlatelolco Treaty,¹ which was signed by all 33 states of the region. The treaty has become a model for the establishment of other nuclear-weapon-free zones in various regions of the world, such as the South Pacific (Treaty of Rarotonga, 1986), South-East Asia (Treaty of Bangkok, 1995) and Africa (Treaty of Pelindaba, 1996).²

The treaty prohibits testing, use, manufacture, production, acquisition, receipt, storage, installation, deployment and any form of possession of nuclear weapons. It also establishes negative guarantees. Additional Protocol II prohibits nuclear-weapon states from attacking any party to the treaty. The treaty establishes in Article 13 that states should negotiate multilateral or bilateral agreements with the International Atomic Energy Agency (IAEA) for the application of the agency's safeguards to their nuclear activities. The Tlatelolco Treaty created the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL). In 1992 OPANAL approved amendments to Articles 14, 15, 16, 19 and 20 that were designed to change the verification procedures of the treaty. One additional organization deals with issues related to nuclear non-proliferation: the Brazilian–Argentine Agency for Accounting and Control of Nuclear Materials (ABAAC).

Nevertheless, the southern cone of Latin America used to be one of the subregions in focus regarding concerns over the proliferation of WMD. Argentina and Brazil had for some years embarked on programmes that could have led to the development of nuclear weapons, both having been nominated "threshold countries". Both countries refused for a very long time to join the NPT, regarding the regime as discriminatory and unfair; both rejected full-scope safeguards by the IAEA, although they had accepted

international safeguards on facilities developed with foreign assistance. They also opposed the use of nuclear supplier guidelines to restrict their access to sensitive technology and cooperated with Middle Eastern nations suspected of having nuclear weapons programmes.³ In addition they defended the right to develop “peaceful nuclear explosives”.

In the 1990s Argentina and Brazil, along with South Africa, became examples of proliferation “rollback”.⁴ Between 1985 and 1988 a nuclear regime was built, laying the institutional foundations for verified nuclear non-proliferation in the 1990s. Argentina and Brazil engaged in nuclear confidence-building measures and sought to integrate their national nuclear programmes. During this period cooperation expanded from commercial accords to a number of projects which included information-sharing, research and collaboration on research-reactor fuel production, nuclear instrumentation, isotopic enrichment, nuclear physics, non-destructive tests of nuclear materials, fast-breeder reactor development, safeguard techniques, reporting and mutual aid in the event of a nuclear accident.⁵

In 1987 the Brazilian government acknowledged the “parallel” nuclear programme (the Brazilian Autonomous Programme of Nuclear Technology), under military direction, and by 1991 the IAEA was allowed to inspect formerly secret nuclear facilities.⁶ The 1988 Brazilian constitution allows for nuclear activities only for peaceful purposes and if approved by the national congress.

ABAAC was created in 1991⁷ in order to control the application of the Common System of Accounting and Control. This is a full-scope safeguards system based on the verification that nuclear material in all nuclear activities of the parties is not diverted to uses not authorized under the 1991 bilateral Agreement on the Exclusively Peaceful Uses of Nuclear Energy. The agency has 86 inspectors at its disposition, functions as an international organization and its headquarters are in Rio de Janeiro. This agency and the European Atomic Energy Community are the only organizations to apply regional nuclear safeguards. In 1991 Argentina and Brazil committed fully to the Tlatelolco Treaty and established mutual verification and nuclear facility inspection procedures. In 1994 the Quadripartite Safeguards Agreement⁸ came into force, the verification system having assumed a multilateral dimension. The full accession of both countries to the Tlatelolco Treaty took place that same year.

The coordination between the bilateral agency and the IAEA is supposed to guarantee the application of safeguards to nuclear material in all nuclear activities taking place within the territories of Argentina and Brazil. This regional system holds the advantage of dealing with a small number of installations and being able to use formal and informal channels, making more information available than the two countries would be obliged to submit to the IAEA. On the other hand, the Quadripartite Agreement confers international legitimacy to the system, confidence having transcended the regional limits and technical credibility having been acquired.⁹ The ongoing cooperation between the two countries in the nuclear field finally led to the creation of the Brazil–Argentina Nuclear Energy Application Agency in 2001.

On 10 February 1995 Argentina deposited the instrument of accession to the NPT and Brazil did the same on 18 September 1998. Argentina joined the Nuclear Supplier Group in 1994. These decisions should also be understood in the wider context of universalization of NPT membership which took place during that decade.

Additional protocols to international safeguards agreements with the IAEA, intended to give the agency additional powers to detect clandestine nuclear programmes in undeclared locations, were signed by Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Panama, Peru and Uruguay.¹⁰

The move towards the formation of a nuclear regime in Latin America took place during a period of great optimism regarding a post-Cold War nuclear order launched in Reykjavik in 1986. Nevertheless after these golden years of nuclear rejection proved to be a “false dawn”, the situation in Latin America did not change.¹¹ This reflects a growing normative consensus against nuclear weapons that developed during the 1980s partly as a result of the existing non-proliferation regime. Nuclear capability was seen as a stumbling block on the way to economic modernization and technological advancement instead of a sign of global prestige. Moreover the economic situation in the 1980s reversed the arms races that had threatened to spiral out of control in the previous decade. By the early 1990s military expenditures for Latin America as a whole represented only about 1.5% of the combined gross national products—the smallest proportion of any region in the world. The number of soldiers per thousand people fell from about 4.5 during the first half of the 1980s to about 3.5 during the first

half of the 1990s.¹² This trend is slowly reversing given the new economic situation in the region and the understanding that the armed forces of most countries urgently need modernization.

The Latin American countries have also been strong supporters of the Comprehensive Nuclear-Test-Ban Treaty, Argentina and Brazil having ratified in 1998. OAS member states host a large number of the monitoring facilities that form the International Monitoring System.¹³

Yet one should not forget that the nature of the NPT has always generated opposition from certain sectors of Latin American societies—the perceived discriminatory nature of the regime and the need to move further towards disarmament are issues raised by nationalist parties, sectors of the military establishment and scientists. In line with this perspective Brazil and Mexico take part in the New Agenda Coalition.

There is a wider consensus in the region against the presence of WMD. In 1991 the Peruvian government launched a comprehensive initiative for Latin America seeking the gradual adoption of a WMD-free zone, the prohibition of purchase, transfer and manufacture of new generations of special conventional weapons systems, and the implementation of a set of confidence- and security-building measures (CSBMs).¹⁴ On 4 December 1991 the Cartagena Declaration on Renunciation of Weapons of Mass Destruction was issued, supporting the prohibition of WMD in Latin America and the Caribbean and committing the Andean countries (Bolivia, Colombia, Ecuador, Peru and Venezuela) to renounce the possession, production, development, use, testing and transfer of WMD.

In 1991, two years before the CWC was signed, Brazil joined with Argentina and Chile in the Declaration of Mendoza. They pledged not to produce, buy, stock, use or transfer chemical or biological weapons. The parties also agreed to establish on a national basis appropriate inspection mechanisms. Four other South American nations, Bolivia, Ecuador, Paraguay and Uruguay, signed the declaration later. The Southern Common Market (MERCOSUR) declared its geographic region and Bolivia and Chile free of WMD and a “zone of peace” in July 1998 (the Declaration of MERCOSUR as a Zone of Peace, signed in Ushuaia, Argentina).

Ballistic missile proliferation has become one of the most serious security themes debated in the non-proliferation community. Since the Missile

Technology Control Regime (MTCR) was announced in 1987, Argentina and Brazil among others have curbed their missile aspirations. In 1993 Argentina joined the MTCR membership and in 1995 Brazil did the same. In fact, curbing the missile programmes of countries such as Argentina and Brazil, along with Egypt, South Africa, South Korea and Taiwan, can be considered the most important achievement for the missile non-proliferation regime.

Argentina and Brazil had embarked upon missile programmes in the early 1980s. In 1984 the Condor II medium-range ballistic missile project of Argentina, in collaboration with Egypt, Iraq and with German and Italian firms, was in place. Brazil also developed a missile programme in the 1980s having cooperated with Iraq in this area prior to the 1991 Gulf War. Apart from the variables already mentioned regarding the nuclear rapprochement between the two countries, it became difficult to obtain the necessary technology for the continuation of these endeavours. Argentina announced the suspension of the Condor II project in 1990, turning components from the programme over to Spain for destruction. Brazil also scrapped its ballistic missile programmes although they continued to develop artillery rockets. In the Brazilian case the will to acquire technology for a space launch vehicle also motivated the country to adhere to MTCR guidelines in December 1994.¹⁵ On the other hand, as Dinshaw Mistry remarks, the correlation between nuclear and missile programmes diminished the interest in the latter when nuclear ambitions were renounced.¹⁶ Nonetheless Brazil's space and missile capabilities are sophisticated in relation to those of most developing nations.

In international forums Latin American countries have been strong supporters of the non-proliferation regimes although the need to move towards disarmament is a constant theme. The Conference on Disarmament has accepted nine Latin American countries.¹⁷ It is also significant that Latin American countries have criticized the posture of India and Pakistan. On 10 May 1998 Brazil cancelled a two-year-old protocol with India to jointly develop nuclear energy for peaceful purposes in response to that country's nuclear tests.

Regardless of this generally positive attitude regarding non-proliferation Argentina and Brazil are countries where mechanisms to avoid access to nuclear facilities and materials and chemical and biological agents by non-state actors involved in violent tactics are definitely needed. In other countries, such as Cuba, Mexico or Venezuela, this is also the case, but

this chapter will focus on these two countries as they have enrichment capability.

Argentina and Brazil are among the 10 countries that the United States government classifies as having enrichment capability.¹⁸ Brazil has a number of nuclear civilian facilities including power reactors, research reactors, uranium enrichment plants and uranium processing plants. Two light-water power reactors using low-enriched uranium are now functioning and an additional one is under construction. Four research reactors are also in place. The navy has for the last 40 years sought a reactor for a nuclear submarine; it has succeeded in enriching uranium through centrifuge technology but has not as yet built the submarine. Uranium enrichment facilities include the Resende ultracentrifuge and two facilities at the Aramar Research Centre.¹⁹ The Government of Brazil is considering the possibility of signing an additional protocol with the IAEA that would allow for more intrusive inspections. In April 2004 the Brazilian government denied IAEA inspectors access to the Resende facility and refused to let them see equipment in the plant. Citing a need to protect proprietary information the government had built walls around parts of the facility and put covers over equipment. But by November the IAEA was able to reach an agreement with the Brazilian government on a safeguards approach to verify the enrichment facilities. On 6 May 2006 *Indústrias Nucleares do Brasil* officially launched the first two centrifuges needed for uranium enrichment at that facility.

There is no evidence that Brazil has ever developed or produced biological weapons. It ratified the BTWC in 1973 and signed the Mendoza Declaration in 1991, which prohibits biological as well as chemical agents. The vast industrial capacity of the country does demand great control over agents. Brazil does have the capacity to produce biological agents; for example, it has one of the world's largest crops of the castor bean (which naturally produces the toxin ricin)²⁰ and is proficient in advanced biological techniques such as gene sequencing.

Argentina has significant heavy-water infrastructure facilities, including research and development, heavy water production, fuel manufacture and supply of certain components. From the 1960s to the early 1990s an ambitious programme of nuclear energy and technological development was pursued. In August 2006 Buenos Aires announced it would finish its third nuclear reactor plant (Atucha II), restart a heavy-water production plant in the Neuquén province and conduct feasibility studies for construction of

a new reactor at Embalse. There are plans to resume nuclear enrichment activities using an enrichment technology known as SIGMA, “which is purported to be more economic and more proliferation resistant than alternative methods of enrichment”.²¹

The consensus regarding the banning of WMD in Latin America is profound. It rests on the view that the image of the region as a zone of peace is an asset and on attempts by the major countries to redefine their roles in the international system. The changing relations between military and civilian sectors in most Latin America countries also played a major part in this transformation. Nevertheless the level of development of certain countries and their interest in developing nuclear technology demands a constant debate on compliance with the existing regimes, particularly in a context where “The distinction between military and civil technology is becoming harder to maintain”²² and the military potential of civilian technological development cannot be denied. As Buzan and Herring put it, “This potential lies in its stock of knowledge, equipment, material, technique, and capital.”²³

The existence of terrorist activity and the consensus on cooperation against this criminal behaviour is also a main variable in considering the conditions for implementation of Resolution 1540.

The countries of Latin America have generally cooperated with the United States and other western powers in developing counter-terrorism mechanisms. Although the conceptual and legal framework within which each of the countries deals with the problem varies greatly—and only Colombia has fully embraced the framework put forward by the United States after the attacks of September 2001—there is wide consensus on the need to mobilize resources and learn from more developed countries regarding this issue. Regarding the Tri-Border Area in particular the 3+1 Security Group (Argentina, Brazil, Paraguay and the United States) has been working to improve the capabilities of the three Latin American states to address cross-border crime and combat money laundering and potential terrorist fund-raising activities.

The Western hemisphere is not an area where the presence of terrorist networks is particularly evident; at the time of writing there were no known operational cells of Islamic terrorists in the hemisphere although pockets of ideological supporters and facilitators in South America and the Caribbean

lent financial, logistical and moral backing to groups in the Middle East identified by the United States as terrorist organizations.²⁴ The Tri-Border Area—formed by the cities of Puerto Iguazú, Argentina; Foz do Iguacu, Brazil; and Ciudad del Este, Paraguay—has a reputation for lawlessness and the presence of terrorist support activities. For decades the region has been home to various smugglers, drug traffickers, arms dealers and organized crime figures. Political corruption allows the multitude of criminal activities and illegal markets to overlap with legitimate economic activities. Other areas of concern in the region are northern Chile, especially around Iquique; Maicao, Colombia, near the border with Venezuela; Margarita Island in Venezuela; and Panama's Colon Free Trade Zone. Domestic terrorist activity is a more serious problem, particularly in Colombia but also in Peru.²⁵

RESOLUTION 1540 AND LATIN AMERICA

The need to adapt the non-proliferation regime to the growing presence of non-state actors in the international security scenario led the United States to put forward a resolution that would fill in the gaps of the present regimes. The approval of Resolution 1540 took place in April 2004.²⁶ The resolution imposed binding obligations on all states to establish domestic controls to prevent the proliferation of weapons and their means of delivery, covering biological, chemical and nuclear weapons as well as missiles. Controls over related materials and the adoption of legislative measures were also included. Apart from the actions states are expected to take in order to apply the norms established by the resolution, providing any form of support to non-state actors attempting to acquire WMD is also banned.

Terrorist and illicit networks are targeted given the concern about the possible link between WMD and terrorism, apart from the illicit commerce of hazardous materials, but the resolution also tackles the gap in the non-proliferation regimes regarding non-parties to the treaties that form the legal basis of these regimes. Since the resolution was issued under Chapter VII of the UN Charter it is binding for all states and may generate action on the part of the Security Council to enforce it.

In order to assess adherence to the domestic legal requirements of the resolution, a committee comprising the members of the Security Council was created. The first reports that countries should have presented to the

1540 Committee were due by 28 October 2004. As part of the committee's efforts to promote information-sharing concerning the implementation of Resolution 1540 it developed a database to provide additional information on the laws, regulations and other measures related to states' implementation. The committee is also a clearinghouse on assistance and this is a main aspect of its work. According to the report of the committee, 32 states requested assistance in their national reports for implementing Resolution 1540 and 46 states offered assistance.²⁷ On 27 April 2006 the Security Council extended the mandate of the 1540 Committee for two years with the adoption of Resolution 1673, which reiterated the objectives of Resolution 1540, and decided to intensify its efforts to promote the full implementation of the resolution.

Two main challenges face the efforts to implement 1540 in Latin America: the capacity of states and the perceived legitimacy deficit of the resolution. Although the WMD non-proliferation regimes hold significant legitimacy in Latin America the absence of a move towards implementation of Article 6 of the NPT is seen as an expression of the lack of respect for the regime from major powers. Furthermore the general crisis of the nuclear non-proliferation regime, which became abundantly clear during the 2005 review conference, has an impact in countries such as Argentina and Brazil with civil nuclear capabilities. On the other hand, although counter-terrorist activities are performed and accepted as crucial by most governments, the nature of Resolution 1540, establishing a legislative role for the Security Council, may be seen as a threat to the legalist tradition of the region and the conventional concept of sovereignty. UN resolutions are not usually widely debated in Latin American countries thus it is not easy to fully assess the perceived legitimacy of the resolution. In general a more interventionist and wider role for the Security Council is not well accepted in most countries of the region. Brazil, at the time a Security Council member, objected to one feature of the resolution, namely the reference to national laws contained in paragraphs 2 and 3 of the resolution.²⁸ But 1540 was voted for unanimously and Latin American governments have decided to comply with it and present their reports, as shown in Table 1.

Table 1. 1540 reporting by Latin American countries

| Country | Presentation of 1540 Report |
|-----------------------|--|
| Antigua and Barbuda | 06/11/06 |
| Argentina | 26/10/04, 13/12/05, 05/07/07 |
| Bahamas | 28/10/04 |
| Barbados | |
| Belize | 20/10/04, 10/08/05 |
| Bolivia | 08/03/05, 26/10/06 |
| Brazil | 29/10/04, 22/09/05 (2 reports), 17/03/04 |
| Chile | 27/10/04, 09/05/05, 01/12/05, 19/05/06 |
| Colombia | 10/02/05 |
| Costa Rica | 04/08/04 |
| Dominica | |
| Dominican Republic | |
| Ecuador | 07/04/05 |
| El Salvador | 28/09/05 |
| Grenada | 26/09/05 |
| Guatemala | 27/10/04 |
| Guyana | 11/11/04 |
| Haiti | |
| Honduras | 20/06/06 |
| Jamaica | 05/04/05 |
| Mexico | 07/12/04, 17/12/05, 08/06/07 |
| Nicaragua | 26/01/07 |
| Panama | 12/07/05 |
| Paraguay | 03/11/04, 31/03/06 |
| Peru | 1/11/04, 19/04/06 |
| Saint Kitts and Nevis | |

| Country | Presentation of 1540 Report |
|----------------------------------|------------------------------|
| Saint Lucia | |
| Saint Vincent and the Grenadines | |
| Suriname | |
| Trinidad and Tobago | 07/04/06 |
| Uruguay | 22/12/04, 07/11/05 |
| Venezuela | 16/11/04, 07/11/05, 05/12/05 |

Source: 1540 Committee website, <<http://disarmament2.un.org/Committee1540/report.html>>.

Among the concrete challenges that differ from country to country are border control, physical protection of materials related to WMD, shipment and transshipment, and the financing of illicit proliferation and related activities. As Peter Crail points out, "One of the key challenges poised to prevent the universal implementation of 1540 is the ability of many states to fulfil its central provisions, which require enacting domestic legislation and enforcement measures."²⁹ The countries of Latin America face serious problems regarding the ability of the state apparatus to implement measures in this area, particularly states that lack a modern and efficient bureaucracy, resources and where the rule of law is fragile such as Bolivia, Ecuador, Paraguay and several countries in Central America. The performance of these states regarding criminality, public services and control of territory indicate that international and regional cooperation will be needed. Furthermore in each country the legislative and executive measures will be processed by the political system; further research on the debates and state of the institutions in each country is necessary.

Table 2 shows the percentage of key obligations for implementing 1540 that have been fulfilled by OAS countries. According to Crail's analysis the average fulfilment of priority obligations by the 84 key states is about 23.5%.

Table 2. Total percentage of fulfilment of key obligations

| Country | Key obligations fulfilled |
|---------------|---------------------------|
| Brazil | 33.3% |
| Canada | 30.0% |
| Chile | 2.3% |
| Cuba | 30.8% |
| Mexico | 10.2% |
| Panama | 2.1% |
| Peru | 2.7% |
| United States | 77.2% |
| Venezuela | 3.4% |

Source: Peter Crail, "Implementing UN Security Council Resolution 1540: A Risk-Based Approach", *Nonproliferation Review*, vol. 13, no. 2, 2006, pp. 372–3.

Regional cooperation with international institutions or for the implementation of international norms is well accepted. This attitude has facilitated the initial attempts to implement 1540. The proliferation of WMD regimes in particular is treated as a theme dealt with on a global level and supported by the countries of the region. Article 21 of the Tlatelolco Treaty established that the General Conference of OPANAL should inform the Security Council, the General Assembly and the Council of the OAS when any state party to the treaty violates it and thus threatens the peace and security of the region. Other examples are two OAS resolutions passed in 1999: Inter-American Support for the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, AG/RES. 1624 (XXIX-O/99); and Consolidation of the Regime Established in the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco), AG/RES. 1622 (XXIX-O/99). This last resolution urges states that have not yet done so to negotiate agreements with the IAEA.

Regarding 1540 international cooperation has permitted an initial debate on the subject. Efforts to discuss the resolution in the region and provide

assistance have been taking place although much more needs to be done. The first regional meeting related to the implementation of Resolution 1540 was held jointly by Argentina and Spain for countries of Central America and the Caribbean on 27–28 June 2005 in Antigua, Guatemala, and specifically addressed the preparation of reports. The regional seminar organized by Argentina and the United Kingdom on 26–28 September 2005 in Buenos Aires for participants from Latin American and Caribbean states raised awareness and provided guidance on how to respond to the obligations of the resolution. In November 2006 a seminar took place hosted by the Peruvian government, organized by the Department for Disarmament Affairs through the Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean,³⁰ and sponsored by the European Union and the Government of Spain. Participants addressed the implementation of 1540 in the region, and exchanged views on national and regional implementation experiences and on assistance and cooperation requirements. In May 2007 the Government of Jamaica hosted another event on the implementation of 1540 organized by the Office for Disarmament Affairs and sponsored by the European Union and the Governments of Canada and Norway. There were approximately 35 participants from governmental sectors, mainly from the Caribbean, as well as international, regional and subregional, non-governmental and industry organizations. They addressed the current status of implementation of 1540 in the Caribbean region. They dealt with reporting, transshipment and border controls, and cooperation and assistance for implementing 1540 and 1673.

THE OAS AND RESOLUTION 1540

The OAS security structure was designed for collective security operations and dispute settlement through diplomatic consultation. Chapter VI of the charter states the principle of collective security—an attack on one is considered an attack on all. Regarding conflict between states in the hemisphere the emphasis lies on peaceful means for the settlement of disputes. Chapter V outlines the procedures to promote peaceful settlement of disputes. The legalist tradition is also associated with the norm of peaceful conflict resolution. The provisions for peaceful settlement and for collective security and the principles of non-intervention and sovereignty are complementary yet at the same time are often in tension.

The OAS has had some success in reducing regional tensions and preventing conflicts from escalating.³¹ When a dispute occurs between members either the Charter of the OAS or the Inter-American Treaty of Reciprocal Assistance (the Rio Treaty) may be invoked (Article 60 of the OAS charter and Article 6 of the Rio Treaty establish the conditions for a meeting of consultation). The OAS has functioned as a forum for discussion of inter-state as well as intra-state conflict since its creation. Investigative commissions were created in a number of cases to offer assessments and sometimes indicate solutions to situations of conflict or controversy. The OAS has been a major forum for the process of generation of regional norms on security regarding the peaceful solution of disputes; the association between democracy, stability and security; arms control; and the mechanisms to fight transnational criminality.

The role the OAS played during the Cold War, legitimizing the Latin American version of containment, the organization's inaction during the 1980s conflict in Central America, the marginal role it played in the Falklands/Malvinas War, and the United States' unilateral decisions to intervene in Grenada in 1983 and in Panama in 1989, led to greater emphasis being placed on ad hoc regional arrangements such as the Rio Group, the Summit Meetings, the Meeting of Defence Ministers and the Guarantors of the Peru–Ecuador Treaty.

Since the end of the Cold War an attempt to redefine the role played by the OAS has been made, prompted by a sense of failure, the new consensus on democracy in the region, the admission of Canada in 1990, different interests of regional actors and the broader debate on the redefinition of the concept of security. The OAS has become active in fostering confidence-building measures, the support of democracy, land mine clearance and the dialogue on border disputes. The range of activities in which the organization has been involved has grown notably, new capabilities having been generated. Several institutional changes took place and new agencies were created such as the Committee on Hemispheric Security, the Inter-American Drug Abuse Control Commission, the Inter-American Committee Against Terrorism and organs responsible for the promotion of democracy.³² The OAS Secretary General acquired new responsibilities, in line with Article 99 of the UN Charter; the Protocol of Cartagena de Indias, an amendment to the OAS charter adopted in 1985 and entering into force in 1988, authorizes the OAS Secretary General to bring to the attention of the General Assembly or the Permanent Council matters which might

threaten the peace, security or the development of member states. The Education for Peace programme³³ was also created.

The effort to reshape the organization should also be understood in the context of the generation of the idea that peace is a regional asset. The vision of a peaceful and stable region, in contrast to other parts of the world, is perceived by national elites of several countries as an advantage in the context of the current dispute over international investment flows. Thus the organization became more active in several cases of political crises in which democratic regimes were in danger, as well as in other areas. At the same time policy makers and academics undertook a debate on the new role of the OAS.³⁴

In the sphere of security in particular a collective desire to redefine the role of the organization can be observed. Several resolutions on cooperation in this sphere were passed, two important conventions were signed,³⁵ a debate on the redefinition of the concept of hemispheric security was launched and the Hemispheric Security Commission was created in 1991, becoming a permanent body in 1995.

The emphasis on CSBMs, which encourage transparency of military procedures and the availability of information, substituted for the stress on deterrence incorporated by the concept of collective security, that being the idea that aggressors would have to face the combined force of a coalition.³⁶

In 1974 eight Latin American governments³⁷ issued the Ayacucho Declaration, affirming their support for the idea of arms control. The 1997 Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials expresses the link between the arms control agenda and the new prominence of the concept of cooperative security. On 7 June 1999 the OAS General Assembly in Guatemala adopted the landmark Inter-American Convention on Transparency in Conventional Weapons Acquisitions. The convention has been signed by 20 OAS member states—all major hemispheric conventional weapons importers and exporters.

The Contadora Group working on the peace process in Central America, the Ayacucho Declaration, the Tlatelolco Treaty, the treaties between Argentina and Brazil on the nuclear dispute and the Peace and Friendship Treaty

between Argentina and Chile introduced the CSBM agenda, launched at the 1975 Helsinki Conference, to Latin America.³⁸ The 1995 war between Peru and Ecuador reminded Latin American leaders that the territorial disputes in the region, a legacy of the nineteenth century demarcation process, could ignite into an actual exchange of fire. The US government, moving in the 1990s toward a more multilateral approach in the region and the democratization of Latin American countries, also favoured this important change. In addition the concern with the nature of civil–military relations in Latin America, given the region’s history of military intervention in public administration, and the search for new roles and identities for the military, led local elites to acquire greater interest in the subject.

In the 1990s the states in the hemisphere turned to the OAS as a catalyst for confidence building. The OAS has organized and sponsored conferences on CSBMs, designed to strengthen military-to-military relations, deal with historic rivalries and tensions and create an environment that permits the governments of the region to modernize their defence forces without triggering the suspicions of neighbours or leading to arms racing.

In 1994 a meeting of governmental specialists on confidence-building measures and other security-related issues was held in Buenos Aires. This led to two conferences on the theme, held in 1995 in Santiago, Chile, and in 1998 in San Salvador, El Salvador. The Santiago Declaration called on OAS members to accept accords regarding the pre-notification of military exercises, to take part in the UN Register of Conventional Arms, to exchange information regarding national defence policies and to permit foreign observers to be present when military exercises took place. The Declaration of San Salvador expanded this agenda, dealing with political contacts, border cooperation, the exchange of information on national armed forces, the creation of accounting procedures for military expenditures and the institutionalization of discussions on cooperative security through annual expert meetings.

The countries of the region have also adhered to CSBMs on a global level. The Inter-American Convention on Transparency in Conventional Weapons Acquisitions mentioned above provides a framework for the advance notification of acquisitions of weapon systems covered by the UN register. A significant number of American countries are currently submitting their reports to the register (17 governments submitted their reports in 2006).³⁹

This is a strong indicator regarding treaty compliance, the state apparatus in each country having started to translate the convention into deeds.

As part of the transformation process the Inter-American Defense Board (IADB) has also acquired new and different roles. Their current programmes include mine clearance in Central America, reporting on CSBMs and developing educational programmes on regional security. The analysis of military CSBMs was initiated at the headquarters of the IADB staff with the creation of a specific committee in May 1995 tasked with addressing the issue in keeping with Resolution 650 (1031/95) of the OAS Permanent Council. This resolution tasked the IADB with the preparation of an inventory of the military CSBMs that are currently being implemented in the hemisphere. The board provides a senior-level academic programme in security studies for military, national police and civilian leaders at the Inter-American Defence College. On 15 March 2006, the Thirty-second Special Session of the General Assembly formalized the IADB's status as an OAS agency.

In 1999 the Inter-American Committee Against Terrorism (CICTE) was created, further expanding the OAS's involvement in security issues. The committee deals with cooperation in the fight against terrorism and allows for national authorities to have a proper forum to discuss the sharing of information, the development of activities for training and crisis management, border cooperation and travel documentation security measures, apart from the promotion of universal adherence to international counter-terrorism conventions. Programmes in eight different areas are being developed at present: airport security, customs and border protection, cybersecurity, legislation against terrorism, port security, terrorist financing, terrorism policy engagement exercises and tourism security.

Ten days after the 2001 attacks on New York and Washington, the Meeting of Consultation of Ministers of Foreign Affairs approved the resolution Strengthening Hemispheric Cooperation to Prevent, Combat, and Eliminate Terrorism (RC.23/RES.1/01). In 2002 the Inter-American Convention against Terrorism was signed. It seeks to prevent the financing of terrorism, strengthen border controls and increase cooperation among law enforcement authorities in different countries. The Sixth Regular Session of CICTE was held in Bogotá, Colombia, on 22–24 March 2006 and adopted the Declaration of San Carlos on Hemispheric Cooperation for Comprehensive Action to Fight Terrorism, the CICTE Work Plan, and

resolution CICTE/RES. 1/06, Cooperation Initiatives for the Security of Tourism and Recreational Facilities in the Americas.

The committee delivered more than US\$ 5 million in counter-terrorism capacity-building assistance in the region. CICTE provided training to nearly 500 port and airport security officials from 29 member states to help meet the requirements of the International Maritime Organization's International Ship and Port Facility Security Code and the International Civil Aviation Organization's new air security standards. CICTE advised 15 member states on how to meet the requirements of Security Council Resolution 1373, the 13 international conventions and protocols relating to terrorism and the Inter-American Convention against Terrorism, which complements and expands on international conventions and protocols.

On the other hand the OAS has been a focal point for the attempts to link the international non-proliferation agenda and regional mechanisms. The United States has sponsored this move. Thus since the 1990s the organization has emphasized regional contributions to global security.⁴⁰ In line with this orientation the Committee on Hemispheric Security organized a special meeting in 2004 dedicated to combating the proliferation of nuclear, chemical and biological weapons, their delivery systems, and related materials within the framework of Resolution 1540. Support for Implementation at the Hemispheric Level of United Nations Security Council Resolution 1540 is one of the themes that will be debated by the Committee on Hemispheric Security in 2008.

CONCLUSIONS

This analysis allows us to reach two initial conclusions regarding a role for the OAS in the implementation of 1540: one, a regional effort is needed in order to deal with the perceived legitimacy gap of the resolution and the lack of capacity of some states to implement 1540 and to face the dangers of access to weapons or agents used for the production of weapons by non-state actors; and two, the OAS has developed institutional mechanisms that can be geared towards a supporting role for the implementation of 1540 in terms of the objective dimension, that being the development of capabilities lacking in certain parts of the region, and in terms of the subjective dimension, that being generating regional debate on the normative framework the resolution puts forward and increasing its legitimacy.

OBJECTIVE DIMENSION

Abram Chayes and Antonia Chayes argue that there are three important sources of non-compliance with international agreements: ambiguity and indeterminacy of treaty language, limitations on the capacity of parties to carry out their responsibilities, and the temporal dimension, that being the need for a period of transition and for adaptation of the treaty to changing conditions.⁴¹ As has been mentioned many countries in the region will need assistance in dealing with the requirements of the resolution, in particular the countries in Central America. Regarding all these problems in administering the implementation of 1540 the activities in which the OAS has engaged during the last 20 years indicate that it can play a significant role. Presented below are three arguments in this regard.

The creation of a regime for the protection of democracy indicates that the OAS can become an active player, in contrast to its own history of marginalization from the mainstream of international politics in the western hemisphere. The organization offers advisory services and assistance to strengthen electoral institutions and processes and plays a major role in electoral observation—dealing with election administration, political campaigns and freedom of speech. The electoral observation experience shows that the organization can produce a reliable verification mechanism and can support national institution building. Thus the efforts needed to develop the state capacities for implementation of 1540 can be aided by the organization if the proper structure is in place. The OAS can support the administrative aspects of compliance with 1540, which are related to the creation of the proper domestic legislation and efficient enforcement measures. Obviously this involves a political process and the generation of consensus on a basic agenda.

