

## CHAPTER 1

### INTRODUCTION

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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.”<sup>1</sup> 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”;<sup>2</sup>
- 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”;<sup>3</sup> 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”.<sup>4</sup>

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.”<sup>5</sup> 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".<sup>6</sup> 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 ...",<sup>7</sup> 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 ...",<sup>8</sup> 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 implementation ... .<sup>9</sup>

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,<sup>10</sup> 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”<sup>11</sup> 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.<sup>12</sup> 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 weapons<sup>13</sup>—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

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

<sup>10</sup> 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.

<sup>11</sup> *Ibid.*, para. 45.

<sup>12</sup> 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](http://www.7ni.mfa.no/Activities/Activity+reports/070327+New+York/Chair+summary.htm)>.

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