

**NONPROLIFERATION IN A NONCOMPLIANT WORLD: DISCUSSION DOCUMENT**  
**29 October 2015**

Organizational  
Challenges

**1. The 1540 Committee assistance and capacity-building mechanisms - how to make them work?**

**Background:** Resolution 1540 recognizes that some States might need assistance to meet the requirements of the resolution, while others might be in a position to provide assistance. In order to facilitate capacity-building, the 1540 Committee undertakes many tasks, including reaching out to providers of assistance and to States that may need assistance as well as posting and disseminating assistance requests and offers. Many challenges exist:

- Matching for assistance: Although the 1540 Committee technically has a “clearinghouse function,” the 1540 Committee does not itself directly match requests for assistance with [offers of assistance](#). The Committee’s matching mandate has been interpreted in a very limited manner, e.g., “through means as assistance templates.” In addition, because governments have to present official requests for assistance and also officially state when those requests are no longer valid, the information the Committee has is often outdated.
- Good practices:
  - o Upon the Committee’s encouragement, some States and organizations have submitted [effective practices](#). However, these practices are anecdotal, have not been validated, may not address all aspects of 1540 obligations, and are not prioritized for implementation. This approach acknowledges that individual States may choose different paths, however, it also makes it harder for States looking for more directed, good guidance.
  - o Many States for many years have been asking for guidance on the development of good risk-based control lists applicable to their States, per 1540 directive. However, this is hard to do and no one has offered a good, comprehensive approach especially for developing countries to follow; although some have suggested [certain directions](#) and the export-control regime overseers, such as the [Nuclear Suppliers Group](#), have provided some guidance.

**Discussion:**

- How could the clearinghouse function of the 1540 Committee be made more efficient and effective? Should the clearinghouse function of the 1540 Committee be abolished? What would be the consequences of such decision?
- How could a validated guide to effective practices be developed? What, if any, lessons can be learned from counterterrorism guidance efforts and others?
- Is there some way that third-party, possibly professional, advisors could be engaged to develop a process map for countries so they can more easily develop risk-based control lists? Could countries simply refer to regional lists? Could the World Customs Organization be engaged to assist in this process?

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## 2. The 1540 machinery: What changes are needed in the mandate and structure of the 1540 Committee and Group of Experts?

**Background:** The implementation of resolution 1540 is monitored and facilitated by a subsidiary body of the Security Council – the 1540 Committee – supported by a group of up to nine experts, per resolution 2055 (2012). At the moment the mandate of the 1540 Committee extends to 2021. The UN Secretariat, in particular the UN Office for Disarmament Affairs (UNODA) and the UN Department for Political Affairs (UNDPA) support the Committee and Expert Group via funding, which the Committee itself does not control.

In addition, the current “1540 machinery” has been established on an ad hoc basis and faces challenges:

- The decision-making rules of the Committee require consensus on all decisions, even technical ones. This delays decisions and even minor actions.
- The 1540 Committee experts are not selected as per the usual UN recruitment model. The Secretary-General designates experts based on 1540 Committee consensus recommendations. Very often, the Expert Group is not at full capacity as the machinations of expert designation proceed to fill vacant positions, e.g., only two experts served during a six-month period in 2012.
- The two main components of the 1540 machinery – the Committee with its group of experts and UNODA – are part of different chains of command.

**Discussion:** What should happen next? Is an oversight committee really needed? Has the time come to disband the group of experts and establish a non-proliferation directorate within UNODA? Should the Counter Terrorism Executive Directorate (CTED) be used as a model? What benefits could be expected from establishing such a non-proliferation directorate? What other options could be considered to refine the 1540 machinery and make it more effective? Should the recommended structure have a time-limited mandate?

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Implementation  
Challenges

**3. Implementation: What could incentivize States to better comply with the requirements of 1540?**

**Background:** State governments have many demands placed on them – domestically and internationally. States have noted their own lack of capacity to effect the requirements of multiple treaties and UN resolutions such as 1540, 1373, and other obligations. The international community demands too much reporting and has not effectively linked international obligations to domestic development, a bigger priority for many. States thus have to pick from among competing priorities and decide where to devote their scarce governmental resources.

**Discussion:**

- Can various requirements of State's many international obligations and reporting requirements be linked in a vast macro? Could the macro fields be prioritized for their risk and development effects, e.g., via a weighting system into which States can input their concerns and see linkages?
- Should the international community take a more aggressive role in pointing out non-compliance with 1540? Would promoting publicity about the blanks in the matrices help "name and shame" the States who have not been at least attempting to assert their compliance with 1540? Or would that lead more States to simply assert compliance wrongfully?
- How could more capacity be built to assist in compliance? How could/should the UN regional centers for peace and disarmament – UNLIREC in Latin America and the Caribbean, UNREC in Africa and UNRCPD in Asia – see their role strengthened in support of capacity-building? How could academia, civil society organizations, the private sector and the industry provide support to the capacity-building efforts of States and the 1540 Committee?