The generation of a cooperative security paradigm puts the concept of transparency at the centre of inter-state relations in the region. The concept has played a particularly relevant role in relations among different military establishments and in changing national security doctrines in the region. The spread of CSBMs creates the right cultural and institutional basis for the generation of verification mechanisms in other areas and the consolidation of their legitimacy. Although the verification of treaties and confidence-building measures may be treated as two distinct concepts, the availability of information in the security sector is a common denominator and CSBMs “are perceived by some as potent preludes and accompaniments to other forms

of arms control in cases of seemingly intractable conflict".⁴² In particular the agreement on and creation of information and communication measures and observation and inspection measures foster the right environment for the acceptance of procedures implicated in Resolution 1540 and the non-proliferation regimes more generally. The role the OAS has played in this field—the IADB in particular—indicates that the organization may become more involved with the problems in focus here. Implementation of 1540 involves the production and sharing of information that has become common in the military sphere of the region.

The inclusion of terrorism as a theme discussed within the organization opens a new sphere of activities that may assist countries in the region in dealing with this particular aspect of counter-terrorist activities. In fact part of the activities developed by CICTE involve the production of legislation, in particular the adaptation of national laws to the new international conventions and norms on the subject.

SUBJECTIVE DIMENSION

The implementation of 1540, as is the case with other international agreements and norms, is dependent on the international legitimacy it is perceived to have. Legitimacy in international governance is a complex subject, which involves the debate on the democratic deficit of international organizations, on procedures that may generate legitimacy in a Weberian sense and on the cultural basis for principles and norms.⁴³

From any point of view 1540 does suffer a legitimacy deficit in Latin America. The decision-making process in the Security Council is subject to criticism, questions of representation have not been resolved and the expansion of the agenda of the Security Council is seen as problematic in the region. In the case in focus here the Security Council played a legislative role that cannot be detected previously. On the other hand the crisis of the nuclear non-proliferation regime directly affects the implementation of Resolution 1540 in Latin America. Wide-spread abstinence from and the lack of a horizon for implementation of Article 6 of the NPT are widely criticized in countries such as Argentina and Brazil. As this quote from an OPANAL resolution shows, the link between the need to control the access to nuclear weapons by non-state actors and the need to reform the non-proliferation regime can be detected; the member states resolved:

To highlight the growing threat to international security posed by the possibility that non-state actors may obtain nuclear weapons. We, therefore, actively support the initiatives undertaken by the IAEA to this end. We are firmly convinced that the most effective way to avoid non-state actors from gaining access to nuclear weapons is through the total elimination of those weapons.⁴⁴

Thus a public debate within Latin America on the WMD non-proliferation regimes in general and on Resolution 1540 in particular is necessary. Norms devised within multilateral forums do not automatically have a domestic base for legitimacy. In the case of 1540 the measures put forward generate a clear necessity for a public debate and for the involvement of civil society organizations in the process of implementation. In this context it is fundamental to dissociate these measures with norms that limit the technological development of late-comers from “the South”.

As has been seen the OAS has been an important forum for the generation of regional norms on security; regarding the peaceful solution of disputes; the association between democracy, stability and security; arms control and the mechanisms to fight transnational criminality. This experience indicates that this regional forum has the procedures in place and the legitimacy as an organization for the construction of legitimate norms for the management of international security. Moreover the greater cooperation between the OAS and United Nations in the 1990s, in particular the experience in Central America, has created the first building blocks of a greater acceptance of the idea of regionalization of security. The importance of sharing the costs of the non-proliferation regimes is a theme that has yet to acquire relevance within the OAS and for Latin American governments in general. Yet there is room for manoeuvre in this area.

The change in the way Latin American leaders approach the strict defence of the principle of state sovereignty allows for the OAS to deal with threats to security in a more effective manner. The progressive understanding and acceptance by the Latin American elite of the fabric of international agreements, organizations and institutions present in the international context is the cornerstone of this process. Although in countries like Brazil, Mexico and Venezuela the tension between a concept of sovereignty linked to autonomy and a concept of sovereignty linked to the standing of the state in the context of this web of institutions is significant, a move towards the second interpretation indicates a tendency to comply

with international regimes and political will to share the costs of some international regimes. Nevertheless this has been proven to be true only in the context of established regimes, well anchored in legal instruments and in culture. This was the case with the protection of democracy regime in the Western hemisphere. In the case discussed here the incorporation of a wider norm of compliance with international institutions is reinforced by the incorporation of the more specific norm that excludes WMD from the region. As Friedrich Kratochwill has shown these norms tend to operate in national decision-making processes.⁴⁵

The OAS also played a major role in generating a democratic paradigm that holds great legitimacy in the region. Summit meetings, conferences, General Assembly resolutions, the Inter-American Democratic Charter and educational programmes generated within the OAS have supported the legitimacy of the “inter-American democratic paradigm”. The organization also promotes a dynamic exchange of ideas on democratic practices—not only among governments, but also among political parties, parliaments and congresses, academic institutions and other entities of civil society. This experience can be a model for regional political processes in other spheres. In the case of Resolution 1540 the relevant actors must be mobilized for such a debate.

Thus it is possible for the OAS to play a role in supporting compliance with 1540 regarding both the objective and the subjective dimensions. Institutional structures that are in place such as the Committee on Hemispheric Security and CICTE can get involved in the subject, generating debate and assistance programmes, sharing information and producing verification mechanisms where they cannot be generated by the state.

CHAPTER ANNEX A

REGIONAL MEMBERSHIP OF ORGANIZATIONS AND GROUPS

| OAS member | Organization for the Prohibition of Chemical Weapons (OPCW) ¹ | Nuclear Suppliers Group ² | Missile Technology Control Regime ³ | Australia Group ⁴ |
|---------------------|--|--------------------------------------|--|------------------------------|
| Antigua and Barbuda | • | | | |
| Argentina | • | • | • | • |
| Bahamas | | | | |
| Barbados | • | | | |
| Belize | • | | | |
| Bolivia | • | | | |
| Brazil | • | • | • | |
| Canada | • | • | • | • |
| Chile | • | | | |
| Colombia | • | | | |
| Costa Rica | • | | | |
| Dominica | • | | | |
| Dominican Republic | • | | | |
| Ecuador | • | | | |
| El Salvador | • | | | |
| Grenada | • | | | |
| Guatemala | • | | | |
| Guyana | • | | | |
| Haiti | • | | | |
| Honduras | • | | | |

| OAS member | Organization for the Prohibition of Chemical Weapons (OPCW) ¹ | Nuclear Suppliers Group ² | Missile Technology Control Regime ³ | Australia Group ⁴ |
|----------------------------------|--|--------------------------------------|--|------------------------------|
| Jamaica | • | | | |
| Mexico | • | | | |
| Nicaragua | • | | | |
| Panama | • | | | |
| Paraguay | • | | | |
| Peru | • | | | |
| Saint Kitts and Nevis | • | | | |
| Saint Lucia | • | | | |
| Saint Vincent and the Grenadines | • | | | |
| Suriname | • | | | |
| Trinidad and Tobago | • | | | |
| United States | • | • | • | • |
| Uruguay | • | | | |
| Venezuela | • | | | |

¹ Information obtained from the Organization for the Prohibition of Chemical Weapons, <<http://www.opcw.org/>>.

² Information obtained from the Nuclear Threat Initiative, <http://www.nti.org/e_research/official_docs/inventory/pdfs/nsg.pdf>.

³ Information obtained from the Missile Technology Control Regime, <<http://www.mtcr.info/english/partners.html>>.

⁴ Information obtained from the Australia Group, <<http://www.australiagroup.net/en/participants.html>>.

CHAPTER ANNEX B

REGIONAL ADHERENCE TO NON-PROLIFERATION INSTRUMENTS AND ORGANIZATIONS

Key for status

| | |
|---|----------|
| A | acceded |
| R | ratified |
| S | signed |
| • | member |

Key for instruments and organizations

| | |
|-------|---|
| AG | Australia Group |
| BTWC | Biological and Toxin Weapons Convention |
| CPPNM | Convention on the Physical Protection of Nuclear Materials |
| CWC | Chemical Weapons Convention |
| GP | Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (Geneva Protocol) |
| MTCR | Missile Technology Control Regime |
| NPT | Nuclear Non-Proliferation Treaty |
| NSG | Nuclear Suppliers Group |

| Country | AG | BTWC | CPPNM | CWC | GP | MTCR | NPT | NSG |
|---------------------|----|------|-------|-----|----|------|-----|-----|
| Antigua and Barbuda | | A | A | R | A | | A | |
| Argentina | • | R | R | R | R | • | A | • |
| Bahamas | | A | | S | | | A | |
| Barbados | | R | | R | A | | R | |
| Belize | | A | | R | | | A | |
| Bolivia | | R | A | R | R | | R | |
| Brazil | | R | R | R | S | • | R | • |
| Canada | • | R | R | R | S | • | R | • |

| Country | AG | BTWC | CPPNM | CWC | GP | MTCR | NPT | NSG |
|----------------------------------|----|------|-------|-----|----|------|-----|-----|
| Chile | | R | A | R | R | | A | |
| Colombia | | R | A | R | | | R | |
| Costa Rica | | R | A | R | | | R | |
| Dominica | | A | A | R | | | A | |
| Dominican Republic | | R | S | R | R | | R | |
| Ecuador | | R | R | R | R | | R | |
| El Salvador | | R | | R | A | | R | |
| Grenada | | A | A | R | A | | A | |
| Guatemala | | R | R | R | R | | R | |
| Guyana | | S | | R | | | A | |
| Haiti | | S | S | R | | | R | |
| Honduras | | R | A | R | | | R | |
| Jamaica | | A | A | R | A | | R | |
| Mexico | | R | A | R | R | | R | |
| Nicaragua | | R | A | R | S | | R | |
| Panama | | R | R | R | R | | R | |
| Paraguay | | A | R | R | R | | R | |
| Peru | | R | A | R | R | | R | |
| Saint Kitts and Nevis | | A | | R | A | | A | |
| Saint Lucia | | A | | R | A | | A | |
| Saint Vincent and the Grenadines | | A | | R | A | | A | |
| Suriname | | A | | R | | | A | |
| Trinidad and Tobago | | | A | R | A | | R | |
| United States | • | R | R | R | S | • | R | • |
| Uruguay | | A | A | R | S | | R | |
| Venezuela | | R | | R | S | | R | |

Notes

- ¹ The Treaty for the Prohibition of Nuclear Weapons in Latin American and the Caribbean, also known as the Treaty of Tlatelolco, has been in force since April 1969 when 11 states had already ratified it. Cuba signed the treaty in March 1995 but has not ratified it.
- ² For this subject, see Tariq Rauf, *Nuclear-Weapon-Free Zones: Questions and Answers*, International Organizations and Nonproliferation Program, James Martin Center for Nonproliferation Studies, Monterey Institute of International Studies, 1997.
- ³ John Redick, Julio Carasales and Paulo Wrobel, "Nuclear Rapprochement: Argentina, Brazil, and the Nonproliferation Regime", *The Washington Quarterly*, vol. 18, no. 1, 1995, pp. 107–8.
- ⁴ Lewis Dunn, "On Proliferation Watch: Some Reflections on the Past Quarter Century", *The Nonproliferation Review*, vol. 5, no. 3, 1998, p. 22.
- ⁵ The nuclear rapprochement between Brazil and Argentina should be understood in the context of a broader process of restructuring bilateral relations and overcoming the conflict regarding the use of the La Plata river. The nature of the interaction between the Brazilian and Argentine governments, the position of liberalizing coalitions in the domestic sphere in each country, the process of democratization in the 1980s and presidential leadership on both sides largely explain these significant changes. See Michael Barletta, "Democratic Security and Diversionary Peace: Nuclear Confidence-Building in Argentina and Brazil", *National Security Studies Quarterly*, vol. 5, no. 3, 1999, p. 22. Barletta argues that "The idea of democratic security that oriented the group that came to power in Argentina, and its ability to diffuse this understanding among its Brazilian counterparts, was the key to the transformation of bilateral nuclear relations in the late 1980s", p. 27. See also Julio Carasales, "The Argentine–Brazilian Nuclear Rapprochement", *The Nonproliferation Review*, vol. 2, no. 3, 1995, pp. 39–48.
- ⁶ It should be noted that Brazil never engaged in the research necessary to develop deployable weapons. Regarding the competition between Brazil and Argentina, Brazilian military and diplomatic thinking was based on the notion of latent technological deterrence. See Michael Barletta, "The Military Nuclear Program in Brazil", Center for International Security and Arms Control, 1997.

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- ⁷ The agency was established by the Treaty of Guadalajara (Agreement for the Exclusively Peaceful Use of Nuclear Energy, 18 July 1991), which prohibits the testing, manufacture, acquisition, possession and deployment of nuclear weapons.
- ⁸ The treaty was signed in Vienna on 13 December 1991 between the IAEA, ABAAC, Brazil and Argentina.
- ⁹ Elías Palacios, “Desde la Declaración de Foz de Iguazu hasta las Salvaguardias Integradas”, presentation at the Argentine Council for International Relations, Buenos Aires, 28 September 1999.
- ¹⁰ As of September 2007, according to the IAEA.
- ¹¹ The term “false dawn” is used by William Walker in his discussion of the nuclear order. See William Walker, “Nuclear Order and Disorder”, *International Affairs*, vol. 76, no. 4, 2000, pp. 703–24.
- ¹² Arms Control and Disarmament Agency, *World Military Expenditures and Arms Transfers 1991–1992*, US Government Printing Office, 1994. Jorge Domínguez, “The Future of Inter-American Relations”, working paper, Inter-American Dialogue, 1999.
- ¹³ Masabumi Sato, presentation at the OAS Permanent Council, 27 October 1999. For example, Brazil hosts seven facilities, Argentina nine and Mexico five.
- ¹⁴ *Inventory of International Nonproliferation Organizations and Regimes*, James Martin Center for Nonproliferation Studies, Monterey Institute of International Studies, 2000, p. 87.
- ¹⁵ Dinshaw Mistry, “Ballistic Missile Proliferation and the MTCR: a Ten Year Review”, *Contemporary Security Policy*, vol. 18, no. 3, 1998, pp. 64–5. See also Wyn Bowen, “Brazil’s Accession to the MTCR”, *The Nonproliferation Review*, vol. 3, no. 3, 1996.
- ¹⁶ Dinshaw Mistry, “Ballistic Missile Proliferation and the MTCR: a Ten Year Review”, *Contemporary Security Policy*, vol. 18, no. 3, 1998, p. 71.
- ¹⁷ These are Argentina, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Peru and Venezuela.
- ¹⁸ US Congressional Research Service, *Managing the Nuclear Fuel Cycle: Policy Implications of Expanding Global Access to Nuclear Power*, 2007.
- ¹⁹ Daphne Morrison, “Brazil’s Nuclear Ambitions, Past and Present”, issue brief, Nuclear Threat Initiative, September 2006.
- ²⁰ “NTI: Country Overviews: Brazil: Profile”, Nuclear Threat Initiative, September 2007, <www.nti.org/e_research/profiles/Brazil/index.html>.

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- ²¹ "NTI: Country Overviews: Argentina: Profile", Nuclear Threat Initiative, September 2007, <www.nti.org/e_research/profiles/Argentina/index.html>.
- ²² Barry Buzan and Eric Herring, *The Arms Dynamic in World Politics*, Lynne Rienner, 1998, p. 4.
- ²³ *Ibid.*, p. 22.
- ²⁴ US Department of State, "Country Reports: Western Hemisphere Overview", in *Country Reports on Terrorism 2006, 2007*, ch. 2.
- ²⁵ The Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and what remains of the United Self Defense Forces (AUC) are active in Colombia and the Sendero Luminoso is still present in Peru.
- ²⁶ Security Council Resolution 1540 was adopted unanimously by Algeria, Angola, Benin, Brazil, Chile, Germany, Pakistan, the Philippines, Romania, Spain and all the Permanent Members of the Security Council on 28 April 2004.
- ²⁷ Security Council, UN document S/2006/257, 25 April 2006.
- ²⁸ Roberto Lavalle, "A Novel, If Awkward, Exercise in International Law-Making: Security Council Resolution 1540 (2004)", *Netherlands International Law Review*, vol. 51, no. 3, 2004, p. 432.
- ²⁹ Peter Crail, "Implementing UN Security Council Resolution 1540: A Risk-Based Approach", *The Nonproliferation Review*, vol. 13, no. 2, 2006, p. 357.
- ³⁰ The United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UN-LiREC), headquartered in Lima, was created by a General Assembly resolution in 1986.
- ³¹ See Carolyn Shaw, *Cooperation, Conflict and Consensus in the Organization of American States*, Palgrave Macmillan, 2004, p. 96, for a table of cases in which the OAS was involved between 1948–2002. The author cites 31 cases of conflict resolution.
- ³² The Secretariat for Political Affairs is responsible for this area. Three departments are in charge: the Department of Electoral Cooperation and Observation, the Department of Sustainable Democracy and Special Missions, and the Department for State Modernization and Good Governance. Since 1990, 92 electoral observation missions have been conducted by the OAS.
- ³³ The programme, created in 1999, comprises three areas: education for the promotion of peace between states, education for the peaceful

settlement of conflicts and education for the promotion of democratic values and practices.

- ³⁴ For example, see OAS, *A New Vision for the OAS*, 1995; Andrew Cooper and Thomas Legler, "The OAS Democratic Solidarity Paradigm: Questions of Collective and National Leadership", *Latin American Politics and Society*, vol. 43, no. 1, 2001; Tom Farer (ed.), *Beyond Sovereignty: Collectively Defending Democracy in the Americas*, Johns Hopkins University Press, 1996; Viron Vaky and Heraldo Muñoz, *The Future of the Organization of American States*, the Twentieth Century Fund Press, 1993; Robin Rosenberg, "The OAS and the Summit of the Americas: Coexistence, or Integration of Forces for Multilateralism?", *Latin American Politics and Society*, vol. 43, no. 1, 2001; and Inter-American Dialogue, *The Inter-American Agenda and Multilateral Governance: The Organization of American States*, 1997.
- ³⁵ *Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials* and the *Inter-American Convention on Transparency in Conventional Weapons Acquisitions*.
- ³⁶ For the concept of cooperative security see Ashton Carter, William Perry and John Steinbruner, *A New Concept of Cooperative Security*, Brookings Institution Press, 1992. See Permanent Council of the Organization of American States, Special Committee on Hemisphere Security, "Support for a New Concept of Hemisphere Security: Cooperative Security", OAS document OEA/Ser.G GE/SH-12/93 rev. 1, 17 May 1993. For a discussion of the role played by the concept in the Latin American context, see Jorge Domínguez, "Security, Peace, and Democracy in Latin America and the Caribbean: Challenges for the Post-Cold War Era", in Jorge Domínguez (ed.), *International Security and Democracy: Latin America and the Caribbean in the Post-Cold War Era*, University of Pittsburgh Press, 1998; and Ivelaw Griffith, "Security Collaboration and Confidence-Building in the Americas", *ibid.*
- ³⁷ Argentina, Chile, Bolivia, Ecuador, Colombia, Panama, Peru and Venezuela.
- ³⁸ Fernando Rodrigues Goulart, "O ideário da confiança mútua e sua contribuição para a segurança hemisférica", *Military Review*, vol. 79, no. 3, 1999; Francisco Rojas Aravena (ed.), *Medidas de Confianza Mutua: Verificación*, FLACSO-Chile, 1996.

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- ³⁹ General Assembly, *Objective information on military matters, including transparency of military expenditures*, UN document A/61/133, 26 July 2006.
- ⁴⁰ For example, OAS General Assembly, *Regional Contribution to Global Security: Nonproliferation*, OAS document AG/RES. 1302 (XXIV-O/94); OAS General Assembly, *The Americas as a Biological- and Chemical-Weapons-Free Region*, OAS document AG/RES. 2107 (XXXV-O/05), 7 June 2005; OAS General Assembly, *Inter-American Support for the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction*, OAS document AG/RES. 1624 (XXIX-O/99), 7 June 1999.
- ⁴¹ Abram Chayes and Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements*, Harvard University Press, 1995, p. 10.
- ⁴² Steve Tulliu and Thomas Schmalberger, *Coming to Terms with Security: A Lexicon For Arms Control, Disarmament and Confidence-Building*, UNIDIR, 2004, p. 135.
- ⁴³ For this subject, see Jens Steffek, "The Legitimation of International Governance: A Discourse Approach", *European Journal of International Relations*, vol. 9, no. 2, 2003, pp. 249–75; Ian Hurd, "Legitimacy and Authority in International Politics", *International Organization*, vol. 53, no. 2, 1999, pp. 379–408.
- ⁴⁴ OPANAL General Conference, *Santiago de Chile Declaration*, OPANAL document CG/Res. 487, 8 November 2005.
- ⁴⁵ Friedrich Kratochwil, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs*, Cambridge University Press, 1989.

CHAPTER 3

FACILITATING IMPLEMENTATION OF RESOLUTION 1540 IN SOUTH-EAST ASIA AND THE SOUTH PACIFIC

Tanya Ogilvie-White

INTRODUCTION

At the start of the Fortieth Association of Southeast Asian Nations (ASEAN) Ministers Meeting, which was held in Manila in July 2007, the Philippine Foreign Affairs Secretary Alberto Romulo declared that the issue of nuclear non-proliferation would figure prominently on the agenda of the Ministers Meeting and the Fourteenth ASEAN Regional Forum.¹ Noting that the Philippines was a member of the UN Security Council when Resolution 1540 was originally adopted, he explained that participants attending the Ministers Meeting and forum meetings would adopt an ASEAN Regional Forum Statement on the Implementation of UN Security Council Resolution 1540 “in order to ensure that weapons of mass destruction do not spread, and that non-state actors are denied access to [them]”.² At the same press conference Romulo announced that he would be chairing a special Ministerial Meeting of the Southwest Pacific Dialogue, bringing together members of the Southeast Asia Nuclear-Weapon-Free Zone Treaty (Indonesia, the Philippines) and the South Pacific Nuclear Free Zone Treaty (Australia, New Zealand, Papua New Guinea) to discuss non-proliferation and disarmament priorities. These public announcements may signal a new prioritization of non-proliferation issues in South-East Asia and a break with past attempts to downplay sensitive issues that have traditionally been divisive in the region. They may also signal a greater sense of ownership among ASEAN members regarding regional proliferation and terrorism threats, which until now have tended to be dismissed or characterized as a strategic obsession of the West.

While these developments are positive their significance should not be overstated. Despite the leadership role that is being played by the Philippines

in ASEAN, the ASEAN Regional Forum and even in the Asia–Pacific Economic Cooperation (APEC) Counter-Terrorism Task Force, attitudes to the non-proliferation regime in general and to 1540 in particular vary enormously in South-East Asia and the level of implementation of the relevant obligations, though improving, is still low. This problem of uneven compliance and varying degrees of acceptance is also evident in the South-West Pacific, where there has been a high level of “buy in” to 1540 obligations on the part of Australia, New Zealand and to a lesser extent Papua New Guinea, and minimal buy in by the rest of the Island Pacific. In both regions low levels of technological development and poor capacity are partly responsible for this inconsistent record, but negative political perceptions of a US-dominated counter-terrorism agenda and resentment over “one size fits all” approaches to international security also play an important role and are much more difficult to overcome than the practical hurdles.

This chapter examines these problems, beginning with an assessment of the current state of Resolution 1540 implementation in South-East Asia and the South Pacific. The first section includes an analysis of political attitudes to the resolution in the two regions, an examination of the level of compliance with its various provisions and an assessment of ongoing capacity-building needs. The second part of the chapter explores the coordinating role that regional organizations—primarily the ASEAN Regional Forum and the Pacific Islands Forum—and bilateral assistance initiatives have played in facilitating implementation of 1540 and outlines some recommendations that could increase the effectiveness of these efforts.

RESOLUTION 1540 IMPLEMENTATION IN SOUTH-EAST ASIA AND THE SOUTH PACIFIC

In an ideal world there would be no weak links in the implementation of 1540 anywhere—all gaps in the counter-terrorism regime would be closed, from the isolated micro-states of the South Pacific to the interconnected states of mainland South-East Asia. Pursuit of this ideal is likely to remain the focus of the 1540 Committee and donor states because it is well known that terrorist networks seek to exploit loopholes, wherever those may be. However in assessing the level of 1540 implementation in different regions it is important to bear in mind the relative risks associated with non-compliance. South-East Asia for example is considered high risk due to the following factors: the expansion of nuclear energy and research,

the production and storage of hazardous chemicals, the location of busy transshipment points and the existence of known terrorist organizations based in the region. In contrast although serious risks are associated with the production and use of sensitive weapons of mass destruction (WMD) materials in Australia and Papua New Guinea's neighbour, Indonesia, none are produced in the Island Pacific, few transit through the region (with the exception of foreign-owned ships carrying nuclear waste) and radioactive materials are used only minimally in the health and industrial sectors. Thus while the exceptionally low level of implementation of 1540 in the South Pacific is a concern, the inconsistent record of implementation in South-East Asia presents a more serious threat to international security. Table 1 illustrates this point by identifying the known WMD risks in both regions.³

Table 1. Regional WMD risk assessment

| Country | Nuclear | Biological | Chemical | Transit | Terrorism |
|-------------|---------|------------|----------|---------|-----------|
| Australia | • | • | • | • | |
| Indonesia | • | | | • | • |
| Malaysia | • | | | • | • |
| Myanmar | | | • | | |
| Philippines | • | | | • | • |
| Singapore | | | • | • | |
| Thailand | • | | • | • | • |
| Viet Nam | • | | • | • | |

Source: Peter Crail, "Implementing UN Security Council Resolution 1540: A Risk-Based Approach", *Nonproliferation Review*, vol. 13, no. 2, 2006, pp. 366–7.

1540 IMPLEMENTATION IN SOUTH-EAST ASIA

Resolution 1540 has had a poor reception in South-East Asia where attitudes can be influenced by a suspicion of global instruments that are highly formalized, legalistic and intrusive in nature. ASEAN members are much more comfortable with the locally bred, informal political culture that underpins their own institutional frameworks, favouring the principle

of quiet consultation, known as *musyawarah*,⁴ as the basis of settling differences between neighbours. Largely reflecting this informal, consultative approach all instruments of ASEAN and the ASEAN Regional Forum work on a voluntary basis—there are no institutionalized enforcement structures, verification mechanisms or official sanctions for uncooperative behaviour. Given this political culture it is not surprising to find a certain level of resistance in the region to Security Council resolutions such as 1540 that impose formal, legislative obligations on all states.⁵ Despite the efforts of the 1540 Committee to reassure states that its job is not to monitor compliance and that the resolution deliberately does not specify enforcement measures, ASEAN members remain suspicious because the Security Council invoked Chapter VII to legislate on a functional, rather than state-specific, threat.

In addition to this general reluctance to the formal instruments of global governance, states in South-East Asia resent what they regard as the heavy-handed imposition of “one size fits all” Western security agendas on the developing nations of the South without any thought for the specific security needs of different regions.⁶ Most view catastrophic terrorism as a remote threat and believe global attention should focus on more immediate priorities. Conscious of the fact that 1540 drew much of its inspiration from a series of Group of Eight- and US-led initiatives, a number of states in the region suspect that the 1540 assistance clause was inserted so that the United States could dictate to others on the implementation of new and burdensome non-proliferation and counter-terrorism obligations.⁷ This perception has undermined the legitimacy of Resolution 1540, along with the widespread belief in South-East Asia and elsewhere that an exaggerated non-state WMD threat is being used by the nuclear weapons states to distract attention from their failure to comply with their disarmament commitments under the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).⁸ Inevitably this resentment over what is seen as a West-centric agenda has led to some reluctance among South-East Asian states to prioritize the implementation of 1540 and to a determination to ensure that counter-terrorism obligations are not separated from—or pursued at the expense of—disarmament commitments and development needs. The text of the UN Global Counter-Terrorism Strategy is significant in this regard in that it includes very little discussion of WMD threats and emphasizes the importance of adopting a balanced approach to counter-terrorism.⁹

Although negative attitudes to 1540 in South-East Asia have slowed the implementation process, progress is nonetheless occurring thanks in part to

the efforts of the 1540 Committee and its Expert Group, which has attempted to downplay the Chapter VII origins of the resolution and focus instead on building trust through a process of regional and subregional consultation. This has helped alleviate some of the political tensions outlined above but it has not removed them altogether. The result is a somewhat mixed record of implementation in the region: a certain amount of delay combined with genuine capacity constraints and a desire not to be seen to be deliberately shirking global counter-terrorism obligations.

The region's record on fulfilling the 1540 reporting requirements illustrates this ambivalence. On one hand it is positive that all 10 members of ASEAN have submitted national reports to the 1540 Committee. Although most of these were late and some were superficial in nature (in common with ASEAN reports to the Resolution 1373 Counter-Terrorism Committee) this demonstrates a mutual desire not to be seen to be violating international norms. Moreover none of the reports contained the political rhetoric that often dominates ASEAN statements in international non-proliferation and disarmament forums—rather, the individual ASEAN country reports were business-like and straightforward reviews of domestic efforts to introduce non-proliferation regulations. On the other hand responses to the requests by the 1540 Committee for additional information have been less forthcoming. As Table 2 shows, so far only Indonesia, the Philippines, Singapore and Viet Nam have submitted further information on their efforts to implement national WMD controls, which is just one sign of low prioritization of the WMD counter-terrorism agenda among some ASEAN members.

There are other indications of inconsistent implementation of Resolution 1540 in South-East Asia such as the poor record on meeting the obligations set out in operative paragraph 8, which requires all states to promote the universal adoption and full implementation of the multilateral WMD treaties and conventions.¹⁰ Most ASEAN states had already signed the NPT, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (CWC) and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (BTWC) before Resolution 1540 was passed and little progress has been made since that time in achieving full ratification (see Chapter Annex A). The exceptions to this include Cambodia's accession to the CWC in 2005 and to the Convention on the Physical Protection of Nuclear Material (CPPNM) in 2006; the signing of the International

Atomic Energy Agency (IAEA) Additional Protocol by Malaysia, Singapore and Thailand in 2005 and the 2007 announcement by Viet Nam that it intends to follow suit; and the signing of the International Convention for the Suppression of Acts of Nuclear Terrorism by Malaysia, the Philippines and Thailand.

Table 2. Regional status of 1540 reporting

| Country | Date(s) submitted |
|----------------------------------|-------------------------------------|
| Brunei | 30 December 2004 |
| Cambodia | 12 March 2005 |
| Indonesia | 28 October 2004 22 November 2005 |
| Lao People's Democratic Republic | 3 May 2005 |
| Malaysia | 26 October 2004 |
| Myanmar | 6 April 2005 |
| Philippines | 28 October 2004 28 October 2005 |
| Singapore | 21 October 2004 28 August 2005 |
| Thailand | 5 November 2004 |
| Viet Nam | 26 October 2004 12 December 2005 |

Source: 1540 committee website, <www.un.org/sc/1540/nationalreports.shtml>.

