

Between Centrifugal and Centripetal World Forces: Extra-Territoriality of Resolution 1540 and Southern Perspectives

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Between Centrifugal and Centripetal World Forces: Extra-Territoriality of Resolution 1540 and Southern Perspectives

By Rodrigo Alvarez V.

June 1, 2011

This is a paper from the Nautilus Institute workshop "[Cooperation to Control Non-State Nuclear Proliferation: Extra-Territorial Jurisdiction and UN Resolutions 1540 and 1373](#)" held on April 4th and 5th in Washington DC with the Stanley Foundation and the Carnegie Endowment for International Peace. This workshop explored the theoretical options and practical pathways to extend states' control over non-state actor nuclear proliferation through the use of extra-territorial jurisdiction and international legal cooperation.

Nautilus invites your contributions to this forum, including any responses to this report.

CONTENTS

[I. Introduction](#)

[II. Article by Rodrigo Alvarez V.](#)

[III. Notes](#)

[IV. Nautilus invites your responses](#)

I. Introduction

This report, by Rodrigo Alvarez V., Executive Manager of the Global Consortium on Security Transformation and Coordinator of the Non-Proliferation and Disarmament project, asserts that Latin America must keep supporting all types of WMD non-possession, disarmament and non-proliferation initiatives. The paper analyzes the southern perspective on WMD proliferation, develops the current vision for Resolution 1540 in the region, and analyzes the resolution with respect to Latin America's nuclear energy dilemma.

The views expressed in this article are those of the author and do not necessarily reflect the official policy or position of the Nautilus Institute. Readers should note that Nautilus seeks a diversity of views and opinions on significant topics in order to identify common ground.

II. Article by Rodrigo Alvarez V.

-“Between Centrifugal and Centripetal World Forces: Extra-Territoriality of Resolution 1540 and Southern Perspectives”

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Introduction

In the international system, the September 11th attack on the United States of America was a breaking point in global security issues. Since that day the real uncertainty that Weapons of Mass Destruction (Nuclear, Biological and Chemical) could become accessible to State and non-State actors, including terrorist organizations, changed the logic of international security.

One of the first attempts to manage this critical possibility was the 2003 Bush Administration's Proliferation Security Initiative (PSI). The PSI is recognized as the genesis of UNSC Resolution 1540. According to Johnson (2004, p.9) [1], the United Nations Security Council adopted Resolution 1540 on WMDs, which built on the PSI and established a Committee of the Security Council to report back on the resolution's implementation. Lehrman (2004, p. 2) [2] maintains that the PSI laid the foundation of a powerful multilateral force countering the proliferation of WMDs. After the PSI initiative, the second step was the adoption of UNSC Resolution 1540.

UNSC Resolution 1540 [3] was fashioned to create a central role that could contain the fear and possibility that non-State and new State actors could acquire or otherwise be involved in the production, development and/or use of any nuclear, chemical or biological weapon (NCB). According to Crail (2006, p. 356) [4], UN Security Council Resolution 1540 was adopted in April 2004 after months of negotiations regarding possible ways in which the council could respond to a threat that the traditional WMD treaty regimes had been unable to address adequately. Resolution 1540 has been seen as the most comprehensive initiative to control the proliferation of nuclear, chemical and biological weapons. Paraphrasing Scheinman (2008, p. 1) [5], the resolution is distinct from existing treaty-based non-proliferation/arms control regimes in that it covers all WMDs, reaches beyond states, focuses explicitly on the risk of non-state actors and transcends existing anti-terrorism conventions. This argument is supported by Crail (2006, p. 355) who argues that the traditional international WMD nonproliferation regime was not formed to address these types of proliferation considerations, and is struggling to adapt to this issue in the new international security environment. Heupel (2008, p. 95) [6] observes that the Resolution provides generic non-proliferation obligations for the first time.

After the September 11th attacks, and influenced by a feeling of global disorder, the world is feeling the effect of centrifugal and centripetal forces on security issues. These forces are putting pressure on the international system and its aims of avoiding the misuse and spread of nuclear, chemical and biological WMDs by means of UNSC Resolution 1540. In essence, this environment could jeopardize worldwide stated objectives of non-possession of WMDs, as well as commitments to disarmament and non-proliferation.

Not surprisingly, there are at least three parallel issues: **First**, the verification that several new states and non-state actors have initiated, or are trying to acquire the necessary knowledge to initiate, the development of nuclear weapons or otherwise have access to nuclear material. Special attention is given to terrorist groups and the real possibility that they could acquire, produce, develop or use nuclear, chemical or biological material.