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Implementation  
Challenges

## 4. Measuring the implementation of resolution 1540: How sufficient is the 1540 Committee Matrix?

**Background:** Since its adoption in early 2005, the 1540 Matrix has functioned as the primary method used by the 1540 Committee to organize information about implementation of resolution 1540 by Member States. [A matrix](#) for each UN Member State has been prepared by the Group of Experts and subsequently approved by the Committee. The information in the matrices originates primarily from national reports provided by States to the 1540 Committee and is complemented by official government information, including that made available to intergovernmental organizations. In [each field in the matrix](#), the 1540 Committee denotes one of three possible responses:

- An “X” signifies that the reporting State asserts that it has taken relevant measures or that the 1540 Committee has found specific references to the applicable legal basis or executive measures as evidence of such steps.
- A “?” signifies that although the national report or another source of data refers to legislation or other evidence that the State has taken a measure, the details in the references provided raise questions of pertinence or that the information suggests that the State has taken action but a copy of the legislation has not yet been located or available for consultation.
- A blank signifies that the State has provided no information or the 1540 Committee has not established information to enable the entry of an “X” or a “?” against that particular data field. In interpreting the 1540 Matrix, all parties must understand that an “X” does not indicate that the measure or measures taken fully implement an obligation under resolution 1540 (2004). It only indicates that the 1540 Committee and its experts have found evidence that the State has taken a measure or measures relevant to a particular field.

In 2014, the Committee approved a [revised Matrix template](#), designed to organize the information into a more user-friendly format. In 2015, the Group of Experts has completed the task of updating States’ matrices: it is the first update since 2010. Revised matrices will soon be posted on the website of the 1540 Committee and provide a snapshot of the current status of implementation.

### Discussion:

- How useful is the 1540 Committee Matrix to assess the status of implementation of the resolution? What are the drawbacks of the Matrix? Which other methods could be considered to update 1540 Committee matrices on a more regular basis?
- What could be the role of the academia and civil society organizations to better monitor the implementation of the resolution? How could crowd-sourcing be effectively incentivized to support the Group of Experts in updating the matrices and how would entries be validated?
- What other methods can be used to check whether States are pursuing “appropriate and effective” actions? Who could define what these are?
- Which aspects of the Matrix are the most important to reducing risk and how can a State taking appropriate, effective measures in these areas be properly assessed?

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Legal & Regulatory  
Challenges

### 5. Legal Issues: What are the nuts and bolts of nonproliferation laws and regulations that could more easily enable business compliance and criminal prosecution?

**Background:** Currently not all States have criminalized offenses relating to the manufacture, acquisition, possession or transfer of nuclear, chemical or biological weapons and their means of delivery, and of related materials. Even for those States with laws in place, enforcement and penalties can be uneven. Industry complains that the intricacies of trade controls in different countries make compliance difficult.

- Businesses, even ones who want to comply, find it hard to do so given differing control regimes. Fears related to information sharing also reduce cooperation between businesses and with governments.
- States rely on counterterrorism and other laws to define relevant criminal offenses that could then trigger extradition treaties and appropriate prosecutions – but for States without the appropriate criminal laws, extradition agreements many not work. In addition, some [cases](#) have arisen in which ships and crews get detained for unreasonably long periods of time. As noted in the recent [AP story](#), smugglers often return to smuggling once released.
- [Some](#) have argued that possession of WMD should be deemed a crime against humanity and prosecuted in the International Criminal Court. However, not all States recognize the International Criminal Court.
- Many States, especially developing ones, do not have the capacity to draft nonproliferation legislation. Some States also may not fully engage their parliamentarians and industry and other stakeholders in debates over appropriate legislation and regulations regarding proliferation. Poorly crafted laws and regulations can lead to more corruption and selective prosecution.

#### Discussion:

- How can governments make it easier for businesses to support nonproliferation? What role can civil society play, including academia and industry as well as legal specialists, in: recommending, developing and drafting nonproliferation legislation; establishing business compliance norms; and in participating in the review of compliance with the resolution?
- Are there innovative legal approaches that can be taken to address proliferation? What steps can be taken proactively - in advance of an actual harm - to address proliferation, especially in cases where States do not have sufficient domestic rules? In what areas, could other States assert “standing”? What is the likelihood of possession of an agreed weapon of mass destruction being deemed a crime against humanity – and would pursuing this course and establishing a special prosecutor help to slow proliferation? Are there alternate routes for establishing agreed norms for prosecutions and penalties even without treaty agreement, such as through informal alliances and joint training such as undertaken in the Proliferation Security Initiative?

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The Future &  
Other Challenges

## 6. New Challenges: What do we know about future proliferation challenges and what haven't we even thought of?

**Background:** New challenges and threats develop faster than the UN or State authorities can effectively react. The challenges we think are in the future are already here today. And the ones we have not even thought of are already developing.

- New threats are emerging from multiple areas, from 3-D printers, to technology transfers including IP theft, to synthetic bio. These are hard for authorities to understand let alone counter.

- New trade and economic patterns are also challenging to government officials. With the expansion of the Panama Canal and the building of larger tankers and container ships, trade patterns will be changing and will likely increase transshipments and brokering. Manufacturing patterns now involve extended supply chains, more distributors and more difficult end-user identifications. Operations are being outsourced.

- Within the deep Web, the dark Net exists and helps ensure anonymity among buyers and sellers, including for drugs and other materials. Terrorists are using this space to recruit – but even regular folks are going to this space to encrypt their messages and protect their privacy. In addition to encryption being able to hide transactions and protect identities, Bitcoin also makes for payment transfers that are anonymous. Recent books and articles are providing more insight into these areas, see for example [Sue Halpern](#) in The New York Review

### Discussion:

- What are the largest risks not being currently addressed sufficiently?

- How could some of the new trends including in technology be put to good use, e.g., can social media be used to fight proliferation, can training be done for border officials via more web courses?

- What other threats and opportunities do you see? Who should be thinking about these future threats and opportunities in a more systematic way?