Information regarding the national implementation of WMD accounting and control in South-East Asian states is difficult to obtain—a situation that is exacerbated by the lack of detail in most of the relevant 1540 reports and the failure of six states in the region to respond to requests by the 1540 Committee for further submissions on their ongoing efforts to adopt and apply new counter-terrorism mechanisms. The information that is made available through the organizations involved in monitoring activities suggests that while progress is being made the pace of implementation is slow. The exception appears to be in the area of chemical weapons controls, which

have been developing at a faster rate than other WMD control systems—an important development given the existence of quantities of hazardous chemicals in the region. Clear evidence of this momentum can be found in the 2006 Organization for the Prohibition of Chemical Weapons (OPCW) report, which states that national protection programmes have recently been introduced in Indonesia (May 2005), Malaysia (September 2005), Cambodia (April 2006), and Viet Nam (July 2006).¹¹ This is a significant improvement on the regional situation before Resolution 1540 was passed, when only the Philippines and Singapore had introduced national protection programmes. However the news is not universally positive as there are problems concerning the national capacity of most of these states to operate the protection programmes that have been set up with the help of OPCW technical expertise. There is also some concern over the failure of Myanmar and Thailand to declare the status of their national controls (which is required under Article 10 of the CWC) and over the nature of the declarations submitted by Brunei and the Lao People's Democratic Republic, both of which have minimal national CWC controls in place apart from the inspection of imported chemical precursors and limited licensing procedures.¹²

While implementation in the realm of chemical weapons controls is inconsistent but encouraging overall, the same cannot be said for biological weapons controls, which range from weak to non-existent in South-East Asia. Information available through the 1540 reports and updates, and subsequently via INTERPOL's Bioterrorism Unit, indicates that very few concrete legislative steps have been taken to introduce bioterrorism regulations. The countries that have been transparent about this gap in their WMD controls—Cambodia, Indonesia, Malaysia, the Philippines and Thailand—have admitted that the only relevant domestic regulations that they have in place pre-date Resolution 1540.¹³ For example the only biosecurity legislation that Malaysia has in place appears to be the Poisons Act of 1952, the Prevention and Control of Infectious Disease Act of 1988 and the Occupational Safety and Health Act of 1994, none of which specifically address the threat of bioterrorism.¹⁴ In recognition of the inadequacy of this legislation Malaysia is in the process of “studying the need to draft a specific law to implement more effectively the [BTWC]”.¹⁵ This low level of implementation is a common problem throughout South-East Asia as highlighted by the 1540 Committee requests for ongoing updates on steps being taken to address this serious gap. It is noteworthy that neither

Indonesia nor the Philippines listed any concrete progress in this area in their updated submissions to the 1540 Committee in 2005.¹⁶

With regard to controls over nuclear and radiological materials there is an outstanding issue concerning the implementation of nuclear safeguards in the region as Brunei, Cambodia, the Lao People's Democratic Republic, Myanmar and Singapore all have Small Quantities Protocols (SQPs) in place and are therefore not required to share information on their nuclear material to the IAEA as long as quantities remain below certain limits.¹⁷ This is of particular concern because few states with SQPs have a State System of Accounting for and Control of Nuclear Material (SSAC) even though they are required to have such under their SQP arrangements and now also under their Resolution 1540 obligations.¹⁸ At the time of writing Singapore is the only South-East Asian state with an SQP that has signed the Additional Protocol, which automatically obliges it to comply with the modified SQP that was introduced in September 2005, including submitting an initial report on its nuclear material, allowing IAEA inspections and introducing an SSAC.¹⁹ It is also significant that of the five states in question only Cambodia has signed the CPPNM, which at least commits it to introduce domestic legislation to protect nuclear material on its territory. On a more positive note Indonesia and the Philippines have been improving their SSACs through cooperation with IAEA and US initiatives. These controls will need to be strengthened as Indonesia embarks on its nuclear energy programme and will also pose a challenge for Thailand and Viet Nam as they follow suit.

Weak export controls continue to be a serious problem in South-East Asia—a region of major transshipment and assembly points for critical strategic dual-use goods and technologies.²⁰ The main reason for the low level of implementation is that ASEAN members regard export controls with suspicion, viewing them as barriers to economic development at best, and at worst as part of a deliberate strategy of technology denial on the part of the developed world.²¹ Part of the reasoning behind 1540 is that it should help ease concerns over inequitable export control regimes, raise awareness that domestic exports controls need not undermine economic productivity and build consensus on the universal requirement to apply domestic controls on the trade in and movement of sensitive technologies.²² However developments since 2004 show that attitudes are slow to change. With the notable exception of Singapore, South-East Asia's export control systems remain unsophisticated and weak.²³ Brunei for example has sent

representatives to regional workshops but has not taken domestic measures to strengthen or clarify its export control system. This might not appear to be too serious a problem given that the sultanate has little in the way of WMD dual-use or WMD-related trade but the development of an indigenous petrochemical industry is raising concerns. Likewise in Myanmar, though it has sent officials to export control workshops, problems of domestic corruption and political apathy have meant that apparent enthusiasm to cooperate at the regional level has not been mirrored by parallel efforts at the national level. This could represent a potential proliferation risk given that Myanmar is suspected by some of having an illicit chemical weapons programme and may aspire to an indigenous nuclear weapons programme.²⁴ Some of the most worrying gaps however are present in some of South-East Asia's most technologically advanced states—Indonesia, Malaysia and Thailand. Although Indonesia has been cooperating with the United States and the IAEA to secure nuclear and radiological materials within its borders, export controls remain underdeveloped with insufficient legislation covering chemical and biological dual-use items.²⁵ Thailand has established a legal framework for export control legislation but its system also remains underdeveloped despite a growing chemical sector and industries with nuclear and missile dual-use potential.²⁶

Some good news to emerge from the region on the issue of export controls comes from the Philippines, which with the help of the IAEA, INTERPOL and the OPCW is in the process of establishing a comprehensive export control regime.²⁷ Although the Philippines has a series of export controls in place to deal with nuclear materials and chemical substances, little inter-agency coordination has existed until now and the area of biological weapons controls has been neglected entirely. This is likely to change as a major initiative, launched by the Office of the President and coordinated through the Office of the United Nations in the Philippines and the Special Envoy on Transnational Crime, has been working to identify the gaps in the Philippines' export controls system and to set up a new regime that meets international export control standards codified by the Nuclear Suppliers Group, the Wassenaar Arrangement, the Australia Group and the Missile Technology Control Regime. Training and seminars have already taken place in the Philippines to ensure that the human resources required for the implementation and enforcement of the proposed policies and regulations are available once they are introduced.

Given time, incentives and encouragement, and if current international and regional capacity-building efforts continue, the indications are that export control systems will grow and be consolidated in most of South-East Asia. Where the Lao People's Democratic Republic, Malaysia and Myanmar are concerned however the gaps in the system may be more difficult to close. In Malaysia, where only minor, primarily legislative changes have been introduced, the problem appears to be one of ideology. Despite revelations that a Malaysian firm manufactured some of Libya's nuclear equipment, and regardless of US efforts to persuade Malaysia to adopt more stringent export controls, its export controls remain some of the most basic in the region.²⁸ In its report to the 1540 Committee Malaysia admitted that its trade regulations were driven by economic rather than security considerations and explained that it was not a lack of capacity that was hindering the development of a more comprehensive export control system,²⁹ implying that its reasons are ideological rather than practical. Overcoming this kind of deliberate resistance, which stems from a long-held hostility to export controls, is likely to be difficult.

In addition to political resistance, poor capacity has been a significant problem in South-East Asia, hampering the implementation of UN counter-terrorism measures. This was clear in the national reports submitted to the 1540 Committee, all of which contained requests for assistance with the exception of Malaysia's. Most of these requests have since been taken up, some via bilateral programmes but more through UN agency activities, which are viewed in a more positive light than national donor assistance efforts. For example the current multi-agency development of the Philippines comprehensive export control system is taking place as a direct result of the assistance request in the Philippines' original report to the 1540 Committee in 2004.³⁰ Cambodia specifically requested assistance from the Director-General of the OPCW to help Cambodian legislators "collect laws for establishing national authority, roles and duties [of the national authority] for chemical weapons" and help train Cambodian officials to build a database of hazardous chemicals and help monitor their use.³¹ Since then Cambodia with the assistance of the OPCW has set up a national protection programme. These types of UN agency-led capacity-building efforts are welcomed by most states in the region, particularly where their unique domestic conditions are seen to be taken into account by those providing the assistance. Capacity-building efforts based on creating model legislation and model action plans—along the lines of those promoted by the APEC Counter-Terrorism Task Force—are less well received and have

lower levels of buy in, partly because they are seen as heavy-handed and insensitive to local needs.³²

Since there have been so few responses to 1540 Committee requests for further information it is difficult to keep track of current assistance needs in the region. However a fair amount can be gleaned from the speeches and presentations delivered at regional workshops and meetings, especially initiatives that take place at the Track II level such as the Council for Security Cooperation in the Asia Pacific (CSCAP). Overall the greatest needs are in drafting legislation, developing and enforcing export controls and creating bioterrorism controls.³³ The following specific capacity-building needs have been highlighted in recent months:

- Cambodia has requested assistance from relevant agencies to help it develop human resources and other skills and provide equipment for the National Authority to combat the spread of WMD;³⁴
- the Philippines has requested ongoing assistance to help transform its “clutter of laws and regulations”³⁵ into a harmonized export controls regime;³⁶
- Viet Nam needs help in building its human-resources capacity in the areas of customs and policing and requires additional technical equipment to assist with implementing export controls;³⁷ Malaysia needs assistance in the area of drafting counter-terrorism legislation, implementing container and border security measures and establishing a biosecurity framework; it needs help in drafting WMD control lists and identifying dual-use items;³⁸
- Brunei has requested assistance to enhance its biosecurity measures and its airport and port security, especially in the area of human resources development;³⁹ and Thailand has requested help in collecting and analysing counter-terrorism intelligence.⁴⁰

1540 IMPLEMENTATION IN THE SOUTH PACIFIC

The level of 1540 implementation in the South Pacific is lower than in South-East Asia. This is not surprising given the serious capacity-building needs of the small states and micro-states that populate the region and the attitude of the majority of Pacific Island Countries (PICs) to the threat of global terrorism—and especially to WMD terrorism—which is one of scepticism.⁴¹ Most of these countries have not been involved in any way with the conflicts and enmities that have fuelled global terrorism and thus do not

view terrorism as a major concern for Oceania. Some of the reasons for this low threat perception derive from their small populations and geographical remoteness. Furthermore due to the low level of development and lack of infrastructure the Pacific islands appear unattractive as both targets and havens for terrorists. In terms of WMD threats the situation appears even more benign as no nuclear, chemical or biological programmes or stockpiles exist in the region and there are longstanding legal frameworks in place to minimize and control proliferation risks. Chief among these are the 1985 South Pacific Nuclear Free Zone Treaty (Treaty of Rarotonga), which commits signatories not to develop nuclear weapons, and the 1995 Waigani Convention,⁴² which bans the importation of hazardous and radioactive waste into Forum Island Countries⁴³ and controls the transboundary movement and management of these materials in the Pacific. The only perceived WMD threats within the region stem from the Papua New Guinea border with Indonesia; the transit of foreign ships carrying nuclear waste through Pacific waters, which some believe could be vulnerable to hijacking by terrorists; and the presence of radioactive contaminants in the Marshall Islands resulting from US nuclear weapons tests there.⁴⁴

More recently the scepticism created by low regional threat perceptions has been accompanied by stronger feelings of resentment triggered by suspicions that the global counter-terrorism agenda was put together without serious regard for the circumstances of small island states and yet binds every UN Member State to new burdensome obligations. Pacific island leaders have expressed their frustration that the new resolutions—devised by the Security Council, which represents roughly 8% of the total membership of the United Nations—follow neither a consent-based, consensus-based nor community-based principle, but rather are an example of “rule by the few”. The belief that the large amount of Security Council legislation that followed the terrorist attacks of 2001 was based on emotion and heat of the moment decisions rather than careful consideration has added to this frustration and led to a certain detachment from the global counter-terrorism agenda.⁴⁵

Viewed in the context of small island state security priorities in the South Pacific this feeling of detachment is understandable. Only Papua New Guinea is seriously concerned about the regional impact of global terrorism due to its border with Indonesia.⁴⁶ All other PICs are preoccupied by what have been termed “fish and rice issues”—the provision of basic health and education services, the prevention of civil unrest and the management of environment and resource needs.⁴⁷ The challenge of providing these basic

services dominates the daily agenda of most of these countries, absorbing most if not all of their administrative and financial capabilities. In April 2006 this situation was clearly explained to Ambassador Ellen Margrethe Løj, then head of the Counter-Terrorism Committee, in a meeting of the Pacific Islands Forum Working Group on Counter Terrorism (WGCT). Ambassador Løj had been specifically invited by the forum in order to apprise her of the serious hurdles confronting PICs in meeting their counter-terrorism obligations given the scale and nature of their development and resources.⁴⁸

Adherence to international agreements by PICs is considered poor in general and compliance with 1540 is no exception.⁴⁹ The problem is that while it is relatively straightforward to accede to legally binding agreements and to issue verbal commitments in support of them, when it comes to implementation and enforcement, low prioritization, high implementation costs, lack of coordination and poor law enforcement capacity combine to limit compliance.⁵⁰ Where Resolution 1540 is concerned these problems are especially apparent: the resolution's Chapter VII mandate and reporting requirements ensure that non-compliant states in the subregion are more easily identified. Nearly three years after the resolution's first reporting deadline expired and a year since the resolution's original provisions were reaffirmed in Resolution 1673, half of the states in the Island Pacific had not submitted their first 1540 report. Table 3 shows the status of reporting in the region at the time of writing. To some extent this poor performance can be attributed to the burden placed on small states by their reporting obligations, but this is not the full story. For the past two years New Zealand and to a lesser extent Australia have offered assistance to PICs to help them meet their reporting obligations, removing some of the practical obstacles to submission. Despite this only Kiribati, the Marshall Islands, Samoa, the Solomon Islands, Tonga, Tuvalu and Vanuatu have accepted the offer and subsequently submitted reports. As discussed below the 1540 Committee, regional organizations and donor states have attempted to create a greater sense of urgency among PICs by stressing the long-term costs of non-compliance, including possible negative consequences for tourism, but the problems of poor capacity and low prioritization remain.

These problems have affected other aspects of 1540 compliance, a fact that would not be immediately obvious given the impressive list of South Pacific signatories to the various WMD treaties and associated non-proliferation mechanisms. PICs have made efforts to accede to the array of international non-proliferation and disarmament agreements but these have not been

accompanied by parallel efforts to ensure high levels of implementation (see Chapter Annex B).

Table 3. Regional status of 1540 reporting

| Country | Date(s) submitted |
|------------------|-------------------------------------|
| Australia | 28 October 2004 |
| Cook Islands | |
| Fiji | |
| Kiribati | 20 September 2005 |
| Marshall Islands | 23 November 2003 |
| Micronesia | |
| Nauru | |
| New Zealand | 28 October 2004 |
| Malaysia | 26 October 2004 |
| Niue | |
| Palau | |
| Papua New Guinea | |
| Samoa | 13 April 2006 |
| Solomon Islands | |
| Tonga | 5 April 2006 |
| Tuvalu | 13 March 2007 |
| Vanuatu | 22 February 2007 |
| Viet Nam | 26 October 2004 12 December 2005 |

Source: 1540 committee website, <www.un.org/sc/1540/nationalreports.shtml>.

For example although all PICs are members of the CWC none have achieved a minimal level of compliance with their obligations under the convention. According to the 2006 draft report of the OPCW on CWC implementation only Fiji (October 2006), Nauru (September 2006), the Solomon Islands (October 2006) and Vanuatu (August 2006) have

fulfilled the Article 10(4) requirement to submit information on their national protection programmes.⁵¹ Perhaps even more significant is the fact that the four submissions that have been forthcoming indicate that none of the states in question have national protection programmes in place. In contrast Australia has submitted comprehensive annual reports since September 1999 as has New Zealand since May 2005 and both countries are known to fulfil the national protection programme requirements.⁵²

The need to improve the level of 1540 and CWC compliance in the South Pacific is recognized by the OPCW, INTERPOL and donor states, all of which are currently providing technical assistance to help the PICs meet the relevant obligations.⁵³ These assistance efforts are ongoing and are detailed in some of the 1540 reports. Kiribati and Vanuatu for example, with the help of the OPCW, are in the process of drafting the necessary legislation to allow them to meet the legislative requirements.⁵⁴ This followed a visit from OPCW representatives to the 2006 meeting of the Forum Regional Security Committee in Suva, Fiji, where the technical challenges of meeting 1540 and CWC requirements were discussed. In a more recent initiative the OPCW organized in August 2007 a dedicated subregional legal workshop in the South Pacific to provide practical assistance in drafting national legislation to help implement the CWC.⁵⁵

While CWC implementation in the Island Pacific is poor, compliance with the BTWC and biosecurity elements of 1540 is almost nonexistent. Among PICs only Fiji, Palau, Papua New Guinea, the Solomon Islands, Tonga and Vanuatu are members of the BTWC. Of the total of 23 non-signatory states currently preventing the universality of the convention, eight are in the South Pacific.⁵⁶ Among the six PICs that are signatories, only Fiji and the Solomon Islands have provided information on their national implementation of biosecurity legislation and both submissions reveal an insufficient level of regulation of toxins and pathogens.⁵⁷ Reports submitted to the 1540 Committee tell the same story: of the seven submissions from PICs most appear to have modified their criminal offences legislation to cover the supply of chemical or biological weapons to terrorists or criminal gangs but none have legislation (either new or amended) specifically regulating the manufacture, acquisition, possession, development, transportation, transfer or use of biological or chemical weapons, their delivery systems or related components.

Again there is an acute awareness of this gap in implementation among representatives of the 1540 Committee and relevant agencies along with an acknowledgement of the extreme complexity and difficulty of drafting the legislative frameworks required to comply with 1540 bioterrorism provisions.⁵⁸ As the organization tasked with building capacity in this area, INTERPOL's bioterrorism unit has convened information seminars in the Asia-Pacific region with the intention of raising awareness of the threat, developing police training programmes, strengthening efforts to enforce existing legislation, promoting the development of new legislation and encouraging cooperation in this challenging area. However to date all of the Asia-Pacific regional seminars have been held in South or South-East Asia with representatives from the South Pacific needing to travel to Jakarta, Manila, Singapore or Colombo in order to participate. At the time of writing no dedicated subregional biosecurity workshop has been held for PICs despite their obvious need for capacity building and assistance. On a more positive note a group operating under the auspices of the Secretariat of the Pacific Community is currently working on a Model Bio-Security Act (discussed in Section 3.2), which it is hoped will be adopted by PICs when it is released in late 2007. But whether or not they will actually choose to adopt this legislation is unclear at present, partly due to concerns over whether a "one size fits all" approach is even workable in the subregional context.⁵⁹

Most PICs consider themselves to be model members of the nuclear non-proliferation regime, due in part to their membership of the Treaty of Rarotonga with its strong compliance procedures.⁶⁰ However the nuclear non-proliferation commitments under the treaty, to which most PICs are signatories, refer explicitly to state-based proliferation and do not extend to the activities of non-state actors. The only exception to this relates to the issue of dumping radioactive waste and materials at sea or anywhere in the nuclear free zone, which is prohibited to "anyone".⁶¹ The fact that 1540 obliges states to introduce operational and legislative measures to cover all aspects of the nuclear threat is well understood by PICs but a combination of low threat perception and the technical hurdles associated with fulfilling 1540 obligations are hampering progress. At present the available submissions to the 1540 Committee indicate that most PICs have SQPs in place and few have implemented the necessary nuclear controls. This is a concern given that low-level radiological threats do exist in the region as they do everywhere around the world where radioactive materials are used in medicine, industry, agriculture or research. In the case of the South

Pacific their use is not extensive but sealed sources are used in industrial radiography, smoke detectors and irradiation.⁶²

The low prioritization of nuclear and radiological terrorism threats among PICs is also evident from the regional status of the UN counter-terrorism conventions, most notably the CPPNM, which has been open for signature since March 1980, and the more recent International Convention for the Suppression of Acts of Nuclear Terrorism.⁶³ Chapter Annex B illustrates this point very clearly with only the Marshall Islands, Nauru and Tonga currently having acceded to the former and only Kiribati and Palau having signed the latter. This represents a significantly reduced level of support relative to the status of the other 11 UN counter-terrorism conventions in the South Pacific.

By any objective assessment there is an overwhelming gap between the requirements set out in 1540 and the legal, political, technical and financial capacity of most PICs to comply with them. They have small administrations that are already struggling to cope with the “fish and rice” issues—efforts to comply with 1540 are placing further pressure on domestic systems and limited resources. States that have submitted reports to the 1540 Committee have partly been motivated to do so by the opportunity that the reporting requirement provides in terms of raising international awareness of their major assistance needs. The list below highlights some of the key areas where PIC officials have identified the need for assistance from relevant agencies and donor states:

- Vanuatu has requested help in creating advanced operational capability within its police and border security agencies and help assessing the viability of adopting national control lists;⁶⁴
- with only 10 lawyers to handle all legal matters Kiribati “welcomes any offer to assist in identifying and remedying deficiencies in its existing legislation so that it may meet its obligations”; it is particularly interested in receiving technical assistance to identify deficiencies in its legislative obligations associated with CWC membership and assistance to help review and strengthen its existing domestic controls to prevent the proliferation of WMD, especially in relation to border security;⁶⁵
- Tuvalu has asked for help to develop legislative frameworks or supporting operational mechanisms to regulate the physical protection of nuclear, chemical or biological weapons, their

means of delivery and related components, and for controlling the movement of these weapons, their means of delivery and related components;⁶⁶ and

- the Marshall Islands has requested technical assistance to complete a review of its current national legislation in order to determine what further steps are needed to ensure full implementation of 1540 and the WMD treaties.⁶⁷

Other PICs have been less forthcoming about their technical assistance needs. Clearly the more specific a request for technical assistance the more helpful it is to the states, agencies and organizations involved in providing assistance. However a reasonable knowledge of the resolution and its requirements is necessary on the part of the requesting state in order to provide this type of information and certain reports, such as that submitted by Tonga in April 2006, demonstrate a gap in this basic knowledge—the report states that “it will advise in due course the specific area for which additional support is required”.⁶⁸ The assistance requests provided in Samoa’s report are similarly vague and general, covering “any technical assistance that is available”.⁶⁹

Although it has not yet submitted a report to the 1540 Committee Palau has been frank and open about the extent of its capacity-building needs. In 2006 for example, during discussions on the UN Global Counter-Terrorism Strategy, Ambassador Beck of Palau explained that while help in creating legislative frameworks is a useful first step it is meaningless unless states have the capacity to train officials in the skills necessary to monitor compliance and enforce legislation.⁷⁰ Furthermore he explained that although the provision of technical assistance from relevant agencies, such as the OPCW, IAEA or INTERPOL, is useful for many states, PICs are not always in a position to benefit from this expertise due to the financial burden that membership of such organizations entails. He gave the example of Palau’s wish to join INTERPOL, its inability to do so due to the prohibitive costs involved, and the need for a trust fund to be created to allow small developing states to join this and other specialist agencies.⁷¹

IMPLEMENTING 1540: REGIONAL AND BILATERAL COOPERATION

In theory the benefits of using regional security architectures to facilitate the implementation of Security Council resolutions are immense: local knowledge, sensitivity to cultural particularities and a greater awareness of regional priorities and concerns should provide regional organizations with an advantage over global bodies. Certain material advantages are also evident: burden sharing, the pooling of resources and associated efficiency gains all act as strong incentives for states to cooperate at the regional level to reduce the costs of implementing global obligations.

In practice however regional organizations take time to adjust to new tasks—learning can be slow and there can be many false starts, particularly where the tasks are difficult and compromise state sovereignty.⁷² One of the problems is that new agendas tend to create or reinforce hierarchies among regional security organizations, often with the stronger, Western-based organizations taking the lead and others following at different speeds, sometimes leading to frustration and resentment. This has been a problem in the Asia–Pacific where formal regional security institutions have been exceptionally slow to emerge and where the regional organizations that do exist tend to suffer from internal divisions, a lack of coordination and concrete action, and a reluctance to address hard security issues such as WMD proliferation. To an extent the diplomatic traditions of South-East Asia and the South Pacific have contributed to this situation by placing informal dialogue above more concrete forms of cooperation. Although this has played an important role in fostering trust and confidence it has sometimes left a gap between words and deeds.

The next part of the chapter identifies some of these problems as well as highlighting areas where regional organizations such as the ASEAN Regional Forum and Pacific Islands Forum have helped facilitate implementation of 1540. It also identifies some of the bilateral and other subregional initiatives that have been underway in the Asia–Pacific. The latter have played an important role in ensuring that results-based—rather than process-based—initiatives are launched and urgent capacity-building needs are met. In addition to possessing the relevant skills and knowledge associated with implementing WMD controls at the national level, states that engage in bilateral and subregional outreach activities can help create momentum and foster a greater sense of urgency. In South-East Asia Australia and

Japan are leading the most significant initiatives of this kind, whereas in the South Pacific New Zealand is leading the field. The key point about these activities as far as 1540 implementation is concerned is that their goals are limited and focused and thus more likely to be achieved. However as this part of the chapter explains the rush to assist has not always been well coordinated, leading to some inappropriate training, duplication of effort and wasted opportunities.

REGIONAL AND BILATERAL INITIATIVES IN SOUTH-EAST ASIA

Concrete actions towards the prevention of WMD terrorism were initially slow to emerge under the ASEAN Regional Forum with the statements emerging from the annual meetings after September 2001 seemingly rather vague and more concerned with the status quo rather than adopting new initiatives.⁷³ As time progressed Regional Forum reports and documents revealed an increasing awareness of the need to cooperate at regional and international levels in order to deal with the threat of WMD terrorism, but while general consensus statements seemed to represent a step in the right direction they were not being backed with practical steps to prevent and detect the theft and misuse of sensitive materials and thus appeared increasingly hollow. In response officials in the West began to refer to a condition they called “meeting fatigue”—frustration from the perception that dialogue was being used as a cover for inaction in the realm of proactive counter-terrorism cooperation. These comments echoed long-established criticisms of the ASEAN Regional Forum based on the limitations imposed upon it by its founding principles—particularly the principles of consensus and non-interference. These principles, combined with low institutionalization and non-binding decisions, have ensured that the organization has been viewed by many as a talking-shop for diplomats and other government officials rather than a genuine regional security actor.

Despite this slow start and growing frustration in some quarters Resolution 1540 may provide the Regional Forum with an opportunity to prove that it has a meaningful role to play in promoting regional security cooperation, even in the realm of hard security. The first signs that this might happen can be traced back to the ASEAN Regional Forum Statement on Non-Proliferation, which was issued at the Eleventh ASEAN Regional Forum held in Jakarta on 2 July 2004 just a few months after Resolution 1540 was passed.⁷⁴ The statement explicitly stressed the need for Regional Forum member states to adhere to and implement each of the operative paragraphs

outlined in 1540 and emphasized the importance that they strengthen their national legislation regarding WMD, including regarding illicit trafficking and export controls. It also urged participants to enhance their levels of regional cooperation among each other and with the IAEA and OPCW. Beyond reinforcing the obligations outlined in 1540 the statement included more specific measures to increase regional assistance and strengthen WMD mechanisms, including a pledge to maximize the provision of technical expertise among Regional Forum participants; a decision to encourage the Regional Forum Chair to explore with the ASEAN Secretariat, or if established an ASEAN Regional Forum Unit, whether it would be willing to record requests for assistance; and a political commitment from participants to work towards following the IAEA Code of Conduct on the Safety and Security of Radioactive Sources.⁷⁵

Since these issues were raised in Jakarta the ASEAN Regional Forum has taken some significant steps to facilitate counter-terrorism cooperation, playing a coordinating role for the region. Much of this work has been achieved with the help of the Regional Forum's official Track II diplomacy body, CSCAP, which through a series of seminars and workshops has been raising awareness of the need for concerted national implementation efforts and practical cooperation to fulfil Resolution 1540 provisions. At the suggestion of the CSCAP WMD Study Group for example the ASEAN Regional Forum held a workshop on the implementation of Resolution 1540 in San Francisco in February 2007, which was attended by officials from most ASEAN states and relevant UN agencies, and was characterized by a frank exchange of information on implementation efforts, capacity needs and assistance offers.⁷⁶ Subsequently at the Fourteenth ASEAN Regional Forum, which was held in Manila in July–August 2007, Regional Forum members discussed the possibility of creating a new regional body specifically to address disarmament and non-proliferation issues and to coordinate regional WMD initiatives.⁷⁷ At the same meeting ministers adopted a formal statement supporting national implementation of Resolution 1540, which was attached as an annex to the chairman's statement.⁷⁸ Although concerns over West-dominated counter-terrorism and non-proliferation agendas continue to be expressed in Regional Forum meetings and Track II seminars, these recent developments do signal a greater willingness among some ASEAN members to prioritize WMD issues and to acknowledge that Resolution 1540 addresses a genuine and serious global threat.

There are a number of important concrete steps that the ASEAN Regional Forum could now take to help consolidate and expand its regional coordination role. Some relatively small steps would have a significant benefit, such as the adoption of the Export Controls Guidelines, which have been developed by the CSCAP Export Controls Expert Group, as a regional standard for all Regional Forum members. A longer-term, more challenging initiative would involve setting up a Regional Forum oversight body to chart and coordinate 1540 initiatives in the region—a system of keeping track of capacity-building needs, assistance offers, ongoing assistance programmes and available expertise. This body could serve as the main contact point for the 1540 Committee and the relevant UN agencies, helping to provide timely and accurate information, prevent unnecessary duplication of assistance activities and ensure that the complex array of 1540 requirements are met. A similar body already exists in the South Pacific and makes a major contribution to coordinating South Pacific counter-terrorism activities. It is unlikely that such a concrete role is currently envisaged for the new non-proliferation body discussed at the last ASEAN Regional Forum in Manila in July 2007 as it would currently be viewed as impinging on domestic jurisdiction, but it would be beneficial if it could move in this direction.⁷⁹

While most ASEAN members have accepted the evolving counter-terrorism role of the ASEAN Regional Forum, as long as it is achieved without sacrificing other regional priorities, the same cannot be said for ASEAN attitudes to the APEC foray into the hard security realm. Reports indicate significant division within ASEAN over this issue: whereas the Philippines, Singapore and Thailand have welcomed US-led initiatives within this context, officials from Indonesia, Malaysia and Viet Nam have openly expressed reservations, arguing that they do not wish to be associated with the US “war on terror”, which is widely regarded among their populations with deep suspicion and scepticism. Such reservations go even deeper than the stated concern over the US foreign and security policy agenda, to a longer-term preoccupation with the issue of cultural pluralism. While APEC has traditionally operated on the basis of “non-binding commitments, open dialogue, and equal respect for the views of all participating economies”⁸⁰—which sits comfortably within the Asian diplomatic tradition—some ASEAN members are worried that the West-centric counter-terrorism agenda is forcing institutional change within APEC in favour of a more legalistic, formal framework.

Recent developments suggest that some of these concerns are not without foundation as there have been moves among some Western APEC members

to introduce stronger, more formal mechanisms, particularly with respect to the institution's evolving security role. More specifically this relates to the work of the Counter-Terrorism Task Force (CTTF), which senior APEC officials agreed to establish during the October 2002 Economic Leaders Meeting in Los Cabos, Mexico.⁸¹ Unlike parallel regional security institutions, which have issued numerous consensus statements in favour of concrete counter-terrorism cooperation but have achieved little in the way of actual deliverables, from its inception the goal of the CTTF was to serve as an action-oriented security actor drawing APEC members into an ever-deeper series of counter-terrorism commitments. Similar to the agenda of the UN Counter-Terrorism Committee, states are required to provide written reports (known as Counter Terrorism Action Plans) to the CTTF, outlining the counter-terrorism measures that they have undertaken, including in the area of WMD proliferation. Similar to the national reports to the 1540 Committee these action plans are functional documents that are cross-analysed and used for monitoring and assessment purposes.⁸² This exercise is somewhat at odds with the informal dialogue mechanisms that have previously dominated APEC interactions in the economic realm and, although Western states have made much effort to emphasize that the work of the CTTF is based on the objective of achieving secure conditions for the facilitation of trade and commerce in the Asia-Pacific, not all APEC members are convinced by such assurances and some are obstructing APEC's work in this area.⁸³

The most comprehensive bilateral assistance efforts currently underway in South-East Asia have been launched and overseen by Australia, Japan and the United States. The most successful of these are practical, action-oriented initiatives that take place at the ministerial or senior level and which focus on specific threats such as bioterrorism or specific functions such as policing. Ongoing successful initiatives include:

- the Bali Counter-Terrorism Process, coordinated by Australia and Indonesia, focusing on counter-terrorism collaboration in the area of law enforcement and legal frameworks;⁸⁴
- the BTWC Regional Workshops, also hosted by Australia and Indonesia, focusing on developing a range of implementation tools to help states fulfil their obligations under the BTWC;⁸⁵ and
- the Asian Senior-level Talks on Non-Proliferation, hosted by Japan, which focus on strengthening the nuclear non-proliferation regime.⁸⁶

A number of national initiatives aimed at capacity-building via bilateral engagement have also been constructive—particularly the bilateral technical assistance programmes launched by Australia and the United States. These inter-agency programmes tailor bilateral assistance to local needs. Targeted assistance programmes are also being pursued via a trilateral initiative led by Australia, Japan and the United States, which provides counter-proliferation and safeguards training to individual South-East Asian states. The good news is that examples of these types of initiatives are multiplying and that they are building capacity and expertise in the region. The bad news is that participation in them is inconsistent and coordination among them is poor. For these reasons it would be far preferable if technical assistance in South-East Asia could be coordinated through the ASEAN Regional Forum, which could help prevent duplication of effort, identify areas of greatest need and ensure a maximum return on available resources. However it is unclear at this stage whether the political will exists among ASEAN members for the organization to take on this role as there remain significant doubts as to the legitimacy of 1540 in some quarters.

