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UNSC Resolution 1540 on the Nonproliferation of Weapons of Mass Destruction: An Overview

Convention on Nuclear & Radioactive Materials Safety, Security and Safeguards
Putrajaya International Convention Center
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Outline

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UNSC Resolution 1540: Background



- **In 2004, the United Nations Security Council (UNSC) adopted Resolution 1540 on the non-proliferation of nuclear, biological, and chemical (NBC) weapons and their delivery systems**
- **First response ever taken by the Security Council to address the phenomenon of Weapons of Mass Destruction (WMD) proliferation as global threat to international peace and security**
- **Imposed far reaching binding obligations on all States to take a series of steps to prevent WMD from getting into the hands of non-state actors, including terrorists**
 - laws criminalizing non-state NBC proliferation
 - security and accounting for NBC, their means of delivery, and related materials
 - border controls and law enforcement to block illicit trafficking
 - export controls and transshipment controls over NBC technology, materials and commodities

UNSC Resolution 1540: Background



- **Created 1540 Committee to monitor implementation of the Resolution**
 - Mandatory reporting by all states
- **UNSCR 1673 (2006) unanimously extended the 1540 Committee's mandate for 2 years**
 - Invites the 1540 Committee to explore with States and international, regional and sub-regional organizations experience-sharing and lessons learned in the areas covered by UNSCR 1540, and the availability of initiatives that might facilitate the implementation of UNSCR 1540





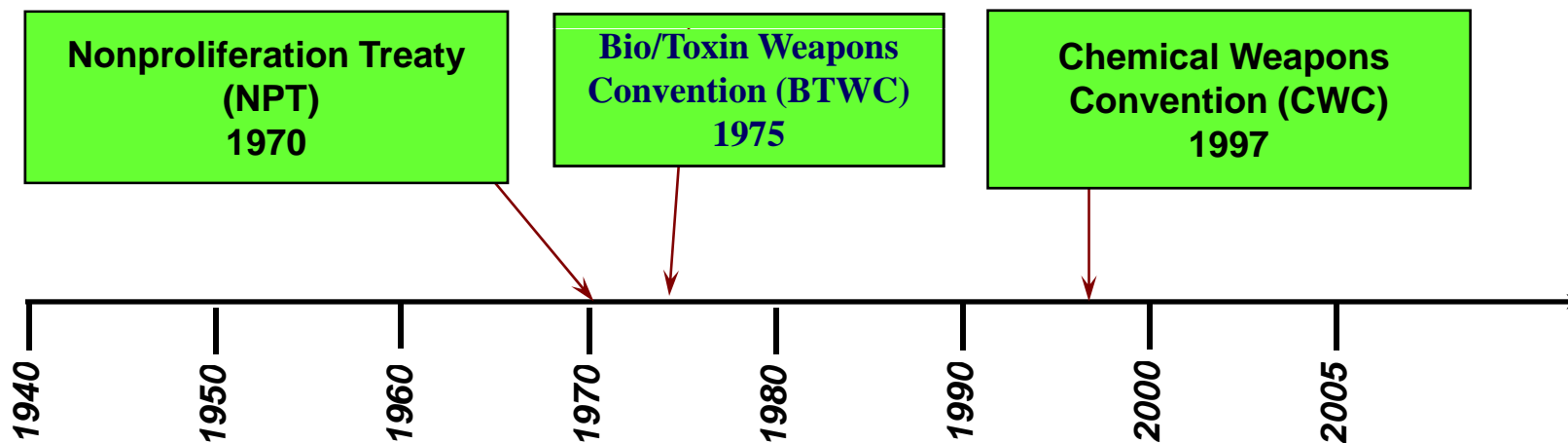
A layered nonproliferation defense

- **The international community has constructed what is, in effect, a “layered defense” to prevent proliferation**
 - comprised of treaties, export control arrangements, and other initiatives such as the Proliferation Security Initiative (PSI)
- **This framework has evolved over many years in response to diverse proliferation threats**
 - with each “layer” or initiative, the framework sought to adapt to new challenges presented by advances in technology, emerging threats, and other global events