The **second** concern is a fear of a hypothetical nuclear war or nuclear incident between nuclear weapon states (NWS). International organizations and treaties, as well as global civil society, have not been able to force NWS to make a real move towards achieving total nuclear disarmament. According to Perkovich and Acton (2008) [7], two irreconcilable positions clash on this subject: “the vision that States possess nuclear weapons because they fear they might face threats of mass destruction in the future; and the purist view of disarmament where the object of nuclear disarmament is to securely eliminate nuclear weapons and erase states’ capabilities to produce them.”

The **third** concern is the spread of peaceful nuclear technology. Many countries have declared their intention to develop nuclear energy to solve their energy crises. This possibility does not necessarily represent a problem, but it could become a real concern. For example, according to the International Atomic Energy Agency [IAEA], there are more than 40 countries that currently have a civilian nuclear capacity that could quite quickly be converted into military programs. This last problem is “potential proliferation”.

This report, with the central argument that Latin America must keep supporting all types of WMD

non-possession, disarmament and non-proliferation initiatives, tackles UNSC Resolution 1540 from the southern perspective. Following this introduction, the paper analyzes the southern perspective on WMD proliferation. Next, the paper develops the current vision for Resolution 1540 in the region and analyzes the resolution with respect to Latin America's nuclear energy dilemma.

A Brief Southern Perspective on WMD Proliferation

Latin America is recognized worldwide as an area where WMD proliferation does not represent a central security issue. From the southern perspective, since the mid 1990's, any WMD proliferation processes have been totally under control. According to Herz (2008, p. 10) [8], Latin American countries have forsworn WMDs, and the region does not represent an important threat to the non-proliferation regime today. Almost all the nations in the region are part of the NPT, CWC, CTWC, Tlatelolco and Antarctic treaties.

However, the region sets an interesting precedent, especially when it comes to the acquisition and development of nuclear technology. In this respect it is possible to distinguish three similar periods in the international system: the Cold War, the 1990s and since 2004 with the global energy crisis. Between 1950 and the end of the 1980's, with different levels of intensity, and dominated by the global division triggered as a result of the Cold War, a couple of Latin America nations showed real interest in developing the necessary nuclear technology, not only to tap the energy derived from it, but to become national military nuclear powers. This environment pushed the region to increase and promote new efforts to control any potential nuclear proliferation. Latin America thus created and encouraged treaties to curb or stop this tendency. In 1967, the region was able to formulate the first ever nuclear weapon free zone: the Tlatelolco Treaty. At the same time, a strong process to encourage nations to become part of the NPT was activated. The outcome was that at the end of the 1980's, twenty-eight Latin American nations and, by the end of the 1990's, the entire region was part of the NPT.

Since the mid 1990's, Latin America has decided to avoid any possible nuclear proliferation, and suspend those initiatives attempting to develop nuclear technology beyond its peaceful use. Argentina and Brazil finally ratified the Non-Proliferation Treaty in 1995 and 1998, respectively.

Southern Demands on Resolution 1540

Despite the well known efforts to manage the proliferation problem, including the Nuclear Proliferation Treaty (NPT), the Chemical Weapons Convention (CWC), the Biological and Toxin Weapons Convention (BTWC), as well as the work done by the International Atomic Energy Agency (IAEA) and the Organization for the Prohibition of Chemical Weapons (POCW) [9], the world is still facing clear disjunctives in the attempts to control and manage the spread of WMD.

From the Southern perspective, Resolution 1540 could confront worldwide weak centripetal and strong centrifugal forces, which could make it difficult to achieve its recommendations.

While some nations and regions are pushing for global non-possession as well as non-proliferation and disarmament of WMDs, there are other states and non-state actors with their own geopolitical interests or political or ideological fights, which are putting pressure on existing international treaties. The outcome could be a globally strong centrifugal process between the existing aims of the treaties and the proliferation of WMDs.

For example, in Latin America, and in other parts of the world, the election of Barack Obama as President of United States of America not only triggered a change in the national nuclear

perspective of the countries in that region, but it also became a catalyst to effectively raise Article IV of the Non-Proliferation Treaty as a concern which needed to be discussed globally.

The international arena, even with the presently high level of consensus on the urgent need to advance and achieve the central objective of the NPT, has over the last decade, witnessed a high level of discontent, which has negatively influenced the processes of non-proliferation and disarmament of nuclear weapons with respect to new states and non-state actors.