The lack of regional coordination of bilateral assistance initiatives has resulted in missed opportunities to maximize their impact. For example resources have sometimes been “thrown at a problem” rather than being carefully tailored to meet particular needs. This has been particularly evident with training seminars, during which differences in knowledge and capacity levels have not always been acknowledged by the experts providing the training.⁸⁷ Thus although a state may be fulfilling its obligation to engage in outreach activities by providing the workshops the actual impact of these efforts is limited because the training provided is not meaningful for some of the officials attending the meetings. The importance of the context of assistance provision is only now being fully grasped with the realization that resources have been wasted on the part of donor and recipient states. Japan for example has literally held hundreds of workshops and training seminars since 2004 to facilitate the implementation of 1540, covering everything from aviation security to export controls to law enforcement cooperation.⁸⁸ These meetings have been attended by officials from all across the region but, while officials from the most advanced states in South-East Asia have been able to implement the training they have received, officials from states with the greatest capacity needs have not due to a lack of resources. The fact that the quality of training is more important than the quantity is now being recognized by Japan, which has begun to engage in follow-up activities and has launched a new assistance programme aimed at providing the

technical equipment that will ensure that its training programmes achieve more concrete results.⁸⁹

REGIONAL AND BILATERAL INITIATIVES IN THE SOUTH PACIFIC

In the South Pacific the primary regional organization tasked with facilitating counter-terrorism cooperation is the Pacific Islands Forum (PIF), which plays a major coordination role for the region.⁹⁰ However the PIF is not without its difficulties in the realm of security cooperation. As the current Secretary General Greg Urwin has noted, the historical circumstances of the formation of this political body are significant, influencing the style and type of security cooperation that is achievable under its direction.⁹¹ It grew at a time when island entities across the Pacific were making their preparations for independence and when these emerging nations were frustrated with the existing regional organization the South Pacific Commission. From its very beginnings, the PIF's members looked upon the organization not only as a means of promoting functional regional cooperation but also as a vehicle for the joint expression of their newly won national sovereignty. This has led them to place a premium on the principle of non-interference in each other's affairs and has restricted any deep institutionalization, such as in the realm of defence cooperation.

With regard to counter-terrorism cooperation the reluctance of most of the PICs to acknowledge terrorism as a genuine regional threat requiring urgent action, combined with their determination to guard the sovereign rights so recently acquired, has limited the level of security cooperation. Although the number of regional security agencies acting under the PIF's purview has been rapidly expanding and the proliferation of PIF declarations, treaty frameworks and far-sighted regional policy agendas give the impression of ambitious security cooperation in the Island Pacific and even a significant trend towards deep security institutionalization, there is a gap between the growth of a sophisticated security architecture and the willingness among some PIF members to utilize it.⁹² Part of this is due to the perception among many in the Island Pacific that regional security institutionalization is a form of twenty-first century neocolonialism led by Australia, the region's most powerful actor. They are wary of regional initiatives that erode their independence and that are regarded as being part of an agenda that does not serve their own national priorities and goals.⁹³ This has led to attempts to reform the Pacific Regional Institutional Framework in an effort to ensure

that it reflects the local needs of PICs, but the reality is that a national–regional disconnect still exists and suspicions remain.⁹⁴

Despite these reservations there have been some significant achievements in regional counter-terrorism cooperation and assistance, including in the area of 1540 implementation, many of which have been conducted under the auspices of the PIF. A key development has been the creation of the WGCT, which was proposed by New Zealand to report on progress within the region with regard to counter-terrorism cooperation and to discuss important trends and issues. The group, which includes delegates from the Forum Island Countries, representatives from the PIF Secretariat, the Secretariat of Pacific Communities, the Oceania Customs Organisation and the Pacific Islands Chiefs of Police, meets in advance of the Forum Regional Security Committee meetings and has become an important forum for information exchange, including on 1540 obligations and implementation. At the first meeting of the WGCT in June 2005 a proposal to create and continuously update a matrix showing the region's progress in fulfilling its counter-terrorism obligations was accepted. The idea is to use the matrix to record implementation and technical assistance needs. At the same meeting the issue of bioterrorism was addressed by the Fijian Commissioner of Police, who provided an account of a recent INTERPOL conference on bioterrorism and set out a number of steps that PICs should take to cope with outbreaks of disease.⁹⁵

Two years after its launch the WGCT appears to be moving beyond its original mandate, acting not only in a monitoring and facilitating capacity with regard to the implementation of UN counter-terrorism resolutions but also as a regional point of contact for the UN Counter-Terrorism Committee and relevant agencies. For example at the July 2007 meeting of the WGCT, representatives from the Counter-Terrorism Executive Directorate and the 1540 Committee briefed PIF members on their activities and on the costs of failing to comply with international counter-terrorism obligations. Committee officials also listened to the technical assistance needs of PIF members via bilateral discussions on the sidelines of the meeting and through attendance of the workshops.⁹⁶ The previous year the meeting of the WGCT had been attended by representatives from the OPCW, encouraging PICs to take advantage of the organization's offers to assist them in drafting legislation to help them meet their CWC obligations and to hold discussions on a dedicated OPCW workshop, which was later held in Palau in August 2007.⁹⁷

A number of regional agencies that operate within the purview of the PIF play a significant role in operational capacity building in the region. For example the Pacific Transnational Crime Coordination Centre in Suva provides an important intelligence coordination role that is very relevant to the implementation of 1540 in the South Pacific. If any suspicious goods are located by customs officials during routine searches of cargo in the region, PICs are supposed to immediately notify the centre. Through this regional intelligence agency PICs are able to gain access to regional and international intelligence networks, including the Customs Asia Pacific Enforcement Reporting System—a secure US-based website that provides sensitive customs-related information to members.⁹⁸

Another regional organization, the Secretariat of the Pacific Community (SPC), is also playing an important role in capacity building in the South Pacific, particularly in relation to biosecurity. One of the oldest regional organizations in the world, the SPC functions as a non-political, technical assistance and research body, working with donor states and other regional and international organizations to provide advice to its 22 island members.⁹⁹ The SPC mandate allows it to work on a variety of governance issues that concern its member countries, adapting as necessary to meet evolving regional needs. With regard to 1540 implementation its most significant work is being carried out by the Suva-based Biosecurity and Trade Support group, which has taken on the task of providing biosecurity advice to PICs, offering technical assistance to encourage the development of border security systems, legislative frameworks and safety and emergency response procedures.¹⁰⁰ At present the group is working with INTERPOL and other relevant agencies and organizations in the drafting of a Model Bio-security Act, which it is hoped will be adopted by PICs in order to close the serious gap in biosecurity legislation in the South Pacific. The key question is whether the PICs will take the advice of the Biosecurity and Trade Support group and adopt this model legislation when it has been completed or whether it will be viewed as an unnecessary burden, at risk of disrupting national trade and development goals. The prospects of “take up” should be reasonably good however given that this legislative instrument is being developed by a group of experts who possess local knowledge of the environment and trade dynamics of the South Pacific and is being tailored to ensure that it works in harmony with existing systems. The current situation, as noted in a number of PIC reports to the 1540 Committee, is that SPC members are “observing” the work of the Biosecurity and Trade Support group and are

withholding judgement on whether or not they will adopt and implement the finished legislation.¹⁰¹

The most significant bilateral assistance efforts in the South Pacific are being led by New Zealand, which places a high priority on helping states fulfil their global counter-terrorism obligations. Officials from New Zealand, as well as Greg Urwin, consistently stress the need to close any weak links in the global counter-terrorism effort—including in areas where there is no obvious or immediate threat, such as in the South Pacific. While acknowledging that the risk of direct terrorist attack in the region is relatively low, officials regularly point out that distance is no guarantee of immunity and that counter-terrorism commitments are global obligations that cannot be shirked.¹⁰² New Zealand's counter-terrorism ambassador, Dell Higgie, has been particularly outspoken in this regard, urging leaders of PICs to take into account the comprehensive nature of global security dynamics, including the linkages between terrorism, crime and civil unrest. By taking the difficult steps to implement their counter-terrorism obligations, she and others have argued, PICs will be working to build more secure societies that are more prosperous and less vulnerable to a whole range of threats.¹⁰³

It may seem surprising to some that, despite its small size and relatively limited resources in Organisation for Economic Co-operation and Development terms, New Zealand—rather than Australia—has been taking the lead in counter-terrorism capacity building in the South Pacific. This is partly a result of practical considerations: Australia's proximity to South-East Asia and the reality of known terrorist threats emanating from that region have led Canberra to focus more of its assistance activities on its northern neighbours. But there are other reasons why Wellington has taken a leading role in the Island Pacific that have more to do with PIC perceptions of the regional powers than operational factors: for example, New Zealand is often regarded as being more sensitive to the needs of small island states and thus a more trusted partner.

This trust is founded on New Zealand's balanced approach to counter-terrorism cooperation and especially on its efforts to articulate and promote the genuine capacity needs of small island states at the international level. A significant number of New Zealand's counter-terrorism initiatives and proposals originate from its desire to encourage greater international awareness of the resource and technical capacity challenges facing the region and of the need to bear these in mind when discussing international

counter-terrorism obligations. Such initiatives include New Zealand's suggestion that the Counter-Terrorism Committee could make a concession on national reporting requirements in order to allow the PIF to submit regional reports; the establishment of the Pacific Roundtable on Counter-Terrorism to discuss the resource constraints faced by PICs and the ways in which these might be addressed;¹⁰⁴ and the establishment of a PIF Expert Working Group to draft model counter-terrorism legislation for PICs.¹⁰⁵ When New Zealand's request for a regional reporting concession was rejected by the UN Security Council, Wellington responded by offering reporting assistance on an individual basis to every PIC—a service that has been applauded by the 1540 Committee and has helped seven PICs to fulfil their reporting obligations under 1540.

Most of New Zealand's assistance and capacity-building work is conducted through the PIF, but an awareness of the urgent needs of PICs and the difficulty of meeting these through slow-moving regional organizations has led New Zealand to set up the Pacific Security Fund to provide one-off contingency assistance. Through this fund New Zealand provides advice, training and technical support in the areas of aviation security, port and shipping security, customs processes, immigration and legislative drafting.¹⁰⁶ Examples of projects that have been funded over the past few years include the provision of x-ray machines for scanning luggage at airports in the Cook Islands, Fiji, Niue, Samoa, Tonga and Vanuatu; training assistance for officials from Pacific countries on the new International Ship and Port Facility Security Code, covering security at port facilities and the new US requirements on container shipping security; programmes to educate Pacific island officials on biosecurity requirements; and consultation services for those tasked with drafting national counter-terrorism legislation. Although a relatively small resource pool (with an annual budget of NZD 3 million), the key point about this fund is that it provides targeted, practical assistance and meets needs that are sometimes of a very basic nature and thus overlooked by countries that are not familiar with the challenges facing small island states. One example of this kind of assistance is the provision through the Pacific Security Fund of computer equipment and services to Tuvalu, which when installed in late 2007 will allow real-time electronic access to customs and other intelligence information for the first time. Until now Tuvalu has had to rely on the Pacific Transnational Crime Coordination Centre to download relevant intelligence information and to fax it through to their officials—a situation that reflects the very basic capacity-building needs of many PICs.¹⁰⁷

CONCLUSION AND RECOMMENDATIONS

The most serious problem affecting the implementation of 1540 in South-East Asia and the Pacific relates to its perceived lack of legitimacy among many states. In South-East Asia questions over legitimacy stem primarily from the origins of the resolution and its apparent connection to the US “war on terror” and the belief that the counter-terrorism agendas of Western states represent a double standard, expecting developing states to comply with stringent non-proliferation obligations while the nuclear weapons states give inadequate attention to their own disarmament commitments. Among the island states of the South Pacific legitimacy questions focus mainly on the nature of the counter-terrorism resolutions, which have imposed universal standards of compliance on all states without due regard for the special priorities and circumstances facing the micro-states of the region. In both cases these unresolved issues have bred resentment, creating an ambivalent attitude toward 1540 and a reluctance to prioritize its implementation. They have also created suspicions surrounding the assistance clause and the provision of donor assistance, which is regarded by some states as an underhanded extension of Western dominance, giving false legitimacy to the non-proliferation initiatives and projects of the United States and others.¹⁰⁸

The consultative approach of the 1540 Committee and the expert group and the efforts to work with regional organizations has helped to assuage some of these concerns but sensitivities remain. For this reason any efforts to develop a more formal monitoring role for the 1540 Committee or to adopt a more forceful approach in response to non-compliance would likely back-fire in South-East Asia and the South Pacific. In both regions cooperation with the 1540 Committee is dependent on careful persuasion and would be enhanced by incentivizing states to fulfil their obligations rather than by creating more intrusive monitoring systems.¹⁰⁹ With this in mind any positive linkages between non-proliferation instruments, such as export controls, and economic development should be explored and highlighted by the 1540 Committee in order to remove some of the negative associations. And rather than being undertaken at the global level, any formal monitoring should be carried out by agencies working under the auspices of regional organizations, which are more sensitive to local conditions.

A number of additional measures could help facilitate implementation of 1540 in South-East Asia and the South Pacific. Longer-term recommendations could include efforts to foster discussion within ASEAN of a new regional security concept. This could help detach UN resolutions such as 1540 from any perceived connections with the “war on terror” and the negative associations of that campaign for domestic audiences across the region. It would also help shift security debates away from China’s advocacy of its own “New Security Concept” and from unpopular suggestions that the Asia–Pacific should adopt European Union approaches to security cooperation.¹¹⁰ Developing a security concept that is particular to the region, that is co-owned by all regional players (rather than being associated with any one of them) and that addresses the causes of multiple transnational security threats, as well as the challenges of dealing with them, could help create a stronger security culture that is freed from current resentments.

Short- and medium-term recommendations for the implementation of 1540 in South-East Asia and the South Pacific focus primarily on developing a more coherent subregional approach to capacity building. To date most bilateral, subregional and regional assistance efforts have been uncoordinated and haphazard, with too little evaluation of their effectiveness and virtually no follow-up. This has led to wasted opportunities, duplication of effort and a poor match between the assistance provided and the capacity needs of recipient states. One way to overcome this problem would be to set up dedicated subregional “1540 oversight bodies” to coordinate and direct capacity building and to liaise with relevant international organizations, UN agencies, bilateral initiatives and donor states. But despite the practical advantages of this type of mechanism resistance to their establishment could be quite strong in both South-East Asia and the Island Pacific due to the widespread conviction that resources should be directed to urgent development and human security priorities rather than to reducing the remote—or exaggerated—threat of WMD terrorism. Given this situation a more realistic option could be to make more use of existing bodies within the two subregions to help develop capacity.

In the Island Pacific there is potential to expand and enhance the work of the WGCT, which operates under the auspices of the PIF. This body already plays an important role in identifying and addressing the capacity needs of member states and in monitoring the implementation of Resolution 1540 but there are ways in which its effectiveness and efficiency could be improved. For example more regular meetings of this body, which currently

meets twice a year, would increase the pace of 1540 implementation among island states, particularly if those meetings included tailored seminars on the technical aspects of introducing WMD controls and were attended by experts with knowledge of local industry, agriculture and commerce. The creation of a registry of expertise in the region would help assist this process as would a regularly updated compendium (both electronic and hardcopy) of relevant documentation relating to the meetings, which would help officials keep track of developments.

In South-East Asia there could be some potential to expand the work of the ASEAN Regional Forum Intersessional Meeting on Counter-Terrorism and Transnational Crime (ISM-CTTC) to include a more specific focus on the implementation of 1540 or to assign this work to the new body on WMD counter-proliferation, which is currently under discussion within the ASEAN Regional Forum. The problem here however is that both bodies—the existing ISM-CTTC and the proposed body on counter-proliferation—are seen to have US origins and may thus encounter some resistance based on opposition to the “war on terror” and on perceived double-standards in arms control and non-proliferation in general. In light of these sensitivities it may be more productive to promote the implementation of some 1540 obligations via subregional bodies that have little or no US connection, such as the Southeast Asia Nuclear-Weapon-Free Zone Commission and Executive Committee, which are supposed to oversee implementation of the Bangkok Treaty. Significantly, Articles 4, 5 and 6 of the treaty call for the implementation of strict nuclear security and safety measures by all member states—obligations that have significant cross-over with Resolution 1540 and are central to the Plan of Action for the implementation of the treaty, which was adopted in Manila in August 2007. In the same vein the Southwest Pacific Dialogue (the forum for discussion between members of the Bangkok and Rarotonga Treaties) could address nuclear security as well as disarmament issues when it meets on the sidelines of the ASEAN Regional Forum.

The following recommendations could also assist in capacity-building:

RECOMMENDATIONS FOR DONOR STATES

- Channel indirect assistance through international agencies and trusted donor states that have the greatest local knowledge of

-
- capacity needs; in some cases this may be more effective and efficient than direct bilateral assistance efforts;
- provide ongoing legal drafting assistance to states, including tailoring model legislation to local requirements;
 - assess the equipment needs of recipient states and ensure that training matches local needs;
 - engage in follow-up activities to assess the effectiveness of assistance programmes and tailor future programmes accordingly;
 - fund and make use of Track II diplomacy initiatives, such as CSCAP, as a means of acquiring information on specific capacity-building needs in South-East Asia and the South Pacific; and
 - fund PIC membership of relevant agencies, such as INTERPOL, in order to improve intelligence sharing in the South Pacific.

RECOMMENDATIONS FOR ASEAN AND THE ASEAN REGIONAL FORUM

- Consider establishing a dedicated entity within ASEAN to liaise with the 1540 Committee and oversee and coordinate 1540 implementation in South-East Asia;
- consider setting up a working group on counter-terrorism, similar to the one that operates under the auspices of the PIF, to set goals and agree priorities;
- in the event of delayed creation or complete rejection of the above bodies, address key WMD security issues via existing ASEAN bodies, such as the Southeast Asia Nuclear-Weapon-Free Zone Commission and Executive Committee;
- construct an ASEAN website to identify gaps and keep track of all cooperative WMD-related counter-terrorism initiatives taking place across the region; this could include a regional experts register; and
- adopt the export controls template being developed by the CSCAP Export Controls Experts Group; this would create a peer review tool to assist in capacity building and monitoring and to encourage best practice in the area of export controls.¹¹¹

RECOMMENDATIONS FOR THE PIF

- Create a PIF website, including an experts register, to keep track of donor assistance and 1540-related activities in the South Pacific; and

- convene annual 1540 workshops, to include participants from government, industry, donor states, the 1540 Committee and UN agencies (that is, formalize and specialize the current dialogue that occurs on the sidelines of the PIF Regional Security Committee).

CHAPTER ANNEX A

STATUS OF ADHERENCE TO NON-PROLIFERATION INSTRUMENTS: SOUTH-EAST ASIA

Key for status

(Dates are included where significant changes have occurred since Resolution 1540 was passed.)

| | |
|-------------|-----------------------------------|
| A | acceded |
| ASQP | amended Small Quantities Protocol |
| BA | board approval |
| R | ratified |
| S | signed |
| SQP | Small Quantities Protocol |

Key for instruments

| | |
|--------------|---|
| AP | IAEA Additional Protocol |
| BTWC | Biological and Toxin Weapons Convention |
| CPPNM | Convention on the Physical Protection of Nuclear Materials |
| CSA | Comprehensive Safeguards Agreement |
| CTBT | Comprehensive Nuclear-Test-Ban Treaty |
| CWC | Chemical Weapons Convention |
| JC | Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste |
| NPT | Nuclear Non-Proliferation Treaty |
| NTC | International Convention for the Suppression of Acts of Nuclear Terrorism |
| NWFZ | Southeast Asia Nuclear-Weapons-Free Zone Treaty |

| Country | AP | BTWC | CPPNM | CSA | CTBT | CWC | JC | NPT | NTC | NWFZ |
|----------------------------------|---------|------|--------|-----------|------|--------|----|-----|--------|------|
| Brunei | | A | | SQP | A | A | | A | | R |
| Cambodia | | R | A 2006 | SQP | R | A 2005 | | A | | R |
| Indonesia | R | R | R | R | A | R | S | R | | R |
| Lao People's Democratic Republic | | R | | SQP | R | A | | A | | R |
| Malaysia | S 2005 | R | | R | A | A | | R | S 2005 | R |
| Myanmar | | S | | SQP | A | S | | A | | R |
| Philippines | S | R | R | R | R | A | S | R | S 2005 | R |
| Singapore | S 2005 | R | | ASQP 2005 | A | A | | R | | R |
| Thailand | S 2005 | R | | R | A | A | | A | S 2005 | R |
| Viet Nam | BA 2007 | A | | R | A | A | | A | | R |

CHAPTER ANNEX B

STATUS OF ADHERENCE TO NON-PROLIFERATION INSTRUMENTS: SOUTH PACIFIC

Key for status

(Dates are included where significant changes have occurred since Resolution 1540 was passed.)

| | |
|-------------|---|
| A | acceded |
| ASQP | amended Small Quantities Protocol |
| D | deposited |
| R | ratified |
| S | signed |
| SQP | Small Quantities Protocol |
| * | state covered under New Zealand legislation |

Key for instruments

| | |
|--------------|--|
| AP | IAEA Additional Protocol |
| BTWC | Biological and Toxin Weapons Convention |
| CPPNM | Convention on the Physical Protection of Nuclear Materials |
| CSA | Comprehensive Safeguards Agreement |
| CTBT | Comprehensive Nuclear-Test-Ban Treaty |
| CWC | Chemical Weapons Convention |
| NPT | Nuclear Non-Proliferation Treaty |
| NTC | International Convention for the Suppression of Acts of Nuclear Terrorism |
| NWFZ | Southeast Asia Nuclear-Weapons-Free Zone Treaty |

| Country | AP | BTWC | CPPNM | CSA | CTBT | CWC | NPT | NTC | NWFZ |
|------------------|--------|------|--------|--------------|--------|--------|-----|--------|------|
| Australia | R | R | R | R | D | D | R | S 2005 | D |
| Cook Islands | | | | SQP* | D 2005 | D | R* | | D |
| Fiji | R 2006 | R | | SQP | D | D | R | | D |
| Kiribati | S 2004 | | | SQP | D | A | R | S 2005 | D |
| Marshall Islands | R 2005 | | A | R | S | D 2004 | A | | D |
| Micronesia | | | | | D | D | A | | |
| Nauru | | | A 2005 | SQP | D | D | A | | D |
| New Zealand | R | R | A 2004 | R | D | D | R | S | D |
| Niue | | | | SQP* | | A 2005 | R* | | D |
| Palau | R 2005 | A | | ASQP 2006 | D 2007 | A | A | S 2005 | |
| Papua New Guinea | | R | | SQP | S | D | R | | D |
| Samoa | | | | SQP | D | D | R | | D |
| Solomon Islands | | S | | SQP | S | A 2004 | S | | D |
| Tonga | | A | A | SQP | | A | R | | D |
| Tuvalu | | | | SQP | | A 2004 | S | | D |
| Vanuatu | | A | | | D 2005 | A 2005 | A | | D |

Notes

- ¹ The Philippines, “Nuclear non-proliferation tops AMM agenda—Romulo”, press briefing, 27 July 2007.
- ² Ibid.
- ³ This assessment is based on the international WMD risk classifications provided by Peter Crail in 2006. See Peter Crail, “Implementing UN Security Council Resolution 1540: A Risk-Based Approach”, *The Nonproliferation Review*, vol. 13, no. 2, 2006, pp. 366–7.
- ⁴ This involves seeking agreement, harmony and consensus over confrontation, accepting the need for sensitivity, politeness and agreeability in dealings with others, and engaging in private elitist diplomacy over frank, open discussion of disagreements.
- ⁵ Olivia Bosch and Peter Van Ham (eds), *Global Non-Proliferation and Counter-Terrorism: The Impact of UNSCR 1540*, Brookings Institution Press, Chatham House and the Clingendael Institute, 2007, p. 8.
- ⁶ See comments by Laxanachantorn Laohaphan of Thailand in Security Council, UN document SC/8221, 19 October 2004. See also remarks by Lauro Baja of the Philippines in Security Council, UN document SC/8366, 26 April 2005. For more general ASEAN reservations, see Security Council, *Note verbale dated 3 May 2005 from the Permanent Mission of the Lao People’s Democratic Republic to the United Nations addressed to the Chairman of the Committee*, UN document S/AC.44/2004/(02)/117, 4 May 2005.
- ⁷ Olivia Bosch and Peter Van Ham (eds), *Global Non-Proliferation and Counter-Terrorism: The Impact of UNSCR 1540*, Brookings Institution Press, Chatham House and the Clingendael Institute, 2007, p. 12.
- ⁸ CSCAP, *Report on the Fifth Meeting of the CSCAP Study Group on Countering the Proliferation of Weapons of Mass Destruction in the Asia Pacific*, 2007; Rajesh Basrur, *The Threat of WMD Terrorism: ASEAN Needs to Respond*, S. Rajaratnam School of International Studies, RSIS Commentaries, 6 June 2007.
- ⁹ See Alistair Millar and Eric Rosand, “Implementing the United Nations General Assembly’s Global Counter-Terrorism Strategy in the Asia-Pacific”, *Asian Security*, vol. 3, no. 3, 2007.
- ¹⁰ Security Council, UN document S/RES/1540, 28 April 2004, op. para. 8.
- ¹¹ The Philippines and Singapore have had national protection programmes in place since before Resolution 1540 was passed. See OPCW Executive Council, *Draft Report of the OPCW on the Implementation*

of the Convention on the Prohibition on the Development, Production, Stockpiling and Use of Chemical Weapons, and on their Destruction, OPCW document EC-49/4 C-12/CRP.1, 27 June 2007, pp. 39–44.

¹² Security Council, *Note verbale dated 3 May 2005 from the Permanent Mission of the Lao People's Democratic Republic to the United Nations addressed to the Chairman of the Committee*, UN document S/AC.44/2004/(02)/117, 4 May 2005.

¹³ According to INTERPOL.

¹⁴ Security Council, *Note verbale dated 26 October 2004 from the Permanent Mission of Malaysia to the United Nations addressed to the Chairman of the Committee*, UN document S/AC.44/2004/(02)/35, 4 November 2004. Updated information is available from the INTERPOL Bioterrorism Unit.

¹⁵ Ibid.

¹⁶ Security Council, *Letter dated 22 November 2005 from the Deputy Permanent Representative of the Permanent Mission of Indonesia to the United Nations addressed to the Chairman of the Committee*, UN document S/AC.44/2004/(02)/45/Add.1, 25 November 2005; Security Council, *Note verbale dated 28 October 2005 from the Permanent Mission of the Philippines to the United Nations addressed to the Chairman of the Committee*, UN document S/AC.44/2004/(02)/34/Add.1, 1 November 2005; Security Council, *Note verbale dated 30 November 2005 from the Permanent Mission of the Philippines to the United Nations addressed to the Chairman of the Committee*, UN document S/AC.44/2004/(02)/34/Add.2, 7 December 2005.

¹⁷ Verification Research, Training and Information Centre, "Strengthening Safeguards in States with Limited Nuclear Activities", *Trust and Verify*, no. 123, 2007, pp. 1–11.

¹⁸ Ibid., p. 3.

¹⁹ IAEA, "Latest Status of Safeguards Agreements & Additional Protocols", as of 13 June 2007.

²⁰ Operative paragraph 2 of Resolution 1540 deals with this issue, requiring parties to state the domestic laws they have in place that "prohibit any non-state actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery".

²¹ CSCAP, *Summary of Key Findings, Report of the Third Meeting of the CSCAP Export Controls Experts Group*, 2007.

²² See, for example, Peter Burian, "Keynote Speech", in UN Department for Disarmament Affairs, *United Nations Seminar on Implementing*

UN Security Council Resolution 1540 in Asia and the Pacific, DDA Occasional Papers no. 11, 2006, pp. 9–14.

- ²³ The key legislative measure that forms the lynchpin of Singapore's domestic efforts is the 2003 Strategic Goods (Control) Act, which includes "catch-all" provisions and covers imports and exports, re-export, transshipments and intangible transfers of goods and technology that could be used for WMD development. Thanks to this, four other acts—the Regulation of Imports and Exports Act, the Chemical Weapons (Prohibition) Act, the Arms Offence Act, and the Arms and Explosives Act—and a bilateral cooperation agreement with Japan, Singapore is developing more effective ways to deal with the growing problem of illicit transfer of sensitive weapons materials, which will hopefully encourage other states in the region to follow its lead. Center for Nonproliferation Studies, "East Asian Governments Report on Export Control and Nonproliferation Progress: Review of Reports to the 1540 Committee", *Asian Export Control Observer*, no. 6, 2005.
- ²⁴ Center for Nonproliferation Studies, "Myanmar–North Korea Nuclear, Missile Cooperation Alleged", *Asian Export Control Observer*, no. 1, 2004, pp. 11–12; "N. Korea reactor for Myanmar", *Newsinsight*, 6 May 2004; Alan Boyd, "Myanmar aims for missiles and misses", *Asia Times Online*, 13 May 2004; and Ernst Jan Hogendoorn, "A Chemical Weapons Atlas", *The Bulletin of Atomic Scientists*, September/October 1997.
- ²⁵ The fact that Indonesia recently co-hosted a workshop on the Biological Weapons Convention with Australia, which included discussion on improving security and oversight of pathogens and toxins and implementation of effective export controls as mandated by Resolution 1540, may signal a more proactive stance on this issue by Indonesia. Center for Nonproliferation Studies, "East Asian Governments Report on Export Control and Nonproliferation Progress: Review of Reports to the 1540 Committee", *Asian Export Control Observer*, no. 6, 2005, p. 18.
- ²⁶ *Ibid.*, p. 10.
- ²⁷ Jaime Victor Ledda, "The Philippines and Export Control", in UN Department for Disarmament Affairs, *United Nations Seminar on Implementing UN Security Council Resolution 1540 in Asia and the Pacific*, DDA Occasional Papers no. 11, 2006, pp. 171–4.
- ²⁸ Center for Nonproliferation Studies, *East Asian Governments Report on Export Control and Nonproliferation Progress: Review of Reports*

to the 1540 Committee, Asian Export Control Observer no. 6, 2005, p. 22.

- ²⁹ Security Council, *Note verbale dated 26 October 2004 from the Permanent Mission of Malaysia to the United Nations addressed to the Chairman of the Committee*, UN document S/AC.44/2004/(02)/35, 4 November 2004.
- ³⁰ Specifically, the Philippines requested assistance in training first responders, border control, the physical protection of Research Reactor PRR-1, enhancement and upgrade of container and cargo security in several seaports, and the drafting of appropriate laws governing border monitoring. See Security Council, *Note verbale dated 28 October 2004 from the Permanent Mission of the Republic of the Philippines to the United Nations addressed to the Chairman of the Committee*, UN document S/AC.44/2004/(02)34, 4 November 2004, pp. 12–13.
- ³¹ Security Council, *Note verbale dated 21 March 2005 from the Permanent Mission of Cambodia to the United Nations addressed to the Chairman of the Committee*, UN document S/AC.44/2004/(02)/110, 1 April 2005, p. 4.
- ³² CSCAP, *Report on the Fourth Meeting of the CSCAP Study Group on Countering the Proliferation of Weapons of Mass Destruction in the Asia Pacific*, 2006; Peter Burian, “Chairman’s Summary: Overview of the Current Status of Implementation of Resolution 1540”, in UN Department for Disarmament Affairs, *United Nations Seminar on Implementing UN Security Council Resolution 1540 in Asia and the Pacific*, DDA Occasional Papers no. 11, 2006, p. 33.
- ³³ For an overview of the nature of capacity-building needs in South-East Asia, see Brad Glosserman, *Progress on the Nonproliferation Front*, Center for Strategic and International Studies, PacNet Newsletter no. 31, 10 August 2007.
- ³⁴ Kouth Thavy, “Presentation by Cambodia”, in UN Department for Disarmament Affairs, *United Nations Seminar on Implementing UN Security Council Resolution 1540 in Asia and the Pacific*, DDA Occasional Papers no. 11, 2006, p. 201.
- ³⁵ CSCAP, *Report on the Second Meeting of the CSCAP Export Controls Experts Group*, 2006.
- ³⁶ Jaime Victor Ledda, “The Philippines and Export Control”, in UN Department for Disarmament Affairs, *United Nations Seminar on Implementing UN Security Council Resolution 1540 in Asia and the Pacific*, DDA Occasional Papers no. 11, 2006, pp. 171–4.