First Layer: Treaties that require attention to export controls



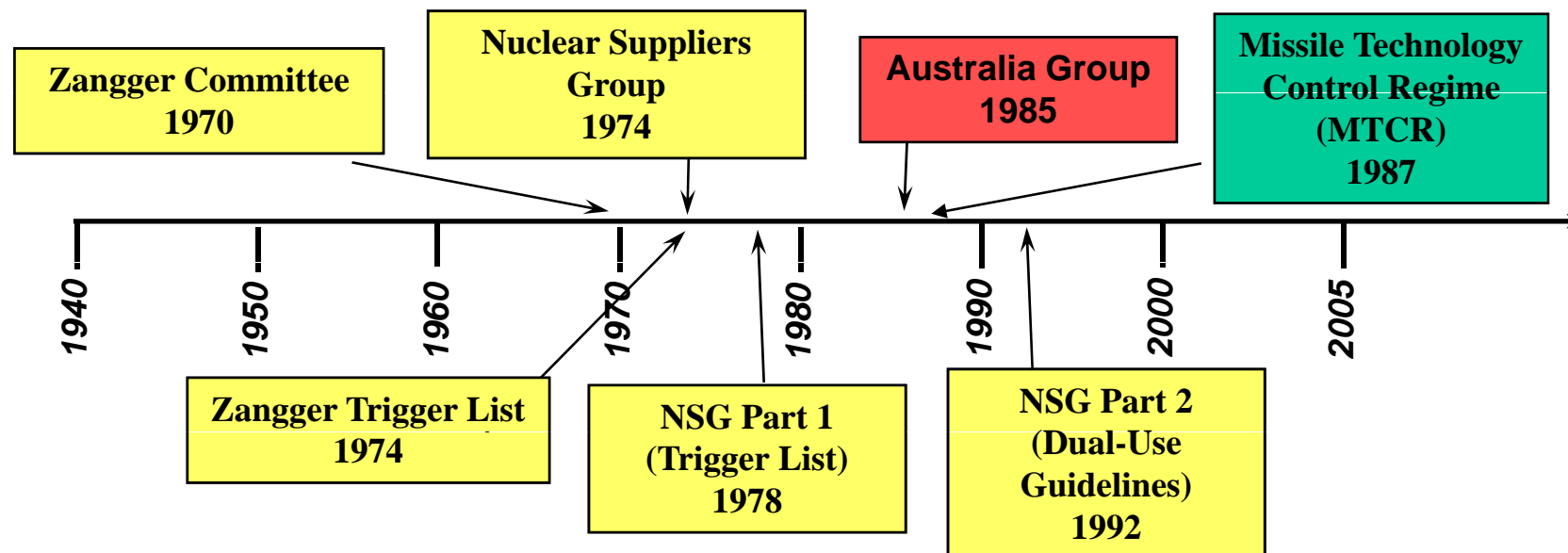
- **Global nonproliferation treaties are the first line of defense**
 - NPT → Article III.2
 - BTWC → Article III
 - CWC → Article I d
- **Treaties establish strong global norms**
 - only as strong as states' parties' willingness to comply with their treaty-based obligations and the resolve of compliant parties to hold others to their obligations





Second layer: Multilateral export control arrangements

- **Multilateral export control arrangements provide a second layer of our nonproliferation defense by establishing control lists and guidelines**
 - Zangger Committee (Zangger)
 - Nuclear Suppliers Group (NSG)
 - Australia Group (AG)
 - Missile Technology Control Regime (MTCR)
- **Multilateral arrangements taken together comprise the multilateral export control regime. These arrangements identify materials, equipment, and technology used in the manufacture of WMD and their means of delivery, and establish control lists and guidelines for controlling transfers of such items.**



Third layer: Other Initiatives and Arrangements, e.g., PSI



- **PSI complements the UNSCR 1540 mandate for States to take cooperative action to prevent the transfer of WMD commodities**
- **PSI aims to impede and stop illegal shipments of WMD, their delivery systems and related materials, consistent with national authorities and international law**
- **Since being established in 2003 over 80 countries have indicated support for the Initiative:**
 - identify national assets that might contribute to PSI efforts
 - willing to establish a concrete basis for PSI cooperation
 - participate in PSI interdiction exercises and actual operations as opportunities arise





Is the layered approach working?

