

UNSCR 1540: A decade of existence

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On April 28, 2004, the United Nations Security Council (UNSC) adopted a resolution, which asked the member states to desist from supporting the efforts of non-State actors to develop, acquire, manufacture, possess, transport, transfer or use Weapons of Mass Destruction (WMD) and their means of delivery. This resolution became popular as UNSC Resolution 1540. The resolution was initially opposed by the Non-Aligned Movement (NAM) countries, but later these countries supported the resolution to fight the danger of WMD terrorism. The resolution that was adopted under Chapter VII of the UN Charter makes it binding for the member countries.

The UNSC took several initiatives to coordinate the implementation of the resolution 1540. Of all, the most significant was setting up of the UNSCR 1540 committee. From time to time, different UNSC resolutions were adopted to extend the tenure of the committee. The UNSCR 1540 committee will now continue to exist, at least, till April 25, 2021. The UNSCR 1977, adopted in April 2011, in fact, gave the committee the mandate to exist till 2021. Over a decade, the committee has scrutinised reports of the member states regarding implementation of the UNSCR 1540, and has mobilised support to assist the member countries in implementing the resolution. The 1540 resolution has introduced unprecedented changes in the export controls landscape, though it is still facing several questions and challenges regarding control and regulation of WMD.

The UNSCR 1540 greatly internationalised export controls. Before the advent of the resolution, the export control scene was dominated by multilateral export controls regimes, though the treaties such as the Chemical Weapons Convention (CWC) and the Biological and Toxic Weapons Convention (BTWC) provided the mandate for the ban on transfer, production and possession of two of the WMD. As materials required for development of WMD have civil or peaceful uses, the member countries were allowed to undertake legitimate trade in most of these materials.

However, the BTWC does not provide any standard or detailed procedure to control biological goods. It is the member countries which develop their own procedures for international commerce in bio-technology and related goods. The CWC has relatively detailed provisions for chemical goods. It has divided the chemicals into three categories for commerce. The schedule 3 contains dual-use goods which are to be traded more liberally. As there is no such international treaty or deliberative body for nuclear trade, a multilateral export control body like the Nuclear Suppliers Group by and large determined the terms of global nuclear commerce. The missiles control also basically received the template from the Missile Technology Control Regime.

The UNSCR 1540 is comprehensive in its mandate and reach. It covers all the WMD and their delivery systems. The resolution *per se* does not have very detailed provisions, but the process of implementation and the UNSCR 1540 committee provided an appropriate institutional framework and procedural dynamics for export controls after its establishment pursuant to UNSCR 1540. The deliberation on export control was no longer confined to less than 50 countries. The group of experts, which has been assisting the committee, is drawn from the UN member states. Even Iraq, Pakistan and India have been represented on the expert group.

The committee through the matrix developed by the expert group has, to a great extent, harmonised the global WMD controls. As discussed, the comprehensive 1540 resolution, basically, provides the broad mandate for securing WMD and their delivery systems. It was the committee that asked the countries to submit their reports using the matrix. The countries were indirectly made to identify the gap and match to the criteria developed in the matrix. Several countries first searched their existing legal systems to provide statutory authority to export controls, later, passed new law to bridge the identified gap. The UNSCR strengthened norms for export control in the last.

Interestingly, in the beginning, India was sceptical of the resolution. India sided with the NAM group of countries. The NAM group opposed the UNSCR 1540 on grounds that that UNSC is not the appropriate body for legislating international law. However, realising the danger of WMD India along with other countries started supporting the resolution and later to implement the resolution it took a series of measures.

Active India

India submitted its reports to the UNSC 1540 committee. The first two reports were general in nature, but when the committee asked the countries to file their national reports using the matrix developed by the UNSCR 1540 committee, India submitted the reports using the UNSCR 1540 committee matrix. India periodically updated its reports. The reporting is indeed a great opportunity for India to showcase its legislative, regulatory and enforcement frameworks to the international community. At the same time, the filing of reports and the subsequent assessment also made India realise the gap in its control structure.

To implement the UNSCR 1540, India had to fill in the gap in its legislative system, and for the purpose, the Indian Parliament passed the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Bill on May 13, 2005. After receiving the Presidential assent on June 6, 2005 the bill became an act or a law. This Act is popularly referred to as the WMD Act. On a number of occasions, Indian officials stated: “Specifically, the WMD Act fulfils India's obligations pursuant to the UN Security Council Resolution 1540 on non-proliferation of weapons of mass destruction by prohibiting the possession, manufacture, transportation, acquisition, development of nuclear weapons, chemical weapons or biological weapons by non-State actors.”

This act introduced several global good practices for WMD control to the India system. Through the act the Indian export controls system has transit and trans-shipment controls, retransfer control, technology transfer controls, brokering controls and end-use based controls. The WMD Act also led to the changes in other laws like Foreign Trade (Development & Regulation) Act. This act helped India in properly implementing and

enforcing the general objectives of the UNSCR 1540 by providing statutory authority to the licensing and the Customs departments.

The engagement is continuing in other implementation activities of the UNSCR 1540. India has been supporting the UNSCR 1540 committee set up to implement the mandate of the resolution. The resolution 1977, which extended the mandate of the UNSCR 1540 till April 25, 2021, had the support of India as well. The 1540 committee is also supposed to work in coordination of other international organisations such as International Atomic Energy Agency (IAEA) or Organisation for Prohibition of Chemical Weapons (OPCW). Under the aegis of IAEA India organised a training course on physical protection of nuclear installations. India is also prepared to share its expertise with any country which is interested in it.

However, the success of a decade of existence of the UNSCR 1540 should not make the international community overlook persisting problems. The objective of the 1540 is to internationalise WMD security by targeting the entire supply chain. Even the countries, which do not have high technology or dual use technology or WMD technology, have been brought under the control framework to plug the loophole in the global control system. The mechanisms such as brokerage and intangible control were introduced for these countries. Yet, some countries have not taken appropriate legislative, regulatory and enforcement measures. Expertise and funding have not reached despite the best of efforts by the international community.

Quite importantly, the 1540 model is structured on the Western experience. The Western countries are also finding that the Cold War export control structure is fast losing its utility. A strong voice is already emanating from these countries to restructure and reorient the export control, but somehow the local dynamic is preventing the restructuring. Shockingly, a country like the United States that is in the forefront is not able to pass its lapsed Export Administration Act for more than two decades. The international community needs to review the functioning of the best practices the UNSCR 1540 has promoted so far. The need is to develop a set of effective practices. The shift in the global paradigm that is taking place because of the UNSCR 1540 needs another shift to make its character truly international.

Views expressed are of the author and do not necessarily reflect the views of the IDSA or of the Government of India.