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- ³⁷ CSCAP, *Report on the Second Meeting of the CSCAP Export Controls Experts Group*, 2006.
- ³⁸ Ibid.
- ³⁹ Brunei Darussalam, APEC Counter-Terrorism Action Plan Report, 2006.
- ⁴⁰ Thailand, APEC Counter-Terrorism Action Plan Report, 2006.
- ⁴¹ See Dell Higgle, "Terrorism and Counter-Terrorism: Their Place on Pacific Island Security Agendas", Speech to the Asia-Pacific Centre for Security Studies, Honolulu, July 2005.
- ⁴² The Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Waste and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region.
- ⁴³ These being the members of the Pacific Islands Forum excepting Australia and New Zealand.
- ⁴⁴ Exporters of trans-boundary waste are obliged to issue notification of their hazardous shipments under Article 6 of the Waigani Convention. However, this provision is often ignored, leading Pacific states to repeatedly voice their objections to the nuclear waste shipments of France, Japan and the United Kingdom. Pacific Islands Forum Secretariat, forum communiqué, PIF document PIFS(06)12, 24–25 October 2006; Peter Heathcote, "Terrorism at Sea—The Potential Threat", *Maritime Studies*, vol. 122, Australian Association for Maritime Affairs, 2002; "Pacific Forum raises concern over nuke shipment", *Pacific Islands Report*, 7 April 2005.
- ⁴⁵ This detachment is especially evident in the speeches given by PICs during counter-terrorism debates in international forums. PIC officials stress the remoteness of the WMD threat to the day-to-day realities of small island states in the South Pacific, and their unwillingness and inability to prioritize this issue. See, for example, General Assembly, statement by Anote Tong, President of Kiribati, 28 September 2004; Security Council, *Note verbale dated 23 November 2004 from the Permanent Mission of the Marshall Islands to the United Nations addressed to the Chairman of the Committee*, UN document S/AC.44/2004/(02)/82, 10 December 2004.
- ⁴⁶ General Assembly, statement by Rabbie Namaliu, Foreign Ministry of Papua New Guinea, 16 September 2005.
- ⁴⁷ "Fish and rice issues" was first used at the 2004 meeting of the Pacific Islands Forum Working Group on Counter Terrorism to highlight the challenges facing PICs. I am grateful to Tessie Lambourn of the Foreign

Ministry of Kiribati for her insights into these priorities. For further discussion of this issue, see General Assembly, statement by Anote Tong, President of Kiribati, 28 September 2004; Pacific Islands Forum Secretariat, forum communiqué, PIF document PIFS(06)12, 24–25 October 2006; John Henderson and Greg Watson (eds), *Securing A Peaceful Pacific*, Canterbury University Press, 2006; Ieremia Tabai, “The Ethics of Development: A Kiribati View”, in Susan Stratigos and Philip Hughes (eds), *The Ethics of Development: The Pacific in the 21st Century*, University of Papua New Guinea Press, 1987.

⁴⁸ Representatives from the PICs left this meeting with a sense of satisfaction that they had been able to express their genuine concerns about the counter-terrorism agenda, and feeling confident that Ambassador Løj had a much clearer understanding of their many capacity problems. Keynote speech by Ambassador Ellen Margrethe Løj, Pacific Islands Counter Terrorism Working Group Dinner, 28 April 2006.

⁴⁹ Neil Boister, “New Directions in Regional Cooperation in the Suppression of Transnational Crime in the South Pacific”, in Geoff Leane and Barbara Von Tigerstrom (eds), *International Law in the South Pacific*, Ashgate, 2005.

⁵⁰ Ibid.

⁵¹ OPCW Executive Council, *Draft Report of the OPCW on the Implementation of the Convention on the Prohibition on the Development, Production, Stockpiling and Use of Chemical Weapons, and on their Destruction*, OPCW document EC-49/4 C-12/CRP.1, 27 June 2007, pp. 39–44.

⁵² Ibid., pp. 39–42.

⁵³ Ibid., p. 47.

⁵⁴ Security Council, *Note verbale dated 22 February 2007 from the Permanent Mission of Vanuatu to the United Nations addressed to the Chairman of the Committee*, UN document S/AC.44/2004/(02)/136, 22 February 2007; Security Council, *Letter dated 1 May 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1540 (2004) addressed to the Committee*, UN document S/AC.44/2004/(02)/127, 1 May 2006.

⁵⁵ OPCW Technical Secretariat, *Call for Nominations for a Legal Workshop for National Authorities of Pacific Island States*, OPCW document S/625/2007, 14 March 2007.

⁵⁶ The non-signatories of the BTWC are Andorra, Angola, Cameroon, Chad, the Comoros, the Cook Islands, Djibouti, Eritrea, Guinea, Israel, Kazakhstan, Kiribati, the Marshall Islands, Mauritania, Micronesia,

Mozambique, Namibia, Nauru, Niue, Samoa, Trinidad and Tobago, Tuvalu and Zambia.

- ⁵⁷ Information on the submissions are available under “national implementation” at the Biological and Toxin Weapons Convention website, <www.opbw.org>.
- ⁵⁸ For a discussion of these difficulties, and the futility of “one size fits all” approaches to drafting BTWC legislation, including a discussion of Australia’s approach of adapting existing legislation, see Treasa Dunworth, Robert Mathews, and Timothy McCormack, “National Implementation of the Biological Weapons Convention”, *Journal of Conflict and Security Law*, vol. 11, no. 1, 2006, pp. 93–118.
- ⁵⁹ See, for example, Security Council, *Note verbale dated 13 March 2007 from the Permanent Mission of Tuvalu to the United Nations addressed to the Chairman of the Committee*, UN document S/AC.44/2004/(02)/137, 14 March 2007; Security Council, *Note verbale dated 22 February 2007 from the Permanent Mission of Vanuatu to the United Nations addressed to the Chairman of the Committee*, UN document S/AC.44/2004/(02)/136, 22 February 2007.
- ⁶⁰ Verification and transparency procedures for the treaty include obligations to engage in consultation and information exchange on the application of peaceful uses of nuclear energy in the South Pacific, mandatory on-site inspections, the introduction of IAEA safeguards, and reporting on all matters relating to the treaty via the Consultative Committee under the auspices of the Pacific Islands Forum.
- ⁶¹ Treaty of Rarotonga, article 7.
- ⁶² A 2003 report stated that there were 1,854 sealed radioactive sources in use in the South Pacific; US General Accounting Office Government, *Nuclear Non-proliferation: U.S. and International Assistance Efforts to Control Sealed Radioactive Sources Need Strengthening*, document GOA-03-638, May 2003.
- ⁶³ IAEA, *The Convention on the Physical Protection of Nuclear Material*, document INFCIRC/274/Rev.1, May 1980; General Assembly, *Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996*, UN document A/59/766, 4 April 2005.
- ⁶⁴ Security Council, *Note verbale dated 22 February 2007 from the Permanent Mission of Vanuatu to the United Nations addressed to the Chairman of the Committee*, UN document S/AC.44/2004/(02)/136, 22 February 2007.

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- ⁶⁵ Security Council, *Letter dated 1 May 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1540 (2004) addressed to the Committee*, UN document S/AC.44/2004/(02)/127, 1 May 2006.
- ⁶⁶ Security Council, *Note verbale dated 13 March 2007 from the Permanent Mission of Tuvalu to the United Nations addressed to the Chairman of the Committee*, UN document S/AC.44/2004/(02)/137, 14 March 2007.
- ⁶⁷ Security Council, *Note verbale dated 23 November 2004 from the Permanent Mission of the Marshall Islands to the United Nations addressed to the Chairman of the Committee*, UN document S/AC.44/2004/(02)/82, 10 December 2004.
- ⁶⁸ Security Council, *Note verbale dated 5 April 2006 from the Permanent Mission of Tonga to the United Nations addressed to the Chairman of the Committee*, UN document S/AC.44/2004/(02)/128, 7 April 2006.
- ⁶⁹ Security Council, *Letter dated 13 April 2006 from the Chargé d'affaires a.i. of the Permanent Mission of Samoa to the United Nations addressed to the Chairman of the Committee*, UN document S/AC.44/2004/(02)/130, 17 April 2006.
- ⁷⁰ "Ambassador Beck's Statement at the Informal Consultation of the Plenary on Counter-Terrorism Strategy", *Palau UN Mission News*, 11 May 2006.
- ⁷¹ "Statement at the Informal Consultation on Counter-Terrorism", *Palau UN Mission News*, 16 May 2006.
- ⁷² Louise Fawcett, *Regional Governance Architecture and Security Policy*, Dialogue on Globalization Briefing Papers, Friedrich-Ebert-Stiftung Berlin, February 2006, pp. 2–8.
- ⁷³ This was apparent in the Chairman's Statement issued at the Ninth Meeting of the ASEAN Regional Forum, which took place in Bandar Seri Begawan, Brunei, on 31 July 2002. Rather than pressing for the urgent implementation of national controls, the statement merely "noted" the consultations between the Nuclear Weapon States and ASEAN concerning the former's signing to the Protocol of the Southeast Asian Nuclear-Weapon-Free Zone Treaty, and pointed to the pivotal role of the NPT in preserving peace and security in the world.
- ⁷⁴ ASEAN Regional Forum, *Statement on Non-Proliferation*, Jakarta, 2 July 2004.
- ⁷⁵ *Ibid.*, §§ 5(C), 6(A), 6(B).

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- ⁷⁶ CSCAP, *Chairman's Report (Final)*, Fifth Meeting of the CSCAP Study Group on Countering the Proliferation of Weapons of Mass Destruction, San Francisco, 12–13 February 2007.
- ⁷⁷ Brad Glosserman, "Progress on the Nonproliferation Front", *PacNet Newsletter*, no. 31, 10 August 2007.
- ⁷⁸ Philippines, Department of Foreign Affairs, "Chairman's Statement, 14th ASEAN Regional Forum", press release, 2 August 2007.
- ⁷⁹ Despite the optimism expressed by John Negroponte, US Deputy Secretary of State (who attended the Fourteenth ASEAN Regional Forum in place of Condoleezza Rice) and Christopher Hill, US Secretary of State for East Asian and Pacific Affairs, there was some opposition to the non-proliferation forum proposal, which does cast some doubt on its future. According to a news report in the *Jakarta Post*, the proposal was criticized by Indonesian Foreign Minister Hassan Wirayuda, who accused the United States of trying to push through a new forum that focused on non-proliferation at the expense of disarmament. Abdul Khalik, "Indonesia Blocks US Proposal on Nuclear Weapons at ARF", *Jakarta Post*, 3 August 2007.
- ⁸⁰ Philippines, Office of the Press Secretary, "APEC 2007 Backgrounder", <www.ops.gov.ph/apec2007/backgrounder.htm>, § "The APEC Process".
- ⁸¹ See APEC, *CTTF Terms of Reference*, APEC document 2005/SOM1/026anxa_rev2, 3–4 March 2005. The work of the CTTF is founded on the APEC Counter-Terrorism Action Plan, which commits it to assisting members in the identification of counter-terrorism needs, coordinating capacity-building and technical-assistance programmes and facilitating cooperation between APEC forums on counter-terrorism issues.
- ⁸² APEC, *CTTF 2005 Work Plan*, APEC document 2005/SOM1/026anxb, 3–4 March 2005.
- ⁸³ The issue of export controls has been particularly controversial in the context of APEC's foray into the security realm, despite the huge potential for the organization to assist in capacity-building in this area. Japan's proposals, under the auspices of the CTTF, to introduce a common standard in export controls for APEC members was not well received among some Asian states, and efforts of the CTTF to conduct a survey of current practices related to the APEC Key Elements for Effective Export Control Systems were hampered by the failure of some states to cooperate. Despite this resistance, Japan has been able to engage in significant capacity-building activities to improve

technical knowledge of export control requirements in the region, holding a series of seminars and workshops for officials from across the Asia–Pacific.

- ⁸⁴ The August 2006 Bali Regional Ministerial Meeting on Counter-Terrorism established two working groups: the Legal Issues Working Group and the Law Enforcement Working Group, which have adopted benchmarks for assessing the adequacy of national legal frameworks for countering terrorism. See Japan, Ministry of Foreign Affairs, “Bali Counter-Terrorism Process: Report of the Australian and Indonesian Co-Chairs”, August 2006.
- ⁸⁵ See M. Slamet Hidayat, “Opening Speech”, in *Proceedings of the 2nd Biological Weapons Convention Regional Workshop, Asia–Pacific Centre for Military Law*, 2006.
- ⁸⁶ The Fourth Asian Senior-level Talks on Non-Proliferation meeting was held on 25–26 January 2007. In addition to its usual focus on the NPT, export controls and the Proliferation Security Initiative, this meeting discussed the implementation of the Security Council resolutions adopted the year before concerning North Korea and Iran.
- ⁸⁷ Philip Divett, “Providing and Receiving Assistance”, in UN Department for Disarmament Affairs, “United Nations Seminar on Implementing UN Security Council Resolution 1540 in Asia and the Pacific”, *DDA Occasional Papers*, no. 11, 2006, p. 168.
- ⁸⁸ For details of the training programmes provided by Japan, see Sho Ohno, “Japan’s Capacity-Building Assistance in Relation to Implementation of UNSCR 1540”, in UN Department for Disarmament Affairs, “United Nations Seminar on Implementing UN Security Council Resolution 1540 in Asia and the Pacific”, *DDA Occasional Papers*, no. 11, 2006, pp. 175–90.
- ⁸⁹ Japan earmarked 7 billion yen (more than US\$ 60 million) for this programme in 2006 to provide equipment for airport and port security and law enforcement agencies. This includes video cameras, x-ray machines, detector devices, radio communication systems, patrol boats and criminal identification materials. *Ibid.*, p. 189.
- ⁹⁰ The Pacific Islands Forum consists of 16 members—all of the sovereign independent Pacific states and a number of those in free association with a former administering power: the Cook Islands, Niue, Micronesia, Palau and the Marshall Islands, plus New Zealand and Australia. Its first meeting was in Wellington in 1971.

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- ⁹¹ Greg Unwin, "Preventing Conflict: What Role for the Pacific Islands Forum?", in John Henderson and Greg Watson (eds), *Securing A Peaceful Pacific*, Canterbury University Press, 2006, pp. 13–19.
- ⁹² The "Pacific Plan", which was proposed by an Eminent Person's Group that reviewed the forum in 2003, is specifically designed to achieve broader levels of cooperation and deeper regional integration. See *The Pacific Plan for Strengthening Regional Cooperation and Integration*, available at <www.pacificplan.org>. The 2002 Nasonini Declaration (on regional security and counter-terrorism) is also very relevant to this paper, as it commits forum members to meet the standards and obligations set out by the international community after the terrorist attacks of 2001, leading to the establishment of an Expert Working Group to develop a regional framework for model legislation, and subsequently to the provision of in-country drafting assistance for forum members. Pacific Islands Forum Secretariat, "Expert Working Group to co-ordinate the development of a regional framework including model legislation to address terrorism and transnational organised crime (2003)", press statement, May 2003; Sheryl Boxall, "The Pacific Islands Forum and Regional Security", in John Henderson and Greg Watson (eds), *Securing A Peaceful Pacific*, Canterbury University Press, 2006, pp. 166–86; Neil Boister, "New Directions in Regional Cooperation in the Suppression of Transnational Crime in the South Pacific", in Geoff Leane and Barbara Von Tigerstrom (eds), *International Law in the South Pacific*, Ashgate, 2005.
- ⁹³ "Pacific People Must Have Sense of Ownership of Pacific Plan", interview with Samoa Prime Minister and chair of the Pacific Islands Forum Tuilaepa Sailele Malielegaoi, Radio New Zealand International, 22 March 2005; Sinclair Dinnen, "Lending a Fist? Australia's New Interventionism in the Southwest Pacific", presented at the State Society and Governance in Melanesia Project Seminar Series, Australian National University, 18 March 2004; and Jon Fraenkel, "Myths of Pacific Terrorism", in John Henderson and Greg Watson (eds), *Securing A Peaceful Pacific*, Canterbury University Press, 2006, pp. 120–23.
- ⁹⁴ Kaliopate Tavola, Makurita Baaro, Lucy Bogari, Lourdes Pangelinan, Adrian Simcock and Epa Tuioti, *Reforming the Pacific Regional Institutional Framework*, Pacific Islands Forum Secretariat, 2006.
- ⁹⁵ Pacific Immigration Directors Conference, *PIDC News*, December 2005, <www.pidcsec.org/files/PIDC_Newsletters/pidcnews_dec2005.pdf>, p. 5.

- ⁹⁶ Opening speech by Greg Urwin, Secretary General of the Pacific Islands Forum, to the UN Office on Drugs and Crime Sub-regional Consultation on Measures for the Legislative Implementation of the Legal Regime Against Terrorism in the Pacific Region and Related Technical Assistance Delivery in Close Cooperation with PIFS, Nadi, Fiji, 25–26 June 2007.
- ⁹⁷ OPCW Technical Secretariat, *Call for Nominations for a Legal Workshop for National Authorities of Pacific Island States*, OPCW document S/625/2007, 14 March 2007.
- ⁹⁸ Security Council, *Note verbale dated 13 March 2007 from the Permanent Mission of Tuvalu to the United Nations addressed to the Chairman of the Committee*, UN document S/AC.44/2004/(02)/137, 14 March 2007; Security Council, *Note verbale dated 22 February 2007 from the Permanent Mission of Vanuatu to the United Nations addressed to the Chairman of the Committee*, UN document S/AC.44/2004/(02)/136, 22 February 2007.
- ⁹⁹ “The South Pacific Commission, as it was formerly known, was founded in 1947 under the Canberra Agreement by the six ‘Participating Governments’ that administered territories in the Pacific: Australia, France, New Zealand, the Netherlands, the United Kingdom and the United States of America. Now all 22 Island countries and territories are full members, along with the five remaining founding powers (the Netherlands is no longer a member as well as the United Kingdom).” For further details, see “SPC - Our History”, <www.spc.int/AC/history.htm>.
- ¹⁰⁰ For information about the work of this group, see “Biosecurity and Trade Support”, <www.spc.int/lrd/biosecurity_trade_support.htm>.
- ¹⁰¹ See, for example, Security Council, *Note verbale dated 22 February 2007 from the Permanent Mission of Vanuatu to the United Nations addressed to the Chairman of the Committee*, UN document S/AC.44/2004/(02)/136, 22 February 2007.
- ¹⁰² See, for example, Dell Higgin, “Terrorism and Counter-Terrorism: Their Place on Pacific Island Security Agendas”, Speech to the Asia-Pacific Centre for Security Studies, Honolulu, July 2005; Opening speech by Greg Urwin, Secretary General of the Pacific Islands Forum, to the UN Office on Drugs and Crime Sub-regional Consultation on Measures for the Legislative Implementation of the Legal Regime Against Terrorism in the Pacific Region and Related Technical Assistance Delivery in Close Cooperation with PIFS, Nadi, Fiji, 25–26 June 2007.
- ¹⁰³ *Ibid.*

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- ¹⁰⁴ The Pacific Roundtable on Counter-Terrorism was first proposed in 2004, when New Zealand was chairing the Pacific Islands Forum. It brought to Wellington key officials from the forum countries along with observers from other partners from within and beyond the region (including representatives of regional bodies and international institutions with a role in counter-terrorism).
- ¹⁰⁵ See Dell Higgle, "Terrorism and Counter-Terrorism: Their Place on Pacific Island Security Agendas", Speech to the Asia-Pacific Centre for Security Studies, Honolulu, July 2005.
- ¹⁰⁶ See New Zealand, "Ongoing funding for Pacific Security Fund", press release, 11 May 2004.
- ¹⁰⁷ Security Council, *Note verbale dated 13 March 2007 from the Permanent Mission of Tuvalu to the United Nations addressed to the Chairman of the Committee*, UN document S/AC.44/2004/(02)/137, 14 March 2007.
- ¹⁰⁸ See The Stanley Foundation, "Implementation of the UN Global Counterterrorism Strategy", *42nd Conference on the United Nations of the Next Decade*, Maryland, United States of America, 8–13 June 2007, p. 4.
- ¹⁰⁹ This assessment is based on the author's interviews with several representatives from South-East Asian states at the IAEA in Vienna, February 2007.
- ¹¹⁰ Some authors have argued that the EU roadmap for action in the fight against the proliferation of WMD may provide a model for others, reinforcing strict implementation and compliance with multilateral agreements, cooperating closely with key partners and providing assistance to third countries. However, the notion of copying another region's approach to security has not been enthusiastically embraced in South-East Asia, in particular, where a number of states have made it clear that they would prefer to develop their own regional institutions based on their own security culture.
- ¹¹¹ See CSCAP, *Chairman's Report (Final)*, Second Meeting of the CSCAP Export Controls Experts Group, Beijing, 11–12 May 2006.

CHAPTER 4

IMPLEMENTING RESOLUTION 1540 IN AFRICA: BALANCING COMPETING PRIORITIES

Jean du Preez and Dominique Dye*

INTRODUCTION

Judging by the number and contents of reports submitted by African governments on their implementation of Security Council Resolution 1540, the African region rates well below that of any other region in the world. To date (January 2008), only 19 African states have submitted reports, and most of these reports are well below the average reporting standard worldwide.

The reasons for the slow rate of implementation in Africa are as diverse as the region itself. A key challenge in Africa is the lack of ability of many states to fulfil the central provisions of 1540, which require enacting domestic legislation and enforcement measures. Moreover, the issue of capacity to meet the obligations is not just a matter of overall state capabilities, but of conflicting priorities as well. In evaluating the submission of country reports, it should therefore be borne in mind that for most African countries the issue of nuclear, biological and chemical weapon (NBCW) non-proliferation is of very low priority. It is also important to acknowledge that very few countries in Africa are actually capable of producing NBCW-related materials.

Implementation of the resolution in Africa also has a political dimension. While no African state has outright rejected the resolution on the basis of legal doubts concerning the Security Council's right to dictate domestic law for UN Member States, the Non-Aligned Movement's (NAM) Ministerial Conference in 2004 expressed concern over this emerging practice:

* Dominique Dye's contribution to this chapter is based on research undertaken for the Arms Management Programme of the Institute for Security Studies (Pretoria) through funding provided by the Government of Norway.

While noting the adoption of the resolution on weapons of mass destruction and non-states actors (S/RES/1540 (2004)) by the Security Council on 28 April 2004, the Ministers underlined the need to ensure that any action by the Security Council does not undermine existing multilateral treaties on weapons of mass destruction and of international organisations established in this regard, as well as the role of the United Nations General Assembly. The Ministers further cautioned against a practice where the Security Council utilises its authority to define the legislative requirements for Member States in implementing Security Council decisions.¹

In a similar vein, South Africa, a leading state in the NAM and in Africa, pointed out prominently in its report to the 1540 Committee that South Africa would be:

concerned if the Security Council were to assume legislative and treaty-making powers on behalf of the international community that are binding on all States and that are not envisaged by the Charter of the United Nations. Like other Governments, the Government of South Africa will also not accept externally prescribed norms or standards, whatever their source, on matters within the jurisdiction of the South African Parliament, including national legislation, regulations or arrangements, which are not consistent with South Africa's constitutional provisions and procedures, or are contrary to South Africa's national interests or infringe on its sovereignty.²

While South Africa's report is the only one that specifically mentions this concern, South Africa's influence in Africa and the NAM, as well as the fact that it has by far the most advanced NBCW control system on the continent, are important factors to bear in mind when evaluating the general approach by African governments toward the resolution.

Furthermore, African regional and subregional organizations, including the African Union (AU) and its predecessor the Organization of African Unity (OAU), pay little if any attention to non-proliferation issues. Non-proliferation and disarmament issues, including the entry into force of the African Nuclear-Weapon-Free Zone Treaty and implementation of Resolution 1540, do not seem to be a high priority for the AU or the Pan-African Parliament. Indeed, in its Statement of Commitment to Peace and Security in Africa, the heads of state and government of member states of

the Peace and Security Council of the AU do not refer to NBCW control at all.³ In one of the few references to NBCW control, the AU's Solemn Declaration on a Common African Defence and Security Policy states that external challenges to Africa's continental security may include, "The accumulation, stockpiling, proliferation and manufacturing of weapons of mass destruction, particularly nuclear weapons, chemical and biological weapons, unconventional long-range and ballistic missiles".⁴

Bearing in mind that the AU, and subregional organizations such as the Southern African Development Community and the East African Community (EAC), are constantly faced with pressing conflict resolution challenges, including ways to solve the conflict in the Sudan and the emerging crises in Zimbabwe, the implementation of Resolution 1540 is not likely to feature on these organizations' agendas unless a more concerted effort is made by the most influential African governments. Although some suggestions have been made that the AU may be an appropriate forum to enhance the implementation of Resolution 1540 in Africa, a recent UNIDIR report⁵ asserted that subregional groups may be more suitable due to their limited membership and relative homogeneity (see Chapter Annex B for a condensed version of this report). However, the nature of these organizations, the priorities of their members and their limited resources may require a different approach.

Instead of focusing on the role of African regional and subregional organizations as ways to promote the implementation of Resolution 1540, more attention should be given to the role of key influential states in the subregions, as well as the impact of regional and subregional seminars. The governments of Egypt, Nigeria, South Africa and so forth should be engaged not only to fully implement the resolution's provisions and thereby strengthen their control mechanisms, but also to use their sphere of influence to ensure that their own control systems expand beyond their borders. While subregional organizations could be useful forums to facilitate this process, their political nature and focus on other priorities could quickly lead to a deadlock. Implementation seminars (such as those held in Accra in 2006 and Gaborone in 2007) under the aegis of the United Nations, or other organizations or governments, could directly impact on the ability of African governments to implement the resolution.

It is also important to recognize when considering the overall implementation of the resolution in Africa that not all states in the region are of immediate

NBCW priority. A closer study of the proliferation risk of African states will show that very few African states, especially those in sub-Saharan Africa, pose a proliferation risk. It is, however, also important to recognize that the effective regional implementation of the resolution is dependent on a “network approach” in which the weakest link could potentially endanger the whole network.

This chapter examines the overall implementation of the resolution in Africa and the role of competing priorities as an explanation for the apparent lack of commitment among African governments not only to the implementation of 1540, but to other NBCW obligations in general. The first part provides an overview of the general perception among African states of the resolution. As such it examines the relevance of the resolution to African concerns, especially given the humanitarian crises on the continent. It also examines the linkage between the implementation of the resolution and the socio-economic development needs and limited government resources in most African countries. The second part identifies which states pose potential risks for NBCW proliferation, and which African states could potentially be used as transit states or as potential operating bases for terrorist groups. This analysis is aimed at identifying a subset of African states for which the implementation of the resolution is more relevant from a proliferation perspective. Part three examines the adherence to and implementation of non-proliferation and disarmament treaties as well as other relevant international obligations by African states with the objective of showing that many measures and mechanisms required by Resolution 1540 may already be in place. The final section of the report focuses on the potential of regional and subregional organizations in promoting the resolution in Africa. The role of regional implementation seminars, bilateral cooperation and civil society is also addressed.

The chapter concludes with a forward-looking approach by making specific recommendations.

REGIONAL OVERVIEW

Examining African country reports submitted to the 1540 Committee to a large extent reveals the general approach of most African governments toward NBCW issues. While the reporting requirement is not a true indication of the level of political commitment to non-proliferation, or the

effectiveness of measures undertaken to prevent proliferation, it is telling that only 19 African states have submitted reports, and that most of these are incomplete.⁶ In terms of the total number of African states (53), this number represents a 36% reporting ratio (see Table 1).

Table 1. Status of 1540 reporting by African states

| Country | Date(s) submitted | Country | Date(s) submitted |
|--------------|--------------------------------------|--------------|--------------------------------------|
| Algeria | 10 November 2004 7 September 2005 | Mauritius | 30 April 2007 |
| Angola | 27 October 2004 | Morocco | 28 October 2004 13 September 2005 |
| Benin | 3 March 2005 | Namibia | 26 October 2004 27 April 2006 |
| Burkina Faso | 4 January 2005 | Nigeria | 28 October 2004 |
| Djibouti | 17 March 2005 | Senegal | 31 March 2005 |
| Egypt | 28 October 2004 17 March 2006 | South Africa | 31 January 2005 3 January 2006 |
| Eritrea | 22 June 2006 | Tanzania | 29 August 2005 |
| Ghana | 5 November 2004 | Tunisia | 10 November 2004 |
| Kenya | 20 July 2005 | Uganda | 14 September 2005 |
| Libya | 12 April 2005 6 December 2005 | | |

Source: 1540 committee website, <www.un.org/sc/1540/nationalreports.shtml>.

While not surprising that every African country submitting a report stated that it does not possess any type of NBCW, very few countries provided information on the type of measures they have implemented or are implementing to prevent their territories from being used as potential sources for NBCW acquisition or as transit routes.

Though Africa is free of any nuclear weapons programmes, there are several countries that have peaceful programmes in which nuclear materials are present. Many more countries have chemical and biological industries,

medical and agricultural research facilities and materials that could potentially be sought by non-state actors and terrorist networks. Therefore, the physical protection and safeguarding of these materials must remain a top priority. Furthermore, states must also work to assure the adequate protection and management of materials that are present and utilized in commercial chemical and biological industries in the region.

Although many African countries have expressed support for the resolution, few have submitted reports and those that have seldom provided sufficient details, suggesting that implementing the resolution is not a high priority for them. A further explanation for the lack of reporting from the continent is the absence of effective governance and political instability in several African countries.⁷ For instance, in its report to the 1540 Committee Eritrea stated:

Eritrea has not enacted specific national legislations on non-proliferation and has not instituted control lists. The delay in taking national implementation measures is mainly caused by the preoccupation of the Government with the unresolved border issue with Ethiopia.⁸

It is encouraging that almost all North African coastal countries have submitted reports to the 1540 Committee, especially given their close proximity to the Middle East. Several of these countries have acknowledged the need to prevent the spread of terrorism and have expressed their support in putting an end to it. Moreover, given their proximity to and bilateral ties with Europe, these countries are likely to be influenced by European security threat perceptions.

It is not unexpected that South Africa's report is by far the most comprehensive and detailed of all African reports. The country has a long history of being involved in NBCW-related issues. Since voluntarily giving up its nuclear programme in the early 1990s, South Africa has become a strong advocate for complete disarmament and non-proliferation, and has joined all the relevant treaties. South Africa is also the only African country member of most of the non-proliferation export control regimes.

Almost every country in the region that has submitted a report has stated that since it does not possess any type of NBCW, it therefore cannot provide any form of assistance to non-state actors in acquiring them. Namibia, for example, does little more than state this in its one-page report. When

reporting on existing non-proliferation measures and steps intended to be taken on implementing the resolution's provisions, many African countries have simply listed the conventions and treaties that they are party to, as well as existing national legislation that pertains to the provisions. Although a step in the right direction, this has hindered progress on the successful implementation of the resolution, as much of the legislation listed is broad, outdated and insufficient to effectively deal with more recent NBCW threats. Libya, for example, stated that provisions one to three of the resolution are already in force under a 1988 act,⁹ which prohibits the use and trade in NBCW and calls on all states to renounce such weapons,¹⁰ while Kenya stated that the development, acquisition, manufacture, possession, transfer, transport and use of nuclear materials, and by extension nuclear weapons, is controlled by a 1982 act.¹¹ This act is currently under review. Kenya made no reference to biological and chemical weapons in its report.¹²

The submission of additional reports is a fair indicator of states' political will to comply with the resolution, but only six African countries have done so. Three of these countries, Egypt, Libya and South Africa, have at some point possessed NBCW programmes, which gives them an advantage over those that have not, as they would have a better understanding of the measures and controls required over NBCW and related materials. Furthermore, having developed NBCW programmes and infrastructures, they would have had some control measures in place prior to adopting the resolution.

It is also interesting to note that some countries have mentioned that they have sufficient border controls in place, a requirement of Resolution 1540, though it is likely that these controls were put into operation to curb illegal trading in small arms and drugs. While these measures could contribute somewhat towards preventing the proliferation of NBCW and related materials, border controls on the continent are notoriously weak and porous, and given the nature of NBCW-related material and equipment, it is unlikely that these types of controls are sufficient for preventing the proliferation of NBCW or their components.

It is further noteworthy that most African countries that have been victims of terrorist attacks, for example Algeria, Kenya and Tanzania, have submitted reports and made reference to the attacks.

While not all sub-Saharan countries are of equal NBCW importance (see the discussion on NBCW risk assessment below) the implementation of

Resolution 1540 region-wide and globally would be greatly strengthened if all African countries, especially those which could potentially be targeted by illicit networks or terrorist groups, fully implement the resolution, and if they are not able to do so, to seek assistance from states from within and outside the region in a position to do so. Many African countries, especially sub-Saharan states, suffer from border skirmishes and conflicts while some borders, notably the Eritrean–Ethiopian border, have yet to be established. Due in part to border instability, many of these countries are sources, destinations and transshipment points for human trafficking, arms smuggling and the drug trade. It is presumable that the same border instabilities which facilitate the previously mentioned activities may also facilitate the proliferation of NBCW-related materials.

