

Implementing Resolution 1540: Assessing Progress in National Nuclear Controls

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Paper Summary

Resolution 1540 has supplemented the nuclear nonproliferation regime by instituting the first international mandate to prevent non-state actors from acquiring and transferring nuclear weapons and related technology, along with other types of weapons of mass destruction (WMD). Significant progress has been made over the past seven years in specifying the resolution's requirements, raising awareness of its goals, and implementing its national WMD controls. However, much more needs to be done to meet the resolution's ambitious requirements. Moreover, in light of expectations for the expansion of nuclear power, the diffusion of nuclear-related technology, and an increasingly complex proliferation environment, the domestic controls mandated by resolution 1540 are becoming a necessary component of responsible nuclear stewardship.

One new development of the 1540 regime has been the committee's efforts to increase transparency through the release of a large number of assessment matrices used to monitor national steps to implement the resolution's varied provisions. This information provides an overview of domestic legal controls over WMD and related materials, signifying what progress has been made in implementation and areas that may pose particular challenges.

Drawing on the newly released committee assessments, this paper evaluates progress in implementing the national controls required under resolution 1540 with respect to nuclear weapons, related materials, and their means of delivery. It focuses specifically on a set of countries for which the resolution's nuclear controls are the most relevant: a group of 92 countries that either maintain nuclear facilities or are seeking to acquire or develop such facilities (83 of which have allowed their assessments to be made public).

The committee assessments for these countries demonstrate that while, about two-thirds of the countries identified have taken steps to implement the majority of resolution 1540's nuclear provisions, several countries with nuclear facilities or which may be seeking nuclear energy programs are lacking in domestic nuclear controls. On average, these 83 states have taken steps to adopt legislation and enforcement mechanisms for about 60% of the resolution's 55 distinct requirements to criminalize nuclear proliferation to non-state actors, account for and secure nuclear weapons-related materials, and control the export of nuclear weapons-relevant goods and technology.

Of those 55 provisions enumerated in the 1540 committee's assessment matrices, there are 10 provisions that represent key implementation gaps by the states examined, including: prohibiting non-state actors from stockpiling nuclear weapons and related materials, reliability checks for nuclear facility personnel, the extraterritorial application of export controls, and addressing the means to delivery nuclear weapons.

Unsurprisingly, most of these key implementation gaps pertain to export controls—an area in which many states have only begun to establish laws, authorities, and procedures. In addition, three of those 10 key implementation gaps pertain to the means of delivery, raising questions about how the resolution defines delivery systems, and the role that those provisions play in proliferation prevention.

Although implementation is still lacking in many areas, much progress has been made over the past five years. Drawing on a 2006 study examining implementation by a similar series of key states using initial committee assessments, this report offers a comparison of implementation between committee assessments concluded in 2005 and 2010.

Based on this comparison, this study finds that, on average, states adopted a legal framework for additional 35% of the nuclear weapons-relevant provisions of the resolution, and instituted enforcement mechanisms for an additional 42% of those provisions. It is critical to note, however, that this comparison not only takes into account domestic controls adopted since the 2005 assessments, they also include pre-existing measures which the states either did not initially report, or which the committee had to clarify with the reporting government.

Lastly, while the committee assessment matrices are a helpful tool in monitoring progress with the implementation of the resolution, they do present critical limitations. In particular, they only signify whether or not there is evidence that a state has adopted laws related to specific resolution 1540 provisions. They do not indicate how effective those legal mechanisms are, and more importantly, the extent to which a state is willing and able to use them to prevent and respond to violations. It is possible for a state to have carried out adopted laws relevant to the vast majority of the resolution's provisions and still lack a domestic legal system that is effective in addressing nuclear proliferation by, and to, non-state actors.

As the committee looks towards a more prolonged extension of its mandate, it will be important to consider whether additional evaluation tools are needed to assess implementation and ensure that domestic legal controls exhibit the “appropriate effective” criteria called for by the resolution.