- **This “layered nonproliferation defense” impedes and slows efforts of state and non-state actors to acquire WMD, however:**
 - Not all states are willing or able to implement effective nonproliferation measures
 - Proliferators systematically attack weak links – the unprotected border, the unenforced regulation, the lax licensing system
 - Although countries agree generally on the danger posed by WMD, agreement on concrete responses is not universal
- **There are no “quick fixes” or easy solutions to prevent proliferation**
 - UNSCR 1540 is a unified step to strengthen the nonproliferation regime, bringing together the entire range of multilateral WMD obligations and controls, including
 - *prohibitions for proliferation.*
 - *material protection and physical security,*
 - *and border and export controls*

Uniqueness of UNSCR 1540 requirements on export controls



- **Specific in requiring states to act beyond an expression of international commitment**
 - National legislation
 - Implementation & enforcement capabilities
- **Comprehensive in coverage of the “elements” of export controls**
 - Laws, regulations on export and trans-shipment
 - End User/Catch all controls
 - Coordination with industry
- **Detailed in items/activities to be controlled**
 - Control list of items must be developed
 - Not just export but re-export, transit, transshipment, brokering are to be controlled regarding exports of material and equipment for NBC weapons and their delivery systems

“States should be aware that unless they meet their obligations in full, by enacting and enforcing national legal and regulatory measures and by committing to international cooperation on non-proliferation, their territories could be exploited in the worst possible way.”

(H.E. Mr. Peter Burian, Slovakia, Chairman of the UNSC 1540 Committee)



UNSCR Resolution 1540 Requirements

- **National Legislation on Prohibitions**

- Para 1: general commitment to not support non-state actors regarding acquisition of NBC weapons and their delivery systems
- Para 2: **prohibit all activities of non-state actors** with regard to WMD-relevant items

→ possess, develop, acquire, export/import

- **Domestic Controls and Enforcement**

- regarding “materials, equipment, and technology covered by the relevant multilateral treaties and arrangement...”
- Para 3a,b: account, secure, and physically protect
- Para 3c: establish effective **border controls and law enforcement efforts** to detect, deter, prevent and combat, illicit trafficking and brokering
- Para 3d: establish effective **comprehensive national export and trans-shipment controls**

→ laws & regulations, financial and transport controls, end-user controls, criminal/civil penalties



UNSCR Resolution 1540 Requirements

- **Reporting**
 - Para 4: Establishes a 1540 Committee and calls upon States to submit a report on steps taken or intended regarding the resolution

- **National Control Lists**
 - Para 6: *calls upon States to establish appropriate national control lists*
→ Control lists consistent with multilateral norms (e.g., EU list)

- **Assistance and Outreach**
 - Para 7: Request/offer assistance on implementation of UNSCR 1540



UNSCR Resolution 1540 Requirements

- **Promotion and Implementation of Multilateral Treaties**

- Para 8a: Promote universal adoption and full implementation of other multilateral treaties
- Para 8b: Incorporate international obligations into domestic laws/regulations
- ➔ **Comprehensive national export control system that meets obligations of treaties & agreements**
- Para 8c: renew and fulfill commitment to IAEA, OPCW, and BWC
- Para 8d: develop appropriate ways to work with industry and public regarding their obligations
- ➔ **Government-Industry Partnership**

- **Promotion of Dialogue and International Cooperation**

- Para 9: engage in dialogue and cooperation on nonproliferation
- ➔ **Attendance at export control meetings and workshops**
- Para 10: take cooperative action to prevent illicit trafficking in WMD items
- ➔ **Clarity and transparency regarding export control systems**



What Do National 1540 Reports Indicate?