1540 AND COMPETING PRIORITIES

In considering African reporting on and the actual implementation of Resolution 1540, the issue of priorities should be recognized up front. Though many African countries have expressed their support for the resolution, NBCW-related issues remain a low priority on the continent—not surprisingly as no African country currently has the infrastructure to produce a nuclear weapon, and very few have the knowledge and technology to produce chemical or biological weapons. African perceptions of significant security threats differ greatly from those of developed countries. With much of the continent plagued by poverty, disease and internal conflicts, many states focus their limited resources on alleviating these problems, given that they have a far greater impact on their security and that of the continent as a whole.

Even if a state supports the aim of preventing NBCW proliferation and acquisition by non-state actors—as do all 19 African states that reported—the priority for most African countries is to deal with existing problems instead of devoting their limited resources to potential threats that may not necessarily be directed toward them. As such, an examination of reports submitted by African states shows that since they do not possess NBCW, this issue is of little or no importance to most African governments. Other pressing priorities, in particular the devastating effects of HIV/AIDS, the continuation of armed conflicts and genocide, and the overall impact on African economies of the proliferation and use of small arms and light weapons, require more attention and action from African leaders. Given

that African regional and subregional organizations are extensions of the national policies of their collective membership, the implementation of NBCW obligations, including those required by Resolution 1540, is not a priority for these organizations.

Moreover, since the resolution only emphasizes non-proliferation measures, African governments may also be reluctant to take measures to address a threat which they essentially believe is “northern”. Benin, an influential West African state, and one of the few African states that play an active role in international non-proliferation activities, including in the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) review process, stated in its report that:

the question of prevention of access by non-State actors to weapons of mass destruction (WMD) should be linked to that of disarmament, and that States in possession of weapons of mass destruction should be called on to eliminate them, where necessary, or further reduce available stocks by ending programmes on the modernization of such weapons.¹³

At a June 2006 regional seminar held in Accra, Ghana, to consider the implementation of 1540 in Africa, the Algerian delegate reiterated his country’s support for the resolution. But while stating that Algeria has actively fought against the scourge of terrorism, and that it supports the total elimination of NBCW, he also raised numerous concerns surrounding the lack of a balanced approach that needs to be addressed in the context of the NPT, particularly as it is one of the foundational treaties on which the resolution is based.¹⁴ And while the South African delegate at the same meeting emphasized the need to establish effective controls over NBCW-related materials and to guard against their abuse, he at the same time stressed that one size does not fit all and that regional considerations need to be taken into account.¹⁵

At an open meeting¹⁶ of the Security Council on 23 February 2007, held to discuss the overall implementation of the resolution, the Congo attributed the poor reporting by some countries to the lack of capacity that many states face, and more importantly to the question of states’ priorities in dealing with issues related to international security threats. They reminded the council that the issue of small arms and light weapons is a more legitimate concern for African countries, given that they threaten the daily existence

of the people, and that they are the primary means used by terrorists to carry out their crimes.¹⁷ South Africa stated at the same meeting that it fails to find assurances in the situation where NBCW, in particular nuclear weapons, are deemed safe in the hands of some but not in others, and mentioned concerns over the Security Council becoming involved in the domestic affairs of states.¹⁸ Both South Africa and the Congo acknowledged that it is predominantly developing nations that are behind on reporting on and implementing the resolution, but attributed this to a lack of capacity, as well as reporting fatigue. Given that reporting requirements are overly complicated and unsuitable for many developing states, and that developing nations mostly do not have proliferation-sensitive NBCW capabilities, it is often not a priority for them. South Africa suggested that the council should differentiate between states according to their capabilities.¹⁹ The Ghanaian delegate also stressed that given the difference in state capabilities, implementing the provisions of the resolution, even to a satisfactory universal level, would more than likely take years if not decades to accomplish. He also highlighted the 1540 Committee's lack of capacity to provide the assistance required by many countries to implement many of the resolution's provisions.²⁰

Most African states, especially in sub-Saharan Africa, may not consider the threat of NBCW terrorism as eminent. Instead, they are occupied with regional conflicts and other forms of terrorism and illicit activities. Most African governments also do not have the resources to implement what many consider to be very cumbersome requirements. However, despite their limited resources and conflicting priorities, African states should recognize that the global nature of non-state actors and entities, and the ease with which they have been able to operate and transfer weapons and materials across borders, place some level of responsibility on all countries to minimize the risk of these actors operating and transferring weapons across their borders.

Many African countries have emerging or weak economies and would be severely impacted by a terrorist attack. Furthermore, they need to attract foreign investment to strengthen their economies, and being seen to be compliant with international security measures can increase their own domestic security while making themselves more attractive for investment. It is also worth considering the impact that a major terrorist attack can have on the global economy, as was seen in September 2001, and the implications that this would have for a developing country. While short-

term effects such as the fall in commodity prices and the weakening of currencies are often quickly reversed, long-term effects can have more severe implications. Increased costs in international trading to tighten security, decreases in tourism traffic, and stricter immigration laws that have the potential to lower the number of workers employed abroad and therefore affect the level of remittances, all have dire consequences for emerging economies.²¹

Though African countries are largely preoccupied with more immediate problems, implementing some of the provisions of the resolution could contribute toward addressing these. There is little doubt that the proliferation of small arms and light weapons is a major concern for the continent, and significant amounts of resources are channelled toward curbing the illegal arms trade. Adopting effective laws and enforcement measures, as outlined in Resolution 1540, to prevent non-state actors from transporting or transferring NBCW or related materials, could at the same time strengthen existing controls established to curb the flow of small arms and light weapons through Africa's porous borders.

At the African regional seminar held in Accra in 2006, Ambassador Peter Burian, former chairman of the 1540 Committee, concluded the seminar by acknowledging and responding to various problems and concerns raised by African countries surrounding the implementation of the resolution. He reminded the 25 African delegations at the meeting that Africa has not been immune to terrorist activities, with both Kenya and Tanzania being victims, and referring to the revelation of the Khan network, he warned that the expansion of civilian nuclear programmes will provide more opportunities for non-state actors to get access to fissile and radioactive materials.²² He also acknowledged that numerous factors, such as a lack of capacity, the complexity of legislative procedures and preoccupations with other priorities, have all contributed to the lack of reporting from African countries, but he emphasized the benefits of implementing the resolution, especially since improved national legislation could provide increased security from possible future attacks. In addition, building effective border controls and legislative institutional systems to subvert the proliferation of NBCW would also work in conjunction with combating the proliferation of small arms and light weapons on the continent.²³

COMPETING PRIORITIES AND THE RISK OF NBCW PROLIFERATION

It goes without saying that certain countries are more at risk for NBCW proliferation than others, and that there is less incentive for countries that do not possess any NBCW capabilities to prioritize reporting and implementing provisions.²⁴ Those more at risk typically include countries that possess, or have possessed, any type of NBCW or related materials, and those that have the potential to be used as transit states for transferring weapons and components.²⁵ Very few African states fall into this category, making it difficult to substantiate why implementing the resolution should be of high priority for them. If one for instance compares the need for South Africa to implement all the requirements of the resolution, the same priority is not necessarily applicable, over the short to medium term, to most other African countries.

Given the stated purpose of the resolution to prevent the acquisition by or diversion of NBCW and related materials and technologies to non-state actors and non-parties to the treaties addressing the proliferation of these types of weapons, there are very few African countries that are of immediate concern. Based on their past involvement in NBCW activities, eight African countries are of particular relevance for some or all of the domestic legal obligations of Resolution 1540. The selection of these states derives from both a risk-based approach, which seeks to identify the most likely proliferation paths of NBCW, as well as a recognition of state accountability in which states that maintain NBCW-relevant capabilities have the responsibility to ensure that such capabilities are not misused.²⁶ Therefore, fulfilling the resolution's provisions is more applicable to states that fall into these two categories and they should be the first benchmarks in an overall strategy for 1540 implementation in Africa. However, given that many states in Africa have unstable economies, weak enforcement structures and are often prone to government corruption, the potential risk of an additional 24 countries should be added to the list of African states that could be targeted as potential transit states (see Tables 1–6 for an overview of the proliferation and other risks related to Resolution 1540 in Africa).²⁷

The purpose of the following NBCW risk assessment is not to imply that any state in the region possesses NBCW or actively assists illicit networks or terrorists in acquiring NBCW material and technologies.

SOUTHERN AFRICA

The risk of potential proliferation and transit of NBCW material and terrorism in Southern Africa is relatively low (see Table 2). Given that the Angolan civil war has severely debilitated the basic infrastructure needed for effective policing, the country is used as a transshipment point for cocaine destined for Western Europe and other African states.²⁸ The same networks and routes could potentially be used by non-state actors for illicit activities. Although the Democratic Republic of the Congo has no nuclear power programme, its research reactor²⁹ could become a source of sensitive technology and radioactive material. The decommissioned Shinkolobwe mine is a target of illegal miners. Uranium can be extracted from the mine and, since there is no government control, there is a potential risk of diversion to non-state or terrorist networks. Madagascar, an island state with a undeveloped coastline of more than 3,000 miles without adequate monitoring, could be a target of both illicit networks as well as terrorist activities.

While South Africa has nuclear, chemical and biological capabilities, the country also has the most advanced export control laws and systems on the continent and belongs to all of the non-proliferation export control groups except for the Australia Group. After dismantling its nuclear weapons programme in the early 1990s, South Africa's weapon-grade highly enriched uranium was placed under strengthened safeguard systems, and is well secured and under continual surveillance by the International Atomic Energy Agency (IAEA). However, given South Africa's extensive nuclear, metallurgical and other related industries, the country could be a potential target for non-state actors in search of nuclear-related material and equipment. A number of cases have been documented in recent years linking some individuals operating from South Africa to the A.Q. Khan network. South Africa also developed a robust chemical and biological defence protection programme and maintains an extensive animal vaccine production and pharmaceutical industry. It furthermore has a very advanced chemical and microbiological research and development capacity.

Tanzania is considered to be a potential transit route given the prevalence of drug trafficking and money laundering networks in the country. It could also become an East African access point for illicit networks. Dar es Salaam is the principle port and a major sea outlet for Burundi, Malawi, Rwanda, Uganda, Zambia, Zimbabwe and eastern parts of the Democratic Republic of the Congo. The port is also well connected to the hinterland, especially

with Burundi, the Democratic Republic of the Congo, western Kenya and Uganda, through the railway system.

Though the Tanzanian rail network and seaport does not in itself contribute to terrorist activities, this transit point has the potential to be targeted by agents acting on behalf of illicit networks or non-state actors. There is already sufficient evidence that Tanzania is used as a transshipment point for heroin from South-West and South-East Asia, and South American cocaine destined for South African, European and US markets.³⁰

Table 2. Southern African states NBCW risk assessment

| Country | Nuclear | Biological | Chemical | Transit | Terrorism |
|----------------------------------|---------|------------|----------|---------|-----------|
| Angola | | | | • | |
| Botswana | | | | no data | |
| Democratic Republic of the Congo | • | | | | • |
| Lesotho | | | | no data | |
| Madagascar | | | | • | |
| Malawi | | | | | no data |
| Mauritius | | | | no data | no data |
| Mozambique | | | | no data | no data |
| Namibia | | | | no data | |
| South Africa | • | • | • | | |
| Swaziland | | | | no data | |
| Tanzania | | | | • | • |
| Zambia | | | | | no data |
| Zimbabwe | | | | | |

Note: The countries in this table are considered based on the following regional grouping: Southern African Development Community. Tanzania is a member of both the East African Community and the Southern African Development Community.

EASTERN AFRICA

The situation in Eastern Africa is slightly different. While none of the countries in the region have any NBCW-related material or activities to be concerned about, a number of countries could potentially be used as transshipment points, or as bases for terrorist cells seeking to acquire NBCW-related materials and equipment from a country such as South Africa (See Table 3). The porous borders and past and current conflicts in Burundi, Eritrea, Ethiopia, Kenya, Tanzania and Uganda make these countries potential transit countries, while Kenya, Rwanda, Tanzania and Uganda have been victims of terrorist activities. Although there is no history of terrorist groups operating in Djibouti, the geographical location of the country is of strategic importance. While Djibouti is not considered a high-risk country, its strategic location and close proximity to the Middle East, its status as a free trade zone in the Horn of Africa and the use of the Djibouti City port by many North African countries make it a potential transshipment point.

Table 3. East African states NBCW risk assessment

| Country | Nuclear | Biological | Chemical | Transit | Terrorism |
|----------|---------|------------|----------|---------|-----------|
| Burundi | | | | • | |
| Djibouti | | | | • | |
| Eritrea | | | | • | |
| Ethiopia | | | | • | |
| Kenya | | | | • | • |
| Rwanda | | | | • | • |
| Tanzania | | | | • | • |
| Uganda | | | | • | • |

Note: The countries in the table are considered based on the following regional grouping: East African Community. Tanzania is a member of both the East African Community and the Southern African Development Community. Rwanda is also a member of the Economic Community of Central African States.

CENTRAL AFRICA

Angola, Burundi, the Democratic Republic of the Congo and Rwanda have already been discussed. The Central African Republic is largely lawless, especially in the rural areas where the government does not have full control. There is also widespread proliferation of illegal arms, as well as armed groups operating from the northern areas. In Chad, the alliance of Al-Qaeda in the Islamic Maghreb and the Salafist Group for Preaching and Combat uses the territory for training and as a transit point. Equatorial Guinea is considered a transit and destination country for human trafficking and these routes could potentially be used by illicit NBCW networks. Remnants of the civil war militias in the Congo are still active in the southern Pool region, and most have yet to disarm and many have turned to banditry. See Table 4.

Table 4. Central African states NBCW risk assessment

| Country | Nuclear | Biological | Chemical | Transit | Terrorism |
|----------------------------------|---------|------------|----------|---------|-----------|
| Angola | | | | • | |
| Burundi | | | | • | |
| Cameroon | | | | | no data |
| Central African Republic | | | | • | no data |
| Chad | | | | • | • |
| Congo | | | | • | no data |
| Democratic Republic of the Congo | • | | | | • |
| Equatorial Guinea | | | | • | no data |
| Gabon | | | | | no data |
| Rwanda | | | | | • |
| São Tomé and Príncipe | | | | | no data |

Note: The countries in the table are considered based on the following regional grouping: Economic Community of Central African States. Both Angola and the Democratic Republic of the Congo are members of Southern African Development Community, while Burundi and Rwanda also belong to the East African Community.

WESTERN AFRICA

While not a NBCW high-risk region, West African states are prone to be potential transit states or havens for terrorist activities. In the region, only Ghana and Nigeria are considered to be potential NBCW risks. Ghana has a SLOWPOKE-type 30kW reactor³¹ while Nigeria has a tank-in-pool type Miniature Neutron Source Reactor (NIRR-1),³² both using 90% enriched uranium as fuel. In Nigeria's case it is also worth noting that the government requested IAEA assistance to recover radioactive material missing from oil operations in the southern part of the country. Radioactive materials used in oil operations include cesium-137, which could be used in a so-called dirty bomb.³³ Given illicit trafficking activities in Benin, Cape Verde, Côte d'Ivoire, Liberia, Mali, Niger and Sierra Leone, there are some concerns that these countries could be potential transit states for NBCW-related activities. There is also a potential for terrorists to operate in Mali, as well as in Niger and Nigeria. Much of the Algerian-based Al-Qaeda in the Islamic Maghreb revolves around the black market economy (drugs, arms, vehicles, money laundering, extortion, kidnapping and racketeering) across the neighbouring borders of Chad, Libya, Mali, Mauritania and Niger.³⁴ See Table 5.

Table 5. West African states regional NBCW risk assessment

| Country | Nuclear | Biological | Chemical | Transit | Terrorism |
|---------------|---------|------------|----------|---------|-----------|
| Benin | | | | • | no data |
| Burkina Faso | | | | | no data |
| Cape Verde | | | | • | no data |
| Côte d'Ivoire | | | | • | no data |
| Djibouti | | | | • | |
| Gambia | | | | | no data |
| Ghana | • | | | | no data |
| Guinea | | | | | no data |
| Guinea-Bissau | | | | | no data |
| Liberia | | | | • | |
| Mali | | | | • | • |
| Niger | | | | • | no data |

| Country | Nuclear | Biological | Chemical | Transit | Terrorism |
|-----------------------|---------|------------|----------|---------|-----------|
| Nigeria | • | | • | | • |
| São Tomé and Príncipe | | | | | no data |
| Senegal | | | | | |
| Sierra Leone | | | | • | |
| Togo | | | | | no data |

Note: The countries in the table are considered based on the following regional grouping: Economic Community of West African States. São Tomé and Príncipe is also a member of Economic Community of Central African States.

NORTHERN AFRICA

From a NBCW and terrorist-risk perspective, the North African region is of highest priority. It is however noteworthy that, with the exception of the Sudan, all North African countries have submitted reports to the 1540 Committee. This is probably due to their close proximity to the Middle East, as several states have acknowledged the need to prevent the spread of terrorism and have expressed their support in putting an end to it. Furthermore, being near to and given their ties with Europe, these countries are likely to be influenced by European security threat perceptions, of which NBCW proliferation is currently considered as the highest priority.

Algeria's 15MW Es Salam reactor has the theoretical capacity to produce as much as 3kg of weapons-grade plutonium a year. Some reports also claim the existence of a secret reprocessing plant near the reactor facility. Algeria has not signed an IAEA Additional Protocol. Furthermore, according to the US State Department:

the [Al-Qaeda in the Islamic Maghreb/Salafist Group for Preaching and Combat] continues to operate in the Trans-Sahara region, crossing difficult-to-patrol borders between Mali, Mauritania, Niger, Algeria, and Chad to recruit extremists within the region for training and terrorist operations in the Trans-Sahara, and possibly for operations outside the region. Its new alliance with Al-Qaeda potentially has given it access to more resources and training.³⁵

The proximity of the Algerian coastline to Europe and known human trafficking activities make Algeria a potential NBCW transit state.

Egypt has an active peaceful nuclear research programme³⁶ and has long expressed the desire to develop an independent fuel cycle, which was reiterated in 2006.³⁷ Egypt is also one of the few countries that has used chemical weapons in warfare³⁸ and is suspected of maintaining a chemical warfare capability.³⁹ Egypt has not signed the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (CWC) and while there is no available evidence that Egypt has pursued an offensive biological weapons capability, for the purpose of this study Egypt is listed as a potential source for biological agents and toxins given its strong technical base in applied microbiology. There is a presence of indigenous extremist groups, especially al-Tawhid wa al-Jihad (a radicalized Bedouin extremist group responsible for the 2006 bombings in Egypt),⁴⁰ which supposedly has a pro-Al-Qaeda stance. The rugged northern Sinai region is a potential transit point for smuggling arms and explosives into Gaza. Egypt is also a potential transit route for drug trafficking into Europe, Israel and North Africa, and there are concerns of money laundering due to ineffective enforcement mechanisms.

Libya admitted in 2004 to having secretly imported raw uranium and the necessary equipment to convert it for enrichment into weapons-grade material. It has also been revealed that Libya was a recipient of technology and equipment sourced through the A.Q. Khan network. Libya also used mustard gas bombs against Chad in the late 1980s, though has since renounced all NBCW programmes. After joining the CWC in December 2003, Libya declared a significant stockpile of nerve gas precursor chemicals, an inactivated chemical weapons production facility and two chemical weapons storage facilities. Parts of the former chemical weapons production facility are being converted into a pharmaceutical plant to produce low-cost vaccines and medicines to treat HIV/AIDS, malaria and tuberculosis for distribution to the African market. In 2003, Libya also admitted its previous intentions to acquire equipment needed to produce biological weapons and, according to reports, revealed a number of medical and agricultural research centres that had the potential to be used in biological weapons research.⁴¹ Although the country has declared its intention of dismantling these programmes, there is a danger of leakage of these sensitive technologies—tangible and intangible—to non-state

actors. An Al-Qaeda-affiliated terrorist group, the Libyan Islamic Fighting Group, is reportedly based in Libya.

While Morocco is generally not considered a high-risk country, its strategic location along the Strait of Gibraltar and reports⁴² that Moroccan territory has been used as a route for drug trafficking into Western Europe should be noted. According to a 2004 UN press release:

Drug trafficking from Morocco (estimated at \$12.5 billion) has been identified as the major source of funding for three major terrorist incidents: the aborted attack on a US Navy vessel in Gibraltar in 2002; the bombing of several sites in Casablanca in May 2003, and the March 2004 attack on rail passengers in Madrid.⁴³

At the same press conference UN Office on Drugs and Crime Director Costa underlined the linkage between illicit drugs, crime and terrorist groups:

It has become more and more difficult to distinguish clearly between terrorist groups and organized crime units, since their tactics increasingly overlap. The world is seeing the birth of a new hybrid of “organized crime–terrorist organizations”, and it is imperative to sever the connection between crime, drugs, and terrorism now.⁴⁴

The Sudan is of both transit and terrorist concern given the presence of Al-Qaeda elements and reports that the Sudan could be a logistics and transit base for terrorist heading to Iraq. Due to ongoing conflict in the country, the borders are highly porous with weak enforcement of border controls, especially in the southern parts. The Sudan is also a concern given its long history in human trafficking. Tunisia’s proximity to vital shipping lanes makes it a potential target. While there are no overt terrorist activities there, Tunisian extremists have been arrested for or implicated in terrorist activities abroad, including in Algeria, Egypt, Iraq, Italy and Turkey. See Table 6.

Table 6. North African states NBCW risk assessment

| Country | Nuclear | Biological | Chemical | Transit | Terrorism |
|---------|---------|------------|----------|---------|-----------|
| Algeria | • | | • | • | • |
| Egypt | • | • | • | • | • |
| Libya | • | • | • | no data | • |
| Morocco | | | | • | • |
| Sudan | | | • | • | • |
| Tunisia | | | | no data | • |

OVERALL RISK ASSESSMENT

Without suggesting that any African country is of more importance or poses a higher proliferation risk than others, the above risk assessments highlight the need first and foremost to focus on those countries that are considered of highest potential NBCW risk (Algeria, the Democratic Republic of the Congo, Egypt, Ghana, Libya, Nigeria, South Africa and the Sudan). Illicit networks and terrorists seeking NBCW material and technologies are likely to target these countries as potential sources. Of these eight countries, only the Democratic Republic of the Congo and the Sudan have not yet submitted reports to the 1540 Committee. The second group of priority countries should be those considered to be of transit and terrorist risk. Given the porous nature of many African borders, weak border controls and enforcement mechanisms, proneness to other illicit activities including drugs and human trafficking, as well as established terrorist activities in some of these countries, they have the potential of being targeted by NBCW networks or terrorist groups. Compared to the NBCW high-risk group, there are a significant number of these secondary risk countries (24) that have not yet submitted reports to the Security Council.⁴⁵ Considered against the backdrop of other issues such as ongoing internal conflicts and other pressing socio-economic and development priorities in these countries, a direct linkage can be made between their lack of 1540 implementation and these priorities.

1540 IN RELATION TO EXISTING NBCW OBLIGATIONS AND AGREEMENTS

In examining the implementation of Resolution 1540 by African states, comparisons should be drawn between the resolution's key provisions and that of existing NBCW treaties in order to point to several overlapping areas. In fact, effective implementation by African parties of all their existing legal NBCW obligations will greatly enhance the level of implementation of the resolution's provisions. Chapter Annex A contains a comparative table showing African states' adherence to NBCW-related treaties and agreements.

As states parties to the NPT, all African states have a legal obligation to enter into comprehensive safeguards agreements with the IAEA. However, only 31 states have such agreements in place.⁴⁶ In addition to the NPT, the African Nuclear-Weapon-Free Zone Treaty (the Pelindaba Treaty) also requires its member states not only to implement comprehensive safeguards, but also to ensure that such arrangements are implemented by recipients of any transferred nuclear materials and technologies, particularly given that the treaty requires that such agreements should be a condition of supply of such materials and technologies. Unfortunately only 25 African states have so far ratified the Pelindaba Treaty. Since it represents a long-aspired goal to make Africa completely nuclear-weapon-free, all African nations have an obligation to ensure not only its entry into force (the treaty requires 28 states to ratify), but—for the zone to be truly effective—all African states should ratify and implement the treaty's requirements, including the key safeguards agreement obligation. Concluding comprehensive safeguards agreements are not only legally required under both the NPT and the Pelindaba Treaty, but it would contribute significantly to meeting 1540 obligations.

To date almost all African governments (49) have ratified the CWC, which not only requires its states parties not to develop, procure or use chemical weapons, but also to implement measures to prevent or control the transfer of certain dangerous chemicals and precursors. As such most African states should already have a national authority and some form of control system in place to prevent the spread of banned or controlled substances. A smaller number of countries (32) are also party to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (BTWC) which places a legal obligation on states parties not to develop and transfer biological agents

and toxins which could be used in biological weapons. Unlike the CWC, the BTWC does not have a verification system and thus African parties may not have systems in place to control biological agents. In addition, adherence to and full implementation of obligations under other nuclear safety- and security-related treaties such as the Convention on the Physical Protection of Nuclear Material (CPPNM), the International Convention for the Suppression of Acts of Nuclear Terrorism (NTC) and the Africa-specific Bamako Convention on the Ban of the Import Into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa would greatly enhance African security against potential NBCW threats. It is encouraging that a larger number of African countries are already members of the CPPNM (32) and the Bamako Convention (23) which means that they should already have measures in place to protect hazardous nuclear material and other waste against possible diversion.

When considering the relationship between 1540 implementation and that of multilaterally negotiated NBCW treaties it is important to point out, especially to African countries concerned about setting up additional legal mechanisms, that membership of these treaties already requires adherence to a large portion of the requirements of 1540. Considering the number of states with comprehensive safeguards agreements in place (27), states party to the CWC (49) and to the BTWC (32), then a larger number of African governments should be able to report that they have measures in place to prevent NBCW proliferation. Yet, 17 African governments with comprehensive safeguards in place, 32 African parties to the CWC and 19 to the BTWC have not yet submitted reports to the 1540 Committee. In fact, 18 countries have comprehensive safeguards in force and are party to both the CWC and BTWC, but have not submitted reports. Since these governments should in theory have most of the controls and mechanisms required by Resolution 1540 in place already, there is no reason why they should not be able to report that they meet the resolution's requirements.

Given the focus of the resolution, it is noteworthy that very few African governments (nine) have signed the NTC and only South Africa has ratified it. Given its direct relevance to Resolution 1540, more emphasis should be placed on adherence to this convention by African states.

A comparison of the list of states considered to be of NBCW, transit or terrorist risk with the level of adherence to the most important NBCW treaties and agreements (as seen in Chapter Annex A), shows that in

addition to the six states that are considered of highest potential for NBCW risk and that have submitted reports to the 1540 Committee (Algeria, Egypt, Ghana, Libya, Nigeria and South Africa), eight other African states with the potential of being targeted by NBCW networks or terrorist groups have also submitted reports (see Tables 2–6). Admittedly, the contents of many reports submitted by African governments require additional work, but going by the number of reports submitted, this comparison shows that a much larger percentage of African states that are relevant to the provisions of the resolution have submitted reports. As such, 14 of the 19 reporting are listed as priority states, representing roughly 44% of the total number of African states with NBCW potential (32), or that could be targets from a transit and or terrorism perspective. While this number may still be still be low in comparison to other regions, it should be considered within the context of more pressing priorities from an African perspective, as well as the relatively low NBCW risk factor in Africa.

ROLE OF REGIONAL AND SUBREGIONAL ORGANIZATIONS

A strong case can be made for African regional and subregional organizations to become more actively involved in assisting member states in implementing Resolution 1540. As pointed out in a 2007 study commissioned by UNIDIR,⁴⁷ regional and subregional organizations generally consist of states in close proximity to each other with similar political, social, economic, cultural and historic experiences, and as such they present a more appropriate platform to discuss national and regional security benefits and challenges involved in implementing Resolution 1540. These organizations also provide useful opportunities for states in the region and subregions to exchange experiences in implementing the resolution and to seek assistance from other states in a position to do so. Given the political nature of organizations such as the AU, the role of peer pressure through the adoption of resolutions by the organization's main bodies could raise the level of awareness about the resolution and the need for full implementation by states that have not yet done so. In reality, however, the AU and subregional organizations in Africa currently play almost no role in promoting Resolution 1540.

While the OAU, the predecessor to the AU, often passed resolutions relating to global and regional nuclear disarmament, including resolutions in response to French nuclear testing in Algeria during the 1960s, in opposition to South Africa's clandestine nuclear programme, and in support

of the Pelindaba Treaty, the AU has since its inception been less active in its focus on NBCW issues. Although the AU has passed resolutions about African states' determination "to preserve Africa as a nuclear free zone in conformity with the Pelindaba Treaty" and their "resolve to leave no stone unturned to ensure the early entry into force of this Treaty",⁴⁸ it has no strategy or mechanisms in place to facilitate the Pelindaba Treaty's entry into force.

While the AU Peace and Security Council states that the council shall "promote and encourage the implementation of ... UN and other relevant international conventions and treaties on arms control and disarmament",⁴⁹ it is silent on any issue related to NBCW non-proliferation and the implementation of international obligations in this regard. While the Protocol Relating to the Establishment of the Peace and Security Council of the African Union includes several references to small arms and light weapons as well as anti-personnel mines, there is not one reference to NBCW non-proliferation. This underlines the point that NBCW proliferation is not a concern of African states. In the case of individual African state priorities, other pressing issues such as regional conflicts, the situation in the Sudan and dealing with socio-economic crises in Africa have resulted in the AU's primary focus being on peacekeeping and other crisis-management initiatives. Yet, its efforts to deal with these pressing priorities have largely failed, not for a lack of political commitment but rather because of limited financial and other resources as well as expertise. The prevailing view among African governments that not enough is being done about issues such as small arms proliferation and global nuclear disarmament is also an important factor to bear in mind. Since leading African countries, such as Algeria, Nigeria and South Africa, focus on other pressing priorities from an African perspective, the broader AU membership is likely to not be sensitive about the need to broaden its agenda to include non-proliferation orientated issues.

Although its political framework allows the AU council (and by implication the AU secretariat) to focus on the implementation of African states' obligations under regional and international NBCW agreements, there is no dedicated technical and financial framework to do so. While the proposal by the former Nigerian foreign affairs minister Oluyemi Adeniji to establish a dedicated unit within the AU secretariat to promote African states' ratification of and adherence to international non-proliferation and

disarmament agreements is a step in this direction, there has been no political willingness among African leaders to implement this proposal.

It is encouraging that the Ghanaian Permanent Representative to the United Nations at the February 2007 open meeting of the Security Council emphasized the role of regional organizations, such as the Association of Southeast Asian Nations, the Caribbean Community, the Organization of American States, the League of Arab States and the AU, as being “appropriate mechanisms to pool resources for the implementation of such 1540 obligations as border controls and illicit financial networks within the regional context”. He also noted that regional organizations, “given their regional characteristics, [are] able to develop more effective and contextually-driven means to fulfil the obligations of 1540, rather than simply transplanting measures from states with different values and culture”.⁵⁰ It is also encouraging that statements of support for increased regional and subregional cooperation in strengthening the non-proliferation regime in Africa, especially in the area of establishing more effective border controls, were iterated by several African delegates at regional implementation seminars in Accra and Gaborone.

However, despite some statements to this effect, not one African report on the implementation of 1540 mentions the need for the AU or any of the subregional organizations to become more actively involved in facilitating the implementation of the resolution. While several of these reports make reference to the participation of the reporting states in the activities of regional organizations in their efforts to curb small arms and light weapon proliferation and to combat terrorism, they are silent on the role of these organizations in implementing Resolution 1540. Kenya, for instance, referred to the Eastern Africa Association for Radiation Protection, which “has been mandated to train users of Radioactive Materials in radiation safety” and mentioned plans for tripartite meetings including Kenya, Tanzania and Uganda to coordinate radiation protection matters.⁵¹ Benin, Egypt and Eritrea mentioned their ratification of the OAU’s Convention on the Prevention and Combating of Terrorism.⁵²

As was highlighted at a 2002 UNIDIR workshop entitled “Strengthening the Role of Regional Organizations on Treaty Implementation”, the lack of institutional capacity, funds and enforcement mechanisms within these organizations may contribute to their apparent reluctance to be more actively involved in this important issue. It is therefore unlikely that these

organizations will become involved in promoting 1540 without some sort of external support. Taking this into consideration, the 1540 Committee has committed itself to expanding and intensifying regional and subregional activities in order to better provide assistance to states in implementing 1540. The committee might also consider establishing ties with the AU as it has the potential to act both as a facilitator and focal point for dialogue between the continent and the committee.

