



UNITED NATIONS SECURITY COUNCIL RESOLUTION 1540 (2004): CRIMINAL OFFENSES AND COUNTER – PROLIFERATION FINANCING



Organization of
American States



UNSCR 1540

The Security Council, Acting under Chapter VII of the Charter of the United Nations,

Decides that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use 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 (OP 2)



UNSCR 1540

The Security Council, Acting under Chapter VII of the Charter of the United Nations,

Decides that all States, shall establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations (OP 3 (d))



MAIN CHALLENGE IN THE CRIMINALIZATION OF PROLIFERATION OFFENSES

Despite most part of countries have established that the offense of terrorism and international terrorism can be committed through the use of chemical, nuclear, radioactive or biological weapons, certain offenses related to the manufacturing, acquisition, possession, development, transport, transfer of nuclear, chemical, radioactive, biological weapons or dual-use materials remain outside the scope of application of the criminal laws, and could not therefore be considered independent offenses under their penal legislation unless they are connected to the commission of a terrorist act, and cannot be investigated and prosecuted independently of terrorist crimes



MAIN CHALLENGE IN THE PROSECUTION OF PROLIFERATION OFFENSES

Several changes need to be made to the Criminal Procedure Codes of many countries, in order to implement a comprehensive proliferation investigation and prosecution system, as there is not only the absence of legal characterization of the crimes related to the proliferation of weapons of mass destruction but also the lack of specialization of judges and prosecutors on these matters. The lack of special procedures for judgment of these crimes, the absence of criminal liability of legal entities in many legislations have been identified as two of the major challenges to prosecuting these types of offenses.

INTERNATIONAL CRIMINALIZATION AND PROSECUTION OF PROLIFERATION OFFENSES

- **Both the UN Security Council and the International Criminal Court could play key roles in the criminalization of weapons of mass destruction (WMD) proliferation. The combined involvement of the two international bodies could serve both to crystallize further customary international law on the matter and to provide a forum for the individual prosecution of WMD proliferators.**

DEFINITION OF PROLIFERATION FINANCING

"Proliferation financing" refers to:

- **The act of providing funds or financial services which are used, in whole or in part, for the manufacture, acquisition, possession, development, export, trans-shipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery and related materials (including both technologies and dual use goods used for non-legitimate purposes), in contravention of national laws or, where applicable, international obligations.**



FINANCIAL ACTION TASK FORCE RECOMMENDATION 7

Targeted financial sanctions related to proliferation

- **Countries should implement targeted financial sanctions to comply with United Nations Security Council resolutions relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing. These resolutions require countries to freeze without delay the funds or other assets of, and to ensure that no funds and other assets are made available, directly or indirectly, to or for the benefit of, any person or entity designated by, or under the authority of, the United Nations Security Council under Chapter VII of the Charter of the United Nations.**

UNSCR 1540 AND COUNTER PROLIFERATION FINANCING

- UNSCR 1540 does not require that states specifically criminalize proliferation financing: in both of the provisions relating to the financing of proliferation, it is viewed in an ancillary capacity. There are a number of ways in which a jurisdiction could achieve what UNSCR 1540 requires. The UNSCR 1540 requires a given result ("obligation de résultat") but does not prescribe the means to achieve it ("obligations de moyens"). Specific criminalization is one. Ancillary offences or civil penalties are also sufficient to meet the requirements of UNSCR 1540.



MAIN CHALLENGES IN THE CRIMINALIZATION OF PROLIFERATION FINANCING

- As highlighted in the latest round of Mutual Evaluations of the Financial Action Task Force, compliance with international obligations to effectively and immediately freeze and seize assets used for proliferation financing is currently low or non-existent in most countries. A major financial reform is needed in these countries to put in place the proper mechanisms for enabling the freezing without delay of funds for terrorism and non-proliferation financing, in accordance with UNSC Resolution 1540 (2004).

MAIN CHALLENGES IN THE CRIMINALIZATION OF PROLIFERATION FINANCING

According to data compiled by the 1540 Committee:

- **95 UN member states have at least one measure that penalizes financing related to illicit proliferation-related acts by non-state entities.**
- **However, only 32 of these states, including 15 of the 31 FATF members - UN member states, penalize proliferation financing related to illicit trade, with 31 of these States criminalizing such violations.**
- **Of the 32 states with criminal sanctions, 23, including 8 FATF members – UN member states, criminalize the financing of such illicit trade transactions using their laws against terrorism or anti-money laundering, rather than laws based on non-proliferation objectives.**

Freezing of assets related to proliferation and terrorism financing (Spain)

	2010	2011	2012
Proceedings of freezing of assets	75	65	82
Designated entities	11	8	7
Amounts in Euros	20,019,535.70	51,187,003.19	173,029,509.00



MAIN CHALLENGES IN THE CRIMINALIZATION OF PROLIFERATION FINANCING

Jurisdictions have taken several different approaches to the criminalization of proliferation finance:

- 1. Some jurisdictions have chosen to create a specific offence of proliferation financing.
- 2. Other states that have established a primary offence which includes proliferation financing, have either: criminalized proliferation financing as an integral component of a proliferation offence; or have criminalized providing any assistance to proliferation.
- 3. Other states have decided not to establish specific offences, but instead to use ancillary offences to prosecute acts of proliferation financing.
- 4. In some jurisdictions, the same conduct may also be covered by other laws, such as those related to terrorist financing and organized crime.

MAIN CHALLENGES IN THE PROSECUTION OF PROLIFERATION FINANCING

- It is important to ensure that different approaches to criminalization and prosecution of proliferation finance do not hamper the prospects of international cooperation, through processes such as mutual legal assistance and extradition.
- To avoid safe havens for proliferators or their facilitators, it is essential to ensure that jurisdictions have procedures in place to render mutual legal assistance in support of the investigation and prosecution of offences of proliferation financing and where possible, extradite individuals charged with such offences.



THANK YOU

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