- **As of April 2006, 129 States and 1 organization (EU) submitted reports**
- **Regarding national legislation on prohibition and enforcement under Para 2**
 - Legislation in place before adoption of 1540 does not explicitly address non-State actors
 - Specific legislation necessary to penalize prohibited activities of non-State actors
 - Specific legislation necessary to prohibit financing of proliferation
- **Regarding export controls**
 - Generally, gaps exist between existence of export control legislation and presence of corollary enforcement measures and penalties
 - 80 States have some WMD export control legislation in place
 - 69 States have penalties associated with legislation
 - 69 States have some form of export licensing system, with one or more licensing bodies
 - Between 55-66 countries have control lists, but only 25 coordinate dual-use items through common legislation
- **Regarding border controls**
 - 73 States identified border control enforcement agencies, but not all have legislated authority over WMD, their means of delivery or related materials
 - Many states lack technical capacity or equipment to implement full range of border controls
 - Limited number of states control transit, trans-shipment, or re-export of WMD-related items



Conclusions

- **Responding to Threat**

- Clear intent of terrorist organizations and some countries, contrary to their NPT commitments, to acquire WMD
- International community must be creative, agile, and aggressive in preventing proliferation
- Efforts must be multi-lateral, multi-national, multi-year, and multi-dimensional

- **Closing the Gap**

- Ensuring that states adopt effective controls and enforcement over sensitive items is not a new endeavor, but there has been a clear gap between the global consensus about the threat of WMD proliferation and concrete action on the ground.

- **Promoting universal adherence**

- UNSC 1540 promotes international nonproliferation efforts by addressing gaps in the existing system regarding proliferation and control of weapons of mass destruction and their possible use by non-state actors. UNSC 1540 stresses the importance of cooperative action by all states to deter the proliferation of nuclear, chemical and biological weapons and their means of delivery

Proliferation is a global problem and success requires collaboration, vigilance and political commitment, as well as follow-through in the form of enforcement and compliance



UNSC Resolution 1540

1. *Decides that* all States shall 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. *Decides also* 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;
3. *Decides also* that all States shall 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 and to this end shall:
 - (a) Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport;
 - (b) Develop and maintain appropriate effective physical protection measures;
 - (c) Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law;
 - (d) 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;



UNSC Resolution 1540

4. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, for a period of no longer than two years, a Committee of the Security Council, consisting of all members of the Council, which will, calling as appropriate on other expertise, report to the Security Council for its examination, on the implementation of this resolution, and to this end calls upon States to present a first report no later than six months from the adoption of this resolution to the Committee on steps they have taken or intend to take to implement this resolution;
5. *Decides* that none of the obligations set forth in this resolution shall be interpreted so as to conflict with or alter the rights and obligations of State Parties to the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention or alter the responsibilities of the International Atomic Energy Agency or the Organization for the Prohibition of Chemical Weapons;
6. *Recognizes* the utility in implementing this resolution of effective national control lists and calls upon all Member States, when necessary, to pursue at the earliest opportunity the development of such lists;
7. *Recognizes* that some States may require assistance in implementing the provisions of this resolution within their territories and invites States in a position to do so to offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions;



UNSC Resolution 1540

8. *Calls upon* all States:

- (a) To promote the universal adoption and full implementation, and, where necessary, strengthening of multilateral treaties to which they are parties, whose aim is to prevent the proliferation of nuclear, biological or chemical weapons;
- (b) To adopt national rules and regulations, where it has not yet been done, to ensure compliance with their commitments under the key multilateral nonproliferation treaties;
- (c) To renew and fulfil their commitment to multilateral cooperation, in particular within the framework of the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons and the Biological and Toxin Weapons Convention, as important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes;
- (d) To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws;

9. *Calls upon* all States to promote dialogue and cooperation on nonproliferation so as to address the threat posed by proliferation of nuclear, chemical, or biological weapons, and their means of delivery;

10. Further to counter that threat, *calls upon* all States, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials;

11. *Expresses* its intention to monitor closely the implementation of this resolution and, at the appropriate level, to take further decisions which may be required to this end;

12. *Decides* to remain seized of the matter.

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