In his presentation at the Accra seminar, former Under-Secretary-General Tanaka of the UN Department for Disarmament Affairs stated that as from the beginning of 2007, the department, through the Regional Centre for Peace and Disarmament in Africa (UNREC), intended to organize subregional follow-up workshops on challenging issues faced by African countries. He continued to say that, given that implementing the provisions of 1540 would complement efforts to curb the proliferation of small arms and light weapons, as well as contribute toward global security efforts, the department would continue to work with the 1540 Committee to increase awareness and provide assistance to states that require it.⁵³

The role of the United Nations Regional Centre for Peace and Disarmament in Africa (UNREC) in coordinating and facilitating both future seminars and regional implementation efforts however remains questionable. Although UNREC claims to be responsible for advancing the cause of NBCW disarmament, it has no specific programme for this purpose. While its main focus has always been small arms and light weapons proliferation, its ability to effectively assist states in implementing the 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA) is questionable, the main reason being that UNREC is severely under-funded, under-staffed and has very little political support from the main regional players.

While some lessons could be drawn from subregional approaches to implement the PoA,⁵⁴ there appears to be a lack of willingness among African governments to invest already stretched human and financial resources to cover NBCW-related materials, which in most cases are not present in their territories. Yet, as they continue to raise awareness and facilitate the implementation of national action plans to implement the PoA, these subregional organizations could play an important role—perhaps even more so than the AU—in promoting 1540 among African states. As such, they could assist and coordinate regional and national initiatives to increase

awareness, establish effective border controls, build capacity in national governments, assist in developing best practice guidelines based on the experience of other African states and create political forums for states in the region, as well as with extraterritorial states and other organizations, to discuss issues related to non-proliferation. Subregional organizations which are already actively involved in implementing the PoA include the Regional Centre on Small Arms and Light Weapons in the Great Lakes Region, the Horn of Africa and Bordering States; the Economic Community of West African States; the Southern African Development Community; and the Southern African Regional Police Chiefs Cooperation Organization.

The role and future potential of regional seminars on the implementation of Resolution 1540 should be further explored and expanded. These seminars could have a far greater impact on the overall implementation of 1540 than efforts to mobilize the AU and subregional organizations. The two African regional seminars held so far (in Accra and Gaborone) were successful in that they raised awareness about the resolution, provided guidance to government officials on the implementation requirements and how to address potential gaps in their legislation, and presented opportunities for African representatives to engage with experts from non-African countries as well as from international organizations. Since these seminars were sponsored by several non-African countries, they also provided opportunities for states outside the region to offer assistance in implementation of the resolution. Moreover, they presented first-hand opportunities for members of the 1540 Committee to engage with African officials responsible for compiling national reports and implementing the provisions of the resolution. These seminars also served to facilitate the sharing of experiences and development of action plans to achieve the full implementation of the resolution.

Following the Accra seminar the former chairman of the 1540 Committee Ambassador Peter Burian emphasized the importance of holding further regional seminars to complete the reporting process and facilitate further discussions on national priorities, as well as to identify implementation gaps and to further share experiences and develop action plans.⁵⁵

While more regional seminars in Africa would go a long way to increase awareness about the resolution, its provisions and ways to implement it, outreach activities in Africa should start focusing more on the national level, as opposed to the regional or subregional. In this regard, the emphasis

should shift to the role of influential countries in the region that already have the required measures in place, and to international organizations, such as the IAEA, INTERPOL and the Organization for the Prohibition of Chemical Weapons, to provide direct assistance and guidance on the implementation of Resolution 1540. Forging partnerships with these international organizations, in particular those that are able to provide technical assistance to countries, could significantly advance progress in implementing 1540 in Africa. A limited number of African countries have any sort of existing national legislation, let alone enforcement capacities, pertaining to the proliferation of NBCW. Since most countries have never possessed any NBCW, there is a distinct lack of knowledge and understanding of the measures required to prevent their proliferation. This has made it difficult for states to assess and outline the kind of assistance they require to implement the resolution. Given that complying with the obligations of the BTWC, CWC and IAEA would contribute significantly towards implementing the resolution, and the fact that the 1540 Committee lacks the mandate and capacity to provide direct assistance to states, these organizations could play a significant role in providing direct assistance to states in their efforts to implement the measures required by the resolution, including by providing training and technical expertise and assisting in drafting national legislation. These organizations could also assist the AU and subregional organizations to develop best practice guidelines on how to prepare national reports and implement effective measures to meet the provisions of the resolution.

Non-governmental organizations and civil society groups in Africa also have the potential to assist in implementation, given that they too are increasingly involved in security issues. They have become, especially in efforts against small arms proliferation and landmines, more effective mechanisms for channelling assistance to countries as they have a greater knowledge of local needs and environments. Furthermore, they could be used as an effective means for applying pressure on nuclear-weapon states to disarm.

THE WAY FORWARD

Given the slow rate of progress in implementing 1540 in many African countries, it is highly unlikely that the resolution will be fully implemented by the time the current committee's mandate expires in April 2008. Complying with the domestic requirements relating to legislation and enforcement is

proving to be the biggest challenge for African states, as many lack the necessary technical expertise and resources. This is further complicated by the different approaches required to prevent the proliferation of NBCW and their components, given their different natures and dual-use purposes.⁵⁶

Since most African states have other primary concerns, such as the prevalence of HIV/AIDS and the alleviation of poverty, and often lack the capacity and knowledge to make real progress in implementing the resolution, progress on the continent as a whole will continue to be slow. But, while the interest in and commitment to the implementation of the resolution may be lacking, especially in sub-Saharan Africa, it is important to emphasize that no country can consider itself immune from the threat of an attack involving NBCW or from having its territory exploited by non-state actors attempting to produce, acquire or transfer NBCW or their components. Furthermore, countering the threat of international terrorism and NBCW proliferation requires efforts at national, regional and international levels.

Implementing the provisions of Resolution 1540 has significant implications for developing countries, as they are required to adopt and enforce legislation and measures to prevent non-state actors from acquiring or being able to produce NBCW. The resolution's national implementation obligations can be broadly categorized into three types of provisions: the criminalization of non-state actor acquisition and use of NBCW, the adoption of accounting and security measures over NBCW and their related materials, and border and export controls. It is the last two of these obligations that are proving to be the most difficult to implement, particularly as little guidance is provided for states on the types of measures that should be adopted.

Although the extent to which African countries should prioritize implementing the resolution can be questioned, particularly given that most of them have never attempted to develop NBCW programmes, there are several reasons why they might consider focusing more attention on implementing the resolution:

- acts of terror recognize no geographical boundaries and have become a global threat;
- all African states are vulnerable to disinvestment, and instability in the global economy;

- establishing and enforcing effective border controls would contribute towards curbing other illicit activities, such as the illicit arms and drug trade; and
- a good reputation in compliance would be advantageous in getting nuclear energy developments approved, financed and established.

Although assistance can be made available to states that require it—and several African countries have requested assistance in their reports to the 1540 Committee—few have been specific or have provided the necessary details of the type of support they require. Assistance is predominantly needed with drafting legislation, training, and expert and technical advice.⁵⁷

At the regional implementation seminars held in Accra and Gaborone, several African countries have expressed support for increased regional and subregional cooperation in strengthening the non-proliferation regime in Africa, especially in the area of establishing more effective border controls. Regional organizations, such as the AU and the Economic Community of West African States, are being seen as more appropriate and effective mechanisms to assist countries in meeting the requirements of international conventions, as they are more in tune with regional contexts and environments. However it is unlikely that these organizations have the capacity to provide such assistance without some sort of external support. Taking this into consideration, the 1540 Committee has committed itself to expanding and intensifying regional and subregional activities, in order to better provide assistance to states in implementing Resolution 1540. The committee might also consider establishing ties with the AU as it has the potential to act both as a facilitator and focal point for dialogue between the continent and the committee.

Bearing in mind that not all African countries are equally of NBCW concern, 34 of 53 African states have yet to submit their first report to the 1540 Committee. There is thus still a long way to go in implementing the resolution on the continent, and in order to advance existing efforts African countries will need to be provided with significant amounts of assistance from regional and international organizations as well as from states outside the region in a position to do so. While it would be important eventually to ensure that all African states fully implement the resolution, priority should be given to the subset of states that are of immediate NBCW concern, and

those that could potentially be targeted by illicit networks or terrorist groups. It would also be important for states in the region such as South Africa to play a more proactive role in promoting the resolution among African states and involving regional and subregional organizations in playing a more active role. In particular, assistance is required in reporting, drafting legislation and in the technical implementation of the resolution's provisions.

Successfully implementing the resolution in Africa could significantly advance existing global efforts in implementing controls to curb NBCW proliferation, but implementing the resolution by putting in place the required legislation and control mechanisms would directly benefit African countries in building and enhancing their capacities to strengthen existing security efforts on the continent, including the means to curb the spread of illicit trade in small arms and light weapons, drugs and human trafficking.

RECOMMENDATIONS

RECOMMENDATIONS FOR REGIONAL STATES

- While acknowledging their limited resources and competing priorities, African governments should recognize that the global nature of the proliferation threat, and the ease with which weapons and materials can be moved across borders, place some level of responsibility on all countries to minimize the risk of non-state actors operating and transferring weapons across their borders.
- Considering that many African countries have emerging or weak economies, and that they need to attract foreign investment to strengthen their economies, being seen to be compliant with international security measures, including Resolution 1540, can increase their own domestic security while making themselves more attractive for investment. The impact of a major terrorist attack on the global economy—increased costs in international trading to tighten security, decreases in tourism traffic, and stricter immigration laws—could have direct negative consequences for emerging economies.
- Implementing some of the provisions of the resolution could contribute toward addressing other pressing security-related concerns in Africa, including the illicit trade in small arms. Adopting effective laws and enforcement measures as outlined in

Resolution 1540—to prevent non-state actors from transporting or transferring NBCW or related materials—could at the same time strengthen existing controls established to curb the flow of small arms and light weapons through Africa’s porous borders.

- States that have not yet fully implemented the resolution’s requirements and that have yet to submit reports should be encouraged to submit requests for assistance not only to the 1540 Committee, but also to subregional organizations and key states in their subregion that have already taken measures to implement the resolution.
- States that already implemented 1540 requirements should offer assistance and training to their subregional neighbours with the aim of expanding their own control mechanisms beyond their borders. For instance, South Africa (with the most advanced export control system and most comprehensive legislation in place) could work closely with its Southern African Development Community partners to ensure that these states implement at the very least the requirements of 1540.
- Based on a needs assessment, key states in a position to do so could also develop, in collaboration with key donor states and relevant international organizations, implementation action plans and implementation packs which could include legislative and export control guidelines (if not model legislation). Priority should be given to those states that are of higher NBCW or transit concern.
- Key capable states from the region, supported by and in cooperation with donor states and relevant international organizations, could initiate in-country implementation plans in states in their subregion.

RECOMMENDATIONS FOR DONOR STATES

- Bearing in mind the need to first focus on states with higher proliferation risks, collaborate with the AU and subregional organizations, as well as key regional states, to channel indirect assistance to states in the region.
- Provide ongoing guidance to states, including on what types of legislation would be required and how to establish export controls and enforcement measures.
- Assess further assistance needs of states in the region, including equipment and training.

- Collaborate with international and regional organizations, such as the AU, IAEA, the Organisation for the Prohibition of Chemical Weapons and the United Nations, in follow-up activities such as regional seminars and bilateral outreach, to assess the effectiveness of assistance programmes and tailor future programmes accordingly.
- Fund and make use of regional and national implementation seminars and other initiatives as a means of assisting states to build capacity to implement the resolution's requirements.

RECOMMENDATIONS FOR THE AU, SUBREGIONAL ORGANIZATIONS AND INTERNATIONAL NON-PROLIFERATION ORGANIZATIONS

- Make non-proliferation and disarmament a permanent agenda item for AU summit and other meetings with the view to adopting specific resolutions and encouraging AU members to fully implement their international non-proliferation obligations including Resolution 1540 and the Pelindaba Treaty.
- Establish a dedicated non-proliferation and disarmament unit within the AU secretariat to coordinate the union's activities in this regard. This unit could also liaise with the 1540 Committee and subregional organizations, and coordinate 1540 training and implementation activities in Africa. Since the 1540 committee has committed itself to expanding and intensifying regional and subregional activities, the committee should establish ties with the AU as it has the potential to act both as a facilitator and focal point for dialogue between the continent and the committee.
- The UN Office for Disarmament Affairs could construct a website for the AU which could include a dedicated section on non-proliferation. This website could serve to provide information to members states, including on specific proliferation threats, ways to address these and a regional non-proliferation experts register.
- Convene annual non-proliferation experts workshops, to include participants from government, industry, donor states, the 1540 Committee, UN agencies and relevant non-government organizations.
- Encourage greater involvement of subregional organizations in assisting states in the implementation of the resolution. As they continue to raise awareness and facilitate the implementation of national action plans to implement the PoA, these subregional organizations could play an important role—perhaps even more so

than the AU—in promoting 1540 among African states. They could assist and coordinate regions and national initiatives to increase awareness, establish effective border controls, build capacity in national governments, assist in developing best practice guidelines based on the experience of other African states, and create political forums to discuss non-proliferation related issues among the regional states, as well as with extraterritorial states and other organizations.

- Since the lack of institutional capacity, funds and enforcement mechanisms within the AU and subregional organizations limit the scope of their activities, they will require external support, including financial and technical means.
- The role of both the IAEA and the Organisation for the Prohibition of Chemical Weapons should be enhanced not only to promote the implementation of measures required by the NPT and the CWC respectively, but at the same time to assist states to implement the requirements of Resolution 1540.

CHAPTER ANNEX A

REGIONAL ADHERENCE TO NBCW-RELATED INSTRUMENTS

It should be noted that all African states are party to the NPT.

Key for status

| | |
|------------|--|
| AP | IAEA Additional Protocol |
| ASQ | amended Small Quantities Protocol |
| CS | IAEA Comprehensive Safeguards Agreement |
| S | signatory |
| SP | state party |
| SQ | Small Quantities Protocol (note: the SQP is not considered to include sufficient controls as required by 1540) |
| * | agreements signed/approved but not yet in force |

Key for instruments

| | |
|---------------|---|
| ANWFZ | African Nuclear-Weapon-Free-Zone Treaty (Pelindaba Treaty) |
| Bamako | Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa |
| BTWC | Biological and Toxin Weapons Convention |
| CPPNM | Convention on the Physical Protection of Nuclear Materials |
| CTBT | Comprehensive Nuclear-Test-Ban Treaty |
| IAEA | agreements with the International Atomic Energy Agency |
| NTC | International Convention for the Suppression of Acts of Nuclear Terrorism |

| Country | 1540 | ANWFZ | Bamako | BTWC | CPPNM | CTBT | CWC | IAEA | JC | NTC |
|----------------------------------|------|-------|--------|------|-------|------|-----|-------------|----|-----|
| Algeria | • | SP | | SP | SP | SP | SP | CS/AP* | | |
| Angola | • | S | | | S | | | | | |
| Benin | • | S | SP | SP | | SP | SP | CS*/AP*/SQ | | |
| Botswana | | SP | | SP | SP | SP | SP | CS/AP | | |
| Burkina Faso | • | SP | S | SP | SP | SP | SP | CS/AP/SQ | | S |
| Burundi | | S | SP | S | | S | SP | CS/AP/ASQ | | |
| Cameroon | | S | SP | | SP | SP | SP | CS/AP*/SQ | | |
| Cape Verde | | S | | SP | SP | SP | SP | CS*/AP*/ASQ | | |
| Central African Republic | | S | S | S | | S | SP | CS*/AP*/ASQ | | |
| Chad | | S | S | | | S | SP | CS*/AP*/ASQ | | |
| Comoros | | S | SP | | SP | S | SP | CS*/AP*/ASQ | | |
| Congo | | S | SP | SP | | S | SP | | | |
| Côte d'Ivoire | | SP | SP | S | | SP | SP | CS/AP* | | |
| Democratic Republic of the Congo | | S | SP | SP | SP | SP | SP | CS/AP | | |
| Djibouti | • | S | S | | SP | SP | SP | | | |
| Egypt | • | S | SP | S | | S | | CS | | S |
| Equatorial Guinea | | SP | | SP | SP | S | SP | CS*/SQ | | |
| Eritrea | • | S | | | | SP | SP | | | |

| Country | 1540 | ANWFZ | Bamako | BTWC | CPPNM | CTBT | CWC | IAEA | JC | NTC |
|---------------|------|-------|--------|------|-------|------|-----|-------------|----|-----|
| Ethiopia | | SP | SP | SP | | SP | SP | CS/SQ | | |
| Gabon | | SP | SP | S | SP | SP | SP | CS*/AP*/SQ | S | S |
| Gambia | | SP | SP | SP | | S | SP | CS/SQ | | S |
| Ghana | • | S | S | SP | SP | S | SP | CS/AP | | |
| Guinea | | SP | S | | SP | S | SP | | | |
| Guinea-Bissau | | S | S | SP | | S | S | | | |
| Kenya | • | SP | S | SP | SP | SP | SP | | | S |
| Lesotho | | SP | S | SP | | SP | SP | CS/SQ | | S |
| Liberia | | S | S | S | | S | SP | | | S |
| Libya | • | SP | SP | SP | SP | SP | SP | CS/AP | | S |
| Madagascar | | SP | S | S | SP | SP | SP | CS/AP/SQ | | S |
| Malawi | | S | | S | | S | SP | CS/AP/SQ | | |
| Mali | | SP | SP | SP | SP | SP | SP | CS/AP/ASQ | | |
| Mauritania | | SP | | | SP | SP | SP | CS*/AP*/SQ | | |
| Mauritius | • | SP | SP | SP | | | SP | CS/AP/SQ | | S |
| Morocco | • | S | | SP | SP | SP | SP | CS/AP* | SP | SP |
| Mozambique | | SP | SP | | SP | S | SP | CS*/AP*/ASQ | | |
| Namibia | • | S | | | SP | SP | SP | CS/AP*/SQ | | |
| Niger | | S | SP | SP | SP | SP | SP | CS/AP | | |
| Nigeria | • | SP | | SP | SP | SP | SP | CS/AP | | SP |

| Country | 1540 | ANWFZ | Bamako | BTWC | CPPNM | CTBT | CWC | IAEA | JC | NTC |
|---------------------------|------|-------|--------|------|-------|------|-----|------------|----|-----|
| Rwanda | | SP | S | SP | SP | SP | SP | | | S |
| São Tomé and Príncipe | | S | | SP | | S | SP | | | S |
| Senegal | • | SP | SP | SP | SP | SP | SP | CS/AP*/SQ | | S |
| Seychelles | | S | | SP | SP | SP | SP | CS/AP/ASQ | | S |
| Sierra Leone | | S | S | SP | | SP | SP | CS*/SQ | | S |
| Somalia | | S | S | S | | | | | | |
| South Africa ¹ | • | SP | | SP | SP | SP | SP | CS/AP | SP | SP |
| Sudan | | S | SP | SP | SP | SP | SP | CS/SQ | | |
| Swaziland | | SP | S | SP | SP | S | SP | CS/AP/SQ | | S |
| Tanzania | • | SP | SP | S | SP | SP | SP | CS/AP/SQ | | |
| Togo | | SP | SP | SP | SP | SP | SP | CS*/AP*/SQ | | S |
| Tunisia | • | S | SP/ | SP | SP | SP | SP | CS/AP* | | |
| Uganda | • | S | SP | SP | SP | SP | SP | CS/AP/SQ | | |
| Zambia | | S | S | | | SP | SP | CS/SQ | | |
| Zimbabwe | | SP | SP | SP | | S | SP | CS/SQ | | |

¹ It should be noted that South Africa is also a member of the Missile Technology Control Regime, the Nuclear Suppliers Group, the Wassenaar Arrangement and the Zangger Committee.

Notes

- ¹ Twenty-fourth Ministerial Conference of the Non-Aligned Movement, Final Document, 2004, para. 93.
- ² Security Council, *Note verbale dated 31 January 2005 from the Permanent Mission of South Africa to the United Nations addressed to the Chairman of the Committee*, UN document S/AC.44/2004/(02)/102, 1 February 2005.
- ³ Statement of Commitment to Peace and Security in Africa, issued by the Heads of State and Government of Member States of the Peace and Security Council of the African Union, AU document PSC/AHG/ST.(X), 25 May 2004.
- ⁴ Solemn Declaration on a Common African Defence and Security Policy, 28 February, 2004.
- ⁵ See Johan Bergenas, "The Role of Regional and Sub-regional Organizations in implementing UN Security Council Resolution 1540: a Preliminary Assessment of the African Continent", United Nations Institute for Disarmament Research and Monterey Institute of International Studies, 2007.
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- ⁷ Andreas Persbo and Angela Woodward, *National Measures to Implement WMD Treaties and Norms: the Need for International Standards and Technical Assistance*, Weapons of Mass Destruction Commission, report no. 32, 2005.
- ⁸ Security Council, *Note verbale dated 22 June 2006 from the Permanent Mission of Eritrea to the United Nations addressed to the Chairman of the Committee*, UN document S/AC.44/2004/(02)/132, 23 June 2006.
- ⁹ Great Green Document on Human Rights in the Age of the Masses.
- ¹⁰ Security Council, *Letter dated 12 April 2005 from the Chargé d'affaires a.i. of the Permanent Mission of the Libyan Arab Jamahiriya to the United Nations addressed to the Chairman of the Committee*, UN document S/AC.44/2004/(02)/115, 18 April 2005.
- ¹¹ Radiation Protection Act.
- ¹² Security Council, *Note verbale dated 20 July 2005 from the Permanent Mission of Kenya to the United Nations addressed to the Chairman*

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- ¹³ Security Council, *Note verbale dated 3 March 2005 from the Permanent Mission of Benin to the United Nations addressed to the Chairman of the Committee*, UN document S/AC.44/2004/(02)/106, 3 March 2005.
- ¹⁴ Mohamed Tefiani, "Relevant Lessons: Algeria", in UN Office for Disarmament Affairs, "United Nations Seminar on Implementing UN Security Council Resolution 1540 in Africa", *ODA Occasional Papers*, no. 12, 2007.
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- ¹⁹ Ibid.
- ²⁰ Ibid.
- ²¹ Organisation for Economic Co-operation and Development, *OECD Economic Outlook*, no. 71, 2002, p. 132.
- ²² Peter Burian, "Keynote Address: Significance of UNSCR 1540 and Opportunities for Cooperation and Assistance", in UN Office for Disarmament Affairs, "United Nations Seminar on Implementing UN Security Council Resolution 1540 in Africa", *ODA Occasional Papers*, no. 12, 2007.
- ²³ Peter Burian, "Concluding Remarks", in UN Office for Disarmament Affairs, "United Nations Seminar on Implementing UN Security Council Resolution 1540 in Africa", *ODA Occasional Papers*, no. 12, 2007.
- ²⁴ Peter Crail, "Implementing UN Security Council Resolution 1540: A Risk-Based Approach", *The Nonproliferation Review*, vol. 13, no. 2, 2006.
- ²⁵ Ibid.
- ²⁶ Ibid.
- ²⁷ The information has been sourced from the British Broadcasting Corporation *Country Profiles*, Central Intelligence Agency *The World Factbook* and the US State Department *Country Reports on Terrorism 2006*.

- ²⁸ Central Intelligence Agency, *The World Factbook*, “Field Listing – Illicit Drugs”, <www.facts.org/docs/factbook/fields/2086.html>.
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- ³⁰ Central Intelligence Agency, *The World Factbook*, “Field Listing – Illicit Drugs”, <www.facts.org/docs/factbook/fields/2086.html>.
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- ³⁷ “Egypt, Russia discuss nuke cooperation”, Middle East Newswire, 29 January 2006.
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- ⁴⁰ US State Department, *Country Reports on Terrorism 2006*, chp. 2, “Country Reports: Middle East and North Africa Overview”.
- ⁴¹ “Country Overviews: Libya: Profile”, Nuclear Threat Initiative, <www.nti.org/e_research/profiles/Libya/index.html>.
- ⁴² Pierre-Arnaud Chouvy, “Morocco’s Smuggling Rackets: Hashish, People and Contraband”, *Jane’s Intelligence Review*, vol. 17, no. 12, 2005.
- ⁴³ UN Information Service, *UN Warns about Nexus Between Drugs, Crime and Terrorism*, UN document SOC/CP/311, 1 October 2004.
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- ⁴⁶ For purposes of this chapter, states with only Small Quantities Protocols in place, or states whose comprehensive safeguards agreements are not yet in force, are considered not to meet the requirements of the resolution.
- ⁴⁷ See Johan Bergenas, "The Role of Regional and Sub-regional Organizations in implementing UN Security Council Resolution 1540: a Preliminary Assessment of the African Continent", United Nations Institute for Disarmament Research and Monterey Institute of International Studies, 2007.
- ⁴⁸ See for example, the Lomé Declaration of 2000; and Peace and Security Council, African Union, *Information Note on the African Nuclear-Weapon-Free Zone Treaty (Treaty of Pelindaba)*, AU document PSC/PR/2(LIII), 31 May 2006.
- ⁴⁹ African Union, *Protocol Relating to the Establishment of the Peace and Security Council of the African Union*, 9 July 2002, art. 7, para. 1(n).
- ⁵⁰ Security Council, *Security Council Affirms Determination to Strengthen Cooperation Aimed at Countering Nuclear, Chemical, Biological Weapons Proliferation*, UN document SC/8964, 23 February 2007.
- ⁵¹ Ibid.
- ⁵² Ibid.
- ⁵³ Nobuaki Tanaka, "Concluding Remarks", in UN Office for Disarmament Affairs, "United Nations Seminar on Implementing UN Security Council Resolution 1540 in Africa", *ODA Occasional Papers*, no. 12, 2007.
- ⁵⁴ See Johan Bergenas, "The Role of Regional and Sub-regional Organizations in implementing UN Security Council Resolution 1540: a Preliminary Assessment of the African Continent", United Nations Institute for Disarmament Research and Monterey Institute of International Studies, 2007.
- ⁵⁵ Peter Burian, "Concluding Remarks", in UN Office for Disarmament Affairs, "United Nations Seminar on Implementing UN Security Council Resolution 1540 in Africa", *ODA Occasional Papers*, no. 12, 2007.
- ⁵⁶ Peter Crail, "Implementing UN Security Council Resolution 1540: A Risk-Based Approach", *The Nonproliferation Review*, vol. 13, no. 2, 2006.
- ⁵⁷ Johan Bergenas, "The Role of Regional and Sub-regional Organizations in implementing UN Security Council Resolution 1540: a Preliminary Assessment of the African Continent", United Nations Institute for

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CHAPTER ANNEX B

THE ROLE OF AFRICAN REGIONAL AND SUBREGIONAL ORGANIZATIONS IN IMPLEMENTING RESOLUTION 1540

Johan Bergenas, with guidance from Lawrence Scheinman

INTRODUCTION

In April 2006, the Security Council passed Resolution 1673. The resolution extended the 1540 Committee's mandate for an additional two years and invited the committee to "explore with States and international, regional and subregional organizations experience-sharing and lessons learned in the areas covered by resolution 1540 (2004), and the availability of programmes which might facilitate the implementation of resolution 1540".¹ In February the following year the Security Council debated ways to enhance implementation of 1540 and again expressed the need to further examine the role of international, regional and subregional organizations in terms of experience-sharing, lessons learned and availability of assistance programmes related to 1540 implementation. During that meeting some states' representatives noted that cooperation within regional and subregional associations could contribute to 1540 implementation.² Ghana's ambassador in particular stressed the role that Africa's largest regional organization, the African Union (AU), could play:

The European Union, the Association of Southeast Asian Nations, the Caribbean Community, the Organization of American States, the League of Arab States and the African Union ... have the appropriate mechanisms for the pooling of resources for the implementation of such obligations under resolution 1540 as border controls and illicit financial networks within the regional context. Given their respective characteristics, they are able to develop more effective and contextually-driven means to fulfill the obligations of resolution 1540, rather than simply transplanting measures from States with different values and cultures. Moreover, such bodies can place the fulfillment of

the resolution on the regional agenda and thereby promote its universal adherence by all States in the region.³

Also, as highlighted in this chapter, several African countries at the regional implementation seminars in Accra and Gaborone expressed support for increased regional and subregional cooperation in strengthening the non-proliferation regime on the African continent. The record of support for the involvement by regional and subregional organizations in implementing 1540 indicates that there exists political will to work on implementation of the resolution within such organizations. It is from this perspective that this annex explores Africa's regional and subregional organizations, as well as their past and current involvement with implementing security-related treaties. It looks at an issue area where regional and subregional organizations have played a role in implementation in recent years—that of small arms and light weapons (SALW).

It is important to note at the outset that issues concerning weapons of mass destruction (WMD) are currently a lower priority in Africa than SALW and other issues such as HIV/AIDS, poverty and civil war, all of which have a more immediate impact on social order and correspondingly greater political relevance at the state and regional levels. It is not that there is indifference to the WMD issue, but that political energy and scarce resources are focused on matters imperative to maintaining viable civil society. Nevertheless, exploring the involvement and infrastructure of regional and subregional organizations in the implementation of the goals and objectives of international treaties, especially as concern SALW, provides an opportunity to better understand the potential role and limitations of these institutions with regard to meeting challenges and defining goals and objectives to address them effectively.

THE CASE FOR REGIONAL AND SUBREGIONAL ORGANIZATIONS⁴

The UN Charter encourages regional organizations to take appropriate actions to maintain international peace and security.⁵ Regional and subregional organizations might be able to augment UN and other actors' efforts to assist states with 1540 implementation. In contrast to international entities, regional and subregional organizations generally consist of states in close proximity to each other with similar political, social, economic,

cultural and historical experiences. Therefore, forums within some regional and subregional organizations could be more appropriate venues in which to discuss the national and regional security benefits that successful 1540 implementation would provide.

Exchanges of experiences and best practices might also be more productive among a group consisting of states with similar strengths and weaknesses. There is also reason to believe that peer pressure applied from states within regional and subregional organizations will be more effective than efforts from outside states or international actors. Some states might find it politically viable to accept assistance earmarked for 1540 implementation from regional and subregional organizations in contrast to bilateral assistance from outside states that might also have other agendas tied to their assistance. Similarly, some countries might resist assistance from outside states and international organizations out of concern for protecting state sovereignty and to shield themselves against outside actors seeking to gain political influence over their internal affairs. The president of Sudan refusing to allow UN troops to replace the AU force in that country is one illustration of this issue.⁶

Some scholars and practitioners with knowledge of specific regional and subregional organizations foresee difficulties with these organizations playing a role in facilitating implementation of international treaties. In 2002, before 1540 was adopted by the Security Council, the issue of regional and subregional organizations and treaty implementation was discussed in Geneva during a UNIDIR workshop entitled “Strengthening the Role of Regional Organizations on Treaty Implementation”. Lack of institutional capacity, funds and enforcement mechanisms, as well as alternative agendas within regional and subregional organizations, were cited as reasons for the doubt.⁷ Additionally, some states are against broadening the agendas of regional organizations to include issues such as the proliferation of WMD. For example, Malaysia has opposed the increased focus on security within the Asia–Pacific Economic Cooperation forum.⁸

THE AFRICAN UNION

Africa’s major regional organization, the AU, has been involved with non-proliferation of WMD since the 1963 founding of its predecessor, the Organization for African Unity (OAU). All African states, apart from Morocco,

are members of the AU. In light of France's nuclear tests in the Sahara desert in the beginning of the 1960s, the OAU, during its first conference, passed a resolution on general disarmament deciding, *inter alia*, "To affirm and respect the principle of declaring Africa a Denuclearized Zone to oppose all nuclear and thermonuclear tests, as well as the manufacture of nuclear weapons and to promote the peaceful uses of nuclear energy".⁹ The OAU also agreed unanimously to destroy all existing nuclear weapons. Later in 1963 the OAU Council of Ministers echoed this resolution by suggesting that member states sign the 1963 Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water.¹⁰ In addition, the OAU played a crucial role in promoting the Treaty on the Non-Proliferation of Nuclear Weapons.¹¹ As a result, African adherence to it is universal. However, many African states have not yet concluded comprehensive safeguards agreements with the International Atomic Energy Agency (IAEA).

In 1985, during the Twenty-first Ordinary Session of the Assembly of Heads of State and Government, OAU states aired "the need for the United Nations to establish an institutional arrangement in Africa to conduct indepth studies and promote the objectives of peace, disarmament and development".¹² The following year, the United Nations established the United Nations Regional Centre for Peace and Disarmament in Africa (UNREC). UNREC was mandated to provide OAU member states, upon request, with assistance in the areas of peace, arms limitation and disarmament and to help coordinate with similar regional efforts. An event that exemplifies UNREC's work was a November 2006 seminar held in Accra, Ghana, entitled "Implementing United Nations Security Council Resolution 1540 in Africa". The seminar was organized by the UN Department of Disarmament Affairs, through UNREC, and co-sponsored by the European Union and the Norwegian government. Another African nuclear weapons non-proliferation measure is the 1996 Pelindaba Treaty. Building on previous resolutions,¹³ the OAU took the initiative to negotiate this treaty that establishes the African continent as a nuclear-weapon-free zone. However, the treaty lacks the necessary 28 ratifications and has yet to enter into force.

Historically, the OAU has directly encouraged global and regional nuclear disarmament, but at the opening of the twenty-first century, with only 14 African states party to the Comprehensive Nuclear-Test-Ban Treaty, there were fears that the continent was losing interest in international nuclear disarmament agreements.¹⁴ By 9 February 2007, however, 33 AU states were party to the treaty. The AU has been less active in promoting other

WMD treaties,¹⁵ such as the Biological and Toxin Weapons Convention (BTWC) and the Chemical Weapons Convention (CWC). Since 1972, when the BTWC opened for signatures, 27 AU states have signed and ratified it. By June 2005, 14 additional states had acceded to the convention. In regard to the CWC, while as of 2002 only 34 AU states were party, that number had risen to 48 by October 2006.

One obstacle that faced the OAU, and now faces the AU, is the lack of follow-up mechanisms and ability to ensure implementation of multilateral and regional agreements.¹⁶ As noted above, not enough states have ratified the Pelindaba Treaty. The AU has drafted several resolutions encouraging states to sign and ratify the document, but without being particularly successful. Neither has the organization successfully promoted compliance with agreements to which African states are party—such as concluding comprehensive safeguard agreements with the IAEA, as mentioned above.

Nevertheless, the AU and its Peace and Security Council (PSC) have ambitious aspirations. Article 7 of the protocol establishing the PSC states that the council shall “promote and encourage the implementation of ... UN and other relevant international Conventions and Treaties on arms control and disarmament”.¹⁷ Factors on the continent, such as foreign and domestic conflicts and extreme poverty, have forced the AU to focus primarily on peacekeeping missions and crisis management. Unfortunately, its missions have at times been under-funded and under-equipped. Yet, the AU is crucial for the implementation of international agreements because many developing states in Africa lack the political, technical and financial framework to carry out the necessary steps themselves. One proposed vision to come to grips with these problems, suggested by Ambassador Oluyemi Adeniji, former Nigerian foreign affairs minister, is to establish a body focusing on international arms treaties within the PSC.¹⁸ Its focus would be on promoting ratification and adherence to international agreements as well as helping with implementation and compliance.

Although recognizing that the African continent might face implementation and compliance challenges—and that WMD issues receive little political attention—it should not be ruled out that Africa can continue to make progress in regard to WMD non-proliferation and international treaties. This is particularly true if external resources are provided.

AFRICAN SUBREGIONAL ORGANIZATIONS¹⁹

A comprehensive framework within subregional organizations in Africa for implementing international treaties on the non-proliferation of nuclear, biological and chemical weapons has yet to be established. However, attention has been devoted to developing mechanisms to combat the proliferation of SALW. As noted above, compared to SALW, WMD proliferation is of less priority on the African continent. However, looking at the efforts to combat SALW proliferation provides an opportunity to learn about regional and subregional organizations' strengths and weaknesses in facilitating implementation of international treaties.

According to the 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA), implementation efforts are supposed to take place on the global, regional and national levels.²⁰ This is also a provision that applies to 1540 implementation.

Looking at the Great Lakes Region and the Horn of Africa, West Africa and Southern Africa, there are best practices and lessons to be learned in relation to regional and subregional organizations' role in international treaty implementation.

THE GREAT LAKES REGION AND THE HORN OF AFRICA

Some states in the Great Lakes Region and the Horn of Africa have promoted regional approaches to implementing the PoA. Consequently, a number of states have made progress implementing the Action Plan. In 2000, the states of the Great Lakes Region and the Horn of Africa signed the Nairobi Declaration, which demonstrated a political commitment to the issue of SALW proliferation. In 2004, states of the region transformed the Nairobi Declaration into the detailed, legally binding Nairobi Protocol. Signed by 12 states and ratified by the required two thirds of signatories, the Nairobi Protocol went into force in May 2006. Its provisions expand on the PoA and other subregional SALW agreements requiring states, inter alia, to introduce controls on illicit manufacturing, import, export and transit, promoting capacity-building, awareness-raising, information-sharing, cooperation and harmonization of legislation, and requiring states to incorporate specific provisions into national legislation. Further, a Best Practice Guidelines document for the implementation of the Nairobi Protocol was produced

in 2005, providing detailed policy and practice recommendations. In June 2005, the Nairobi Secretariat, the subregional coordinating body for SALW, was transformed into the Regional Centre on Small Arms and Light Weapons in the Great Lakes Region, the Horn of Africa and Bordering States (RECSA). Unlike the Nairobi Secretariat, RECSA is a fully recognized, independent subregional coordinating body with a legal mandate. RECSA is helping states to share information on the implementation of the Nairobi Protocol. RECSA provides crucial assistance in harmonizing SALW legislation in the subregion as agreed upon in the PoA and the Nairobi Protocol. RECSA is also the forum for regional workshops and seminars on SALW legislation and the progress made in this area.

WEST AFRICA

Several governments in West Africa have been very active on SALW proliferation issues within the framework of the 15-nation Economic Community of West African States (ECOWAS). A 1998 ECOWAS Moratorium laid the foundation for combating SALW. The moratorium prohibits the import, export and production of SALW by ECOWAS states. The ECOWAS Small Arms Project and a Small Arms Unit were established after the Program for Coordination and Assistance on Security and Development failed to provide adequate capacity and support for the moratorium. The Small Arms Unit was founded to provide technical support on SALW controls implementation, while the Small Arms Project was to address political aspects of the moratorium. The following year, the ECOWAS Convention on Small Arms and Light Weapons expanded the moratorium to make it enforceable and legally binding. The expanded moratorium has yet to go into effect, but hopes are that it will generate stronger commitments and better-managed and organized efforts to implement the PoA.

SOUTHERN AFRICA

The Southern African Development Community (SADC) has been at the forefront of PoA implementation. The SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials entered into force in November 2004 and covers comprehensive PoA implementation measures. However, the protocol lacks a coordinating subregional body, such as RECSA in the Great Lakes Region and the Horn of Africa, and progress has been slow. The Southern African Regional Police Chiefs Cooperation

Organization (SARPCCO) has taken a leadership role. A Task Team to address SALW issues has also been set up (chaired by Tanzania, but also comprising Botswana, Namibia, South Africa and the SARPCCO Secretariat) and mandated to lead subregional efforts to implement the PoA. This subregional element focuses, inter alia, on developing best practices and guidelines and harmonization of national SALW control. The Task Team also aims to study the potential for implementation of the SADC Protocol, using the Nairobi Protocol and RESCA in its coordinating role as models.

Summarizing the key points from the above regional discussions: (1) Subregional organizations—consisting of a smaller and more homogenous membership—to a greater extent than regional organizations have been able to agree on and promote ratification of treaties, accords and protocols. The agreements have many times gone beyond the provisions set forth in the PoA. This could be because subregional organizations have the advantage of being able to tailor their efforts to the wants and needs of a smaller group of states having more similar goals, strengths and weaknesses. (2) Coordinating organs within subregional organizations have played a crucial role helping to implement agreed-upon treaties, accords and protocols. Such bodies have in some cases been relatively successful managing the sharing of information, harmonizing legislation, running awareness-raising programmes and lobbying governments to implement commitments. (3) Successful subregional implementation measures have served as models to other subregional organizations on the African continent. For example, as noted, SADC is looking at the Great Lakes Region and the Horn of Africa and its ratification and implementation of the Nairobi Protocol.

IMPLICATIONS FOR FUTURE RESEARCH

Today, potential WMD proliferators include not just states, but also non-state actors that aspire to acquire nuclear, biological and chemical weapons not for deterrence, but for possible use. In this security environment, in the words of former UN Secretary-General Kofi Annan, “the security of every one of us is linked to that of everyone else.”²¹ However, a vast majority of African states have yet to start the process of implementing 1540, and security for all depends, inter alia, on how well each one is able to address the challenges on the African continent. If motivated and provided with

adequate resources, African regional and subregional organizations could contribute to that process.

This annex laid out a historical overview of non-proliferation initiatives on the African continent, addressed current challenges regarding 1540 implementation and explored proposed visions and windows of opportunity in relation to regional and subregional organizations and 1540 implementation. It should be said that the outcome of the ongoing efforts to energize regional and subregional organizations to meet the obligations of 1540 cannot be predicted with certainty. It is, however, important to explore a wide variety of possible initiatives that could further enhance a comprehensive and effective 1540 implementation process. It is not realistic to envision that one size will fit all when it comes to the involvement of regional and subregional organizations in facilitating 1540 implementation in different parts of the world. Tailor-made regional initiatives are more likely to trigger an enhanced 1540 implementation process. This process is of utmost importance in hindering terrorists from acquiring and using the deadliest of weapons.

Notes

- ¹ Security Council, UN document S/RES/1673, 27 April 2006.
- ² See Security Council, *Security Council affirms determination to strengthen cooperation aimed at countering nuclear, chemical, biological weapons proliferation*, UN document SC/8964, 23 February 2007.
- ³ Ibid.
- ⁴ Ideas and themes for this section were developed during discussions with Lawrence Scheinman.
- ⁵ Charter of the United Nations, chp. VIII, art. 52.
- ⁶ Sudanese President Omar al-Bashir rejected the UN force and was quoted saying they would be “neocolonialists”; Audra Ang, “Sudan leader: no U.N. troops for Darfur”, *Associated Press*, 3 November 2006.
- ⁷ At the 2002 UNIDIR workshop “Strengthening the Role of Regional Organization on Treaty Implementations”, which was chaired by Lawrence Scheinman, Oluyemi Adeniji, Ralph Cossa, Monica Herz and Lawrence Scheinman presented papers entitled “Strengthening the Role of Regional Organizations in Treaty Implementation OAU/African

Union, ECOWAS”, “The Role of East Asia Regional Organizations in Promoting Regime Compliance and other Non-Proliferation Goals”, “A Role for the OAS in the Non-Proliferation of Weapons of Mass Destruction Regimes?” and “Regional Organizations and Treaty Compliance”, respectively.

- ⁸ Tanya Ogilvie-White, “Non-Proliferation and counterterrorism cooperation in Southeast Asia: meeting global obligations through regional security architectures?”, *Contemporary Southeast Asia*, 1 April 2006.
- ⁹ Conference of Independent African Heads of State and Governments, OAU document CIAS/Plen.2/rev.2 D, 22–25 May 1963.
- ¹⁰ OAU Council of Ministers, OAU document CM/Res. 3 (I), 2–11 August 1963.
- ¹¹ Oluyemi Adeniji, “Strengthening the Role of Regional Organizations in Treaty Implementation OAU/African Union, ECOWAS”, see note 7.
- ¹² OAU Assembly of Heads of State and Government, OAU document AHG/Res. 138 (XXI), 18–20 July 1985.
- ¹³ The Pelindaba Treaty was guided by (1) the Declaration on the Denuclearization of Africa (1964), adopted by the Assembly of Heads of State and Government of the Organization of African Unity at its first ordinary session (AHG/Res. 11(1)), in which member states solemnly declared their readiness to undertake, through an international agreement to be concluded under UN auspices, not to manufacture or acquire control of nuclear weapons; and (2) by the resolutions of the fifty-fourth and fifty-sixth ordinary sessions of the Council of Ministers of the OAU in 1991 and 1992 respectively (CM/Res. 1342 (LIV) and CM/Res. 195 (LVI)), which affirmed that the evolution of the international situation was conducive to the implementation of the 1964 Declaration, as well as the relevant provisions of the 1986 OAU Declaration on Security, Disarmament and Development.
- ¹⁴ Oluyemi Adeniji, “Strengthening the Role of Regional Organizations in Treaty Implementation OAU/African Union, ECOWAS”, see note 7.
- ¹⁵ Ibid.
- ¹⁶ Sola Ogunbanwo, “Accelerate the Ratification of the Pelindaba Treaty”, *The Non-proliferation Review*, no. 10, 2003.
- ¹⁷ The protocol is available at <www.africa-union.org/root/au/organs/psc/Protocol_peace%20and%20security.pdf>.
- ¹⁸ Oluyemi Adeniji, “Strengthening the Role of Regional Organizations in Treaty Implementation OAU/African Union, ECOWAS”, see note 7.

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- ¹⁹ The material for the discussion on subregional organizations and the 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects was gathered from the following publications: Mike Bourne, William Godnick, Owen Greene, Elizabeth Kirkham, Jacqueline Macalesher, Janani Vivekananda and Charlotte Watson, *Reviewing Action on Small Arms 2006: Assessing the First Five Years of the UN Programme of Action*, Biting the Bullet, 2006; Michael von Tangen Page, William Godnick And Janani Vivekananda, *Implementing International Small Arms Controls: Some Lessons from Eurasia, Latin America and West Africa*, Jason Print and Design, 2005; and Elli Kytömäki and Valerie Yankey-Wayne, *Five Years of Implementing the United Nations Programme of Action on Small Arms and Light Weapons*, United Nations Institute for Disarmament Research, 2006.
- ²⁰ United Nations, *Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, UN document A/CONF.192/15, 9–20 July 2001.
- ²¹ Remarks by former UN Secretary-General Kofi Annan on 11 December 2006 at the Truman Library in Independence, Missouri, United States. A transcript of the speech can be accessed at <www.un.org/News/press/docs/2006/20061211sgsm1000.htm>.

CHAPTER 5

CONCLUSION

Lawrence Scheinman

In his report to the Security Council and the General Assembly on opportunities and challenges facing cooperation between the United Nations and regional organizations in maintaining international peace and security, then Secretary-General Kofi Annan stated that:

It has long been recognized that the United Nations is not equipped to handle every crisis in the world on its own. It is acknowledged that a partnership between the United Nations and regional and other intergovernmental organizations should be developed if peace and security are to be maintained.¹

While the focus of that report was on conflict prevention, peacemaking, peacekeeping and peace-building, it also addressed disarmament and non-proliferation. In that regard, Annan welcomed the fact that “regional and subregional cooperation to stem the flow of illicit weapons across national borders is on the rise” and that “collaborative efforts of the United Nations and regional stakeholders to implement the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects” were under way.² Specifically referring to Resolutions 1540 and 1673, he further expressed the belief that progress could be achieved “through United Nations interaction with regional and other intergovernmental organizations to design and undertake outreach activities aimed at raising awareness and, as appropriate, facilitate the provision of assistance and cooperation to strengthen States’ national capacity to implement their obligations.”³ Pursuant to that opinion, Annan recommended that the United Nations, in collaboration with regional and other intergovernmental organizations, hold a series of workshops “with a view to raising awareness and, as appropriate, facilitating the provision of assistance and cooperation to strengthen States’ capacity to implement their obligations under Security Council resolutions 1540 (2004) and 1673

(2006)".⁴ Parenthetically, earlier in that report he underscored as well the importance to this enterprise of subregional organizations whose existence is not formally acknowledged in Chapter VIII (Regional Arrangements) of the UN Charter.⁵

When considering the role of regional and subregional organizations in promoting and facilitating implementation by their members of Resolution 1540, it is important to bear in mind that while many regional organizations may be similar in the sense of being founded by like-minded states that share common values and, more often than not, common history, they may differ in significant ways, including the mandate and authority under which they operate, the resources and capabilities available to them, their cohesiveness in matters beyond the particular purpose for which they were created as well as the political circumstances in the region in question and, perhaps most important, the priorities that direct their attention, energies and resources in a particular direction, the diversion of which to other agendas could undermine confidence in, and support, for the organization. The studies undertaken herein identify current constraints and limitations, but also the opportunities and prospects, for successful engagement in security-related matters of the regional organizations that are the focus of this report: the African Union (AU), the Association of Southeast Asian Nations (ASEAN) and its Regional Forum, the Organization of American States (OAS) and the Pacific Island Forum (PIF). As far as opportunities and prospects are concerned, three observations can be made.

First, in contrast to some regional organizations—whose scope may only encompass, for example, economic and cultural issues—international peace and security or regional security, if not the primary concern, are increasingly important for ASEAN and its Regional Forum, the AU and the OAS. While the extent of engagement may vary, all of these institutions are concerned and engaged at least to some extent in facing security-related matters, such as counter-terrorism, small arms and light weapons, drug trafficking, trafficking in persons and other transnational crimes, as well as issues related to weapons of mass destruction (WMD).

Second, the regional organizations in question have established forums or bodies in which the mentioned issues are handled. In the case of ASEAN, the most obvious example is the Regional Forum, but ASEAN itself goes beyond this forum when it comes to addressing security issues. In 2003 the organization endorsed the Declaration of ASEAN Concord II (Bali Concord

II), which established the ASEAN Security Community (ASC). The Bali Concord II decided that the ASC “shall fully utilize the existing institutions and mechanisms within ASEAN with a view to strengthening national and regional capacities to counter terrorism, drug trafficking, trafficking in persons and other transnational crimes; and shall work to ensure that the Southeast Asian Region remains free of all weapons of mass destruction.”⁶ The ASC is also charged with exploring “enhanced cooperation with the United Nations as well as other international and regional bodies for the maintenance of international peace and security.”⁷ The implementation of 1540’s key provisions would impact directly all of the above listed issues, and cooperating with the 1540 Committee would be a clear cut example of enhanced cooperation with the United Nations for the maintenance of international peace and security.

With regard to the Pacific Islands, a Working Group on Counter Terrorism (WGCT) has been set up under the auspices of the PIF to deal with regional counterterrorism issues, including Resolution 1540 obligations and implementation. Recently, the working group appears to be moving toward becoming a regional point of contact for the UN Counter-Terrorism Committee and other UN Committees.

In the case of Latin America, the OAS relies on its Committee on Hemispheric Security when it comes to matters of combating terrorism, arms trafficking and the proliferation of nuclear weapons, to name but a few issues in its purview. Among other things, the Committee on Hemispheric Security has issued a resolution that supports the implementation of 1540, and implementation is indeed one of the Committee’s themes in 2008. The OAS also carries out important counter-terrorism work through the Inter-American Committee Against Terrorism (CICTE), which was established in 1999.

As for the AU, it too has a body designated to address issues that threaten regional or international peace and security, namely the Peace and Security Council. While not specifically addressing WMD, one of its objectives is to “co-ordinate and harmonize continental efforts in the prevention and combating of international terrorism in all its aspects”.⁸ The potential linkage between terrorism and WMD is sufficiently well understood that it would be difficult to accept that the formulation of the article excludes that dimension of the problem.

Third, there are precedents showing that these regional organizations have been or are currently actively involved in activities similar to what would be required to implement Resolution 1540. A few cases in point are the work of the OAS on Resolution 1540 and terrorism in general, the AU's work with small arms and light weapons (particularly at the subregional level, for example the Southern Africa Development Community) and ASEAN's commitment to combating transnational crime and terrorism, as evidenced by the ASEAN Convention on Counter-Terrorism—the objective of which is to “provide for the framework for regional cooperation to counter, prevent and suppress terrorism in all its forms and manifestations and to deepen cooperation among law enforcement agencies and relevant authorities of the Parties in countering terrorism.”⁹

As far as constraints and limitations are concerned, four issues stand out: culture, legitimacy, priority, and capacity.

Culture relates largely to the socio-political foundations and the *modus operandi* of the organization in question. ASEAN for example is frequently characterized in terms of the “ASEAN way”, which refers to the commitment to non-interference in the internal affairs of states, sanctity of the principle of state sovereignty, and consensus-based decision-making. As noted in Chapter 3, informal dialogue predominates both in ASEAN and the Regional Forum, a practice that fosters trust and confidence but sometimes leaves a gap between words and deeds, with no formal mechanism to hold parties accountable for not following through on common understandings. In the case of the AU, there are concerns about too much Western influence intruding into the policy arena and dictating priorities, choices and direction. As for Latin America, there tends to be less distance between it and Western concerns regarding the linkage between terrorism and WMD.

Legitimacy, not so much in regard to substance, but rather in terms of the process by which the objectives and obligations contained in Resolution 1540 came into being, is a sensitive issue for many, particularly in Africa and South-East Asia, and while less so in Latin America, it is still a concern there. Many express the view that the appropriate way to have gone about it would have been to negotiate a treaty or convention in which all states could have participated equally. The counter-argument of course is that exceptional challenges call for exceptional measures, and the time required to carry out the successful negotiation of a treaty that would have incorporated all of the objectives and requirements of 1540 would have likely exceeded

the time necessary to take steps to thwart the risk of WMD in the hands of non-state actors. The issue here is less about what the resolution contains, substantively, than about binding international legislation for all states on the basis of a decision taken by the 15 members of the Security Council. Reviewing the evolution of Resolution 1540, Nobuyasu Abe, former Under-Secretary-General for Disarmament Affairs, underscored that:

At the time of the adoption of the resolution, there were [many] reservations expressed mainly by non-permanent members of the Security Council and non-Security Council members of the UN ... that the Permanent Members of the Security Council may be usurping the legislative power of the General Assembly But it was also true that the General Assembly did not or could not act expeditiously to meet the urgent concern about the proliferation of WMD to non-State actors. Thus, the Council eventually adopted the resolution with the understanding that it was an exceptional stopgap measure.¹⁰

Priority has to do with what are seen by states to be the most pressing concerns that they face. Latin America, more so than the other two regions, tends to share western concerns regarding the linkage of terrorism and WMD, although the institutionalized counter-terrorism programme of the OAS is not explicitly devoted to WMD. For many in the ASEAN community and the Pacific Islands, economic cooperation and prosperity are priorities, as they are for Africa. However, Africa also gives high priority to poverty, disease (in particular HIV/AIDS) and transnational crime such as illegal transfers of conventional weapons for use in local conflicts—issues that are of greater and more immediate importance than dealing with WMD, in particular nuclear weapons, which are seen as primarily a Western problem. What this attitude or judgment overlooks is that, in a globalized economy, to devote attention and resources toward security, in this case prevention of WMD terrorism, is in fact to focus on economic prosperity in that the economic consequences of such terrorism would be profound. It also overlooks the prospect that effective implementation of 1540 would benefit local security objectives—for example, putting in place effective border controls would affect not only WMD, but small arms and light weapons, illicit drug and human trafficking, and the like. This is true for all states, not just a privileged few, and it carries with it benefits that, as noted, extend into the economy generally and reinforce domestic efforts to meet social and economic objectives and raise the level of prosperity

more generally. This is a factor that affects all of the regions considered in this study.

Capacity is an issue in all of the regions here discussed. This relates to the drafting of appropriate legislation to implement the requirements of Resolution 1540, putting in place relevant administrative structures, training of personnel with respect to export controls, transit and border security, providing necessary technical equipment, and the like. An important question here is how best to deliver those resources—which brings us back to the question of the role and relevance of regional and subregional organizations.

There are a limited number of ways in which the resources necessary to effectively implement Resolution 1540 can be delivered. One way is bilaterally, by advanced industrial states individually or through organizations such as the European Union or the Organization for Security and Cooperation in Europe that have the experience and resources at hand, or in certain situations by specialized international organizations such as the International Atomic Energy Agency (IAEA) or the Organization for the Prohibition of Chemical Weapons (OPCW), any of which can work directly in a bilateral fashion with a state, or collectively with a number of states having common requirements. The other way is through the medium of regional or sub-regional organizations. The advantage of the latter is that empowering these organizations with resources to implement Resolution 1540 can bring with it the vesting of ownership (as in taking the issue of legitimacy out of the equation) and continuity (as in avoiding one-time assistance to one or another states from a bilateral source, instead giving focus to long-term assistance tailored to regional needs). Bilateral assistance can clearly be useful but suffers from several drawbacks: in the first place it may (particularly in the case of US bilateral assistance) reinforce the sense that recipient states endorse and are somehow in league with the “war on terror”, with which many countries object to being associated, and this potentially brings with it political problems. Secondly, such assistance risks detracting from, and loses the opportunity to reinforce, the role and relevance of regional organizations, which can and do serve a broader range of member interests and can, as noted above, provide a sense of ownership that leads to greater and more sustained commitment to effective implementation.

Culture, legitimacy, priority and capacity are challenges to be considered when trying to utilize regional organizations in facilitating the implementation of Resolution 1540. Notwithstanding differences among the regions addressed in this study, all of them either explicitly or implicitly converge on supporting measures that could reinforce the ability of regional organizations to facilitate implementation of the objectives of the resolution. One way to achieve this would be to establish a unit dedicated to the 1540 agenda within the existing regional organization forums mentioned above, each of which have a broadly defined security focus covering terrorism, transnational illegal trafficking in all its aspects, and related cross-border criminal activities. An alternative would be to create an independent unit dedicated exclusively to implementing Resolution 1540. Such a unit within each regional (or where more appropriate, sub-regional) organization would be dedicated explicitly and exclusively to the implementation of the resolution, unlike the earlier mentioned entities that have a broadly defined security focus. An independent unit could devote systematic, continuous attention to the WMD challenge while coordinating with institutions having broader but related missions. It could function as a bridge between the individual states, the regional organization and the 1540 Committee, but also liaise with subregional organizations and other institutions that have implementation resources available, such as the IAEA and the OPCW. Proposed entities could coordinate training, generate debate, provide for the sharing of information, establish best-practice guidelines and, in general, oversee the implementation of 1540. In cases where subregional organizations were deemed to be more appropriate (likely the case for Africa with its great expanse and wide diversification in terms of levels of development, prioritization of issues confronting contiguous states and the like), they could take on these responsibilities.

The work of these entities could also benefit the outreach activities organized by the United Nations and other organizations because they would be able to pinpoint the specific regional or subregional issues needing attention and recommend that they be the focus of seminars, assistance and other outreach activities. These proposed entities would coordinate a regional organization's efforts with regard to 1540 implementation, ensure that there is no duplication of work and that valuable resources would be utilized for their intended purpose and not wasted. Outreach activities undertaken to raise awareness of Resolution 1540 and to support capacity-building efforts have taken place in Beijing, Accra, Lima, Amman, Kingston and Gaborone (representing the three regions with the lowest rates of reporting

to the 1540 Committee) among other places, and are a central feature not only of the 1540 Committee but of other organizations, including non-governmental organizations such as the Stockholm International Peace Research Institute, the Verification Research, Training and Information Centre and the Monterey Institute of International Studies. Past activities have enabled the 1540 Committee to identify implementation problems and to deploy efforts to address them. The continuation and even intensification of these endeavours are essential to increased and more comprehensive implementation of Resolution 1540. This is a task not only for the 1540 Committee, but for other organizations (such as those just noted), states and non-governmental organizations as well. A full effort that addresses understanding of the importance of Resolution 1540 to collective security offers the best prospect for achieving the objectives of the Security Council in this regard.

The preceding discussion on outreach reflects an initiative strongly espoused by Ambassador Peter Burian, Chair of the 1540 Committee from 2006 to 2008: increasing the number and role of regional seminars and related activities, not only to raise awareness of the requirements of Resolution 1540 but also to “facilitate sharing good national practices and lessons learned from national implementation” among regional states and to “develop frameworks of regional cooperation between the regional experts and institutions dealing with different aspects of resolution 1540.”¹¹

One final caution: Notwithstanding the obligatory nature of Resolution 1540, states that see the issues that prompted the resolution as remotely, if at all, relevant to their own situations in terms of urgency, priority or allocation of scarce resources, may consider non-implementation of Resolution 1540 to be a totally rational act on their part. Ultimately, however, such decisions, if pursued by other states for any reason, would lead to continued or increased risk of the spread of WMD to terrorist organizations and undermine the common security of all—a situation described in academic literature as a “tragedy of the commons”, wherein behaviour driven by self-interest to maximize private gains (or minimize private costs) threatens common security.¹² In an age characterized by the rise of disaffected, alienated or apocalyptic movements, the last thing that we can afford is the existence of weak links in the chain of control over WMD, their components or their means of delivery. Today, common security can only be achieved by common efforts because, as pointed out by former UN Secretary-General Kofi Annan, “In today’s world, the security of every one of us is linked

to that of everyone else.”¹³ In other words, the global community can either collectively strengthen measures against WMD terrorism, as laid out in Resolution 1540, or continue to face the same or increased risk of a terrorist organization acquiring and using a chemical, biological, or nuclear or radiological weapon with all the consequences that would entail for civil society and social order.

Notes

- ¹ United Nations, *A regional–global security partnership: challenges a opportunities, Report of the Secretary-General*, UN document A/61/204–S/2006/590, 28 July 2006, para. 6.
- ² *Ibid.*, para. 43.
- ³ *Ibid.*, para. 45.
- ⁴ *Ibid.*, para. 98(c).
- ⁵ *Ibid.*, para. 81.
- ⁶ *Declaration of ASEAN Concord II*, 7 October 2003, § A, para. 10.
- ⁷ *Ibid.*, § A, para. 11.
- ⁸ African Union, *Protocol Relating to the Establishment of the Peace and Security Council of the African Union*, 9 July 2002, art. 3(d).
- ⁹ Association of Southeast Asian Nations, *ASEAN Convention on Counter Terrorism*, 13 January 2007, art. 1.
- ¹⁰ Nobuyasu Abe, “The Role of the UN Security Council in Promoting in Promoting Compliance with Multilateral Disarmament and Non-Proliferation Treaties”, in *Assessing Compliance with Arms Control Treaties*, Geneva Centre for Security Policy and Centre d’études de sécurité internationale et de maîtrise des armements, 2007, p. 81.
- ¹¹ Briefing by Ambassador Burian, Chairman of the 1540 Committee, to the Security Council, 17 December 2007.
- ¹² See Johan Bergenas, “The Slippery Slope of Rational Inaction: Resolution 1540 and the Tragedy of the Commons”, forthcoming in the July 2008 issue of the *Nonproliferation Review*.
- ¹³ Kofi Annan, Independence, Missouri, 11 December 2006.

ACRONYMS

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| APEC | Asia–Pacific Economic Cooperation |
| ASEAN | Association of Southeast Asian Nations |
| AU | African Union |
| BTWC | Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction |
| CICTE | Inter-American Committee Against Terrorism |
| CPPNM | Convention on the Physical Protection of Nuclear Material |
| CSBM | confidence- and security-building measure |
| CSCAP | Council for Security Cooperation in the Asia Pacific |
| CTTF | APEC Counter-Terrorism Task Force |
| CWC | Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction |
| ECOWAS | Economic Community of West African States |
| IADB | Inter-American Defense Board |
| IAEA | International Atomic Energy Agency |
| MTCR | Missile Technology Control Regime |
| NAM | Non-Aligned Movement |
| NBCW | nuclear, biological and chemical weapons |
| NPT | Treaty on the Non-Proliferation of Nuclear Weapons |
| NTC | International Convention for the Suppression of Acts of Nuclear Terrorism |
| OAS | Organization of American States |
| OAU | Organization of African Unity |
| OPANAL | Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean |
| OPCW | Organization for the Prohibition of Chemical Weapons |
| PICs | Pacific Island Countries |
| PIF | Pacific Islands Forum |
| PoA | Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects |
| PSC | AU Peace and Security Council |

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| RECSA | Regional Centre on Small Arms and Light Weapons in the Great Lakes Region, the Horn of Africa and Bordering States |
| SADC | Southern African Development Community |
| SALW | small arms and light weapons |
| SPC | Secretariat of the Pacific Community |
| SQP | Small Quantities Protocol |
| UNREC | Regional Centre for Peace and Disarmament in Africa |
| WGCT | Pacific Islands Forum Working Group on Counter Terrorism |
| WMD | weapons of mass destruction |

Security Council Resolution 1540 is a critical tool for preventing non-state actors from obtaining weapons of mass destruction. Regional organizations could play a significant role in helping to implement the resolution. Do the experiences of these organizations in conventional security issues, such as small arms control, offer lessons for addressing weapons of mass destruction in regions where the issue is not considered a high priority?

This book examines the experiences of organizations in Africa, Latin America, and South-East Asia and the Pacific to identify how they can motivate and assist their members with their commitments to implement Resolution 1540.

UNIDIR



Designed and printed by the Publishing Service, United Nations, Geneva
GE.08-01245 — June 2008 — 3,720 — **UNIDIR/2008/8**

United Nations Publication
Sales No. GVE.08.0.1
ISBN 978-92-9045-190-7