The world agenda is being dominated by the debate about the uncertainties regarding how the nuclear agenda is and will be controlled. In this respect, the threats that the world faces with respect to nuclear proliferation, and nuclear weapons more broadly, demand robust and well-informed international cooperation. Beyond the well known but limited achievements of the 2010 Review Conference on the Non-Proliferation of Nuclear Weapons, the international system is still facing formidable obstacles in the effort to control and manage the spread of WMDs.

From this perspective, the Latin American region is not an outsider player and should be deeply linked and related to present demands to control the proliferation of WMDs, especially since new threats are not only coming from state actors, but non-state actors with high mobility and communication capacity. Paraphrasing Herz (2008, p.9) [10], since the mid-1990's the linkages between terrorists and WMDs have been a significant fear of great powers—proliferation by state actors are no longer the sole source of concern.

Resolution 1540 seems to be an important tool to consolidate these issues in Latin America. However, the resolution has raised doubts and criticism. Steyn (2005, p. 86) [11] has suggested that Resolution 1540 was drafted in broad terms and contains many requirements that are vague and open. Heupel (2008, p. 96) goes further and observes that, in order to accommodate the uneasiness of many states with what was seen as the UNSC interfering deeply with domestic politics, the resolution's requirements are vague and do not stipulate specific standards. Other criticisms have stemmed from the clear difficulty for NWS to accomplish Article VI of the NPT. According to Ware (2005, p 3) [12], while UNSC Resolution 1540 was adopted unanimously, the fact that the US and other NWS were increasingly pro-active regarding the non-proliferation of WMD while doing little to implement obligations to eliminate their own stockpiles was also heavily criticized. In Latin America, Brazil is the most concerned by this duality: the weak link between non-proliferation and disarmament. At the same time, there are also a lot of concerns about NWS outside of the NPT; including India, Israel, Pakistan and North Korea. In essence, what is under scrutiny with Resolution 1540 is its extraterritoriality.

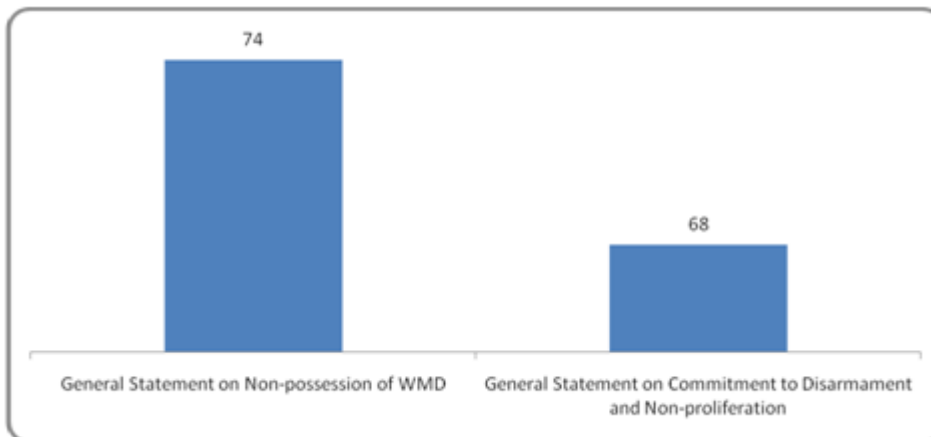
Despite the existence of some nation's claims about weaknesses and doubts concerning the Resolution's objectives, the Latin American region has tried to support Resolution 1540. As analyzed by Herz (2008), Resolution 1540 was voted for unanimously and Latin American governments have decided to comply with it and present their reports. In this respect, the 2008 report, *Implementing Resolution 1540: the Role of Regional Organizations* confirmed that 75% (24 out of 32) of the region's nations had submitted these reports, which are considered one of the central pillars of the Resolution's objectives. In addition, in 2011 the 1540 Committee website noted that this percentage had jumped to 93% (30 out of 32), with only two countries having not reported: Haiti and Saint Lucia. Also, special attention should be given to Argentina's Action Plan for the implementation of Resolution 1540 [13].

It is also important to mention that 31 out of 32 states in Latin America have submitted their 1540 matrices. The matrices are an important tool to study the level of compromise and accomplishment between nations and the objectives of Resolution 1540 by means of legal frameworks and

enforcement.

The first important recognition for the region is its explicit commitment to cooperate with the international system in order to stop proliferation and promote the disarmament of WMD. Not surprisingly, 74% submitted a General Statement on Non-possession of WMD and 68% signed a General Statement on Commitment to Disarmament and Non-Proliferation (**Figure 1**). It seems that this percentage should be even higher since some countries that are globally recognized for their concerns on these subjects did not make statements on non-possession or disarmament and non-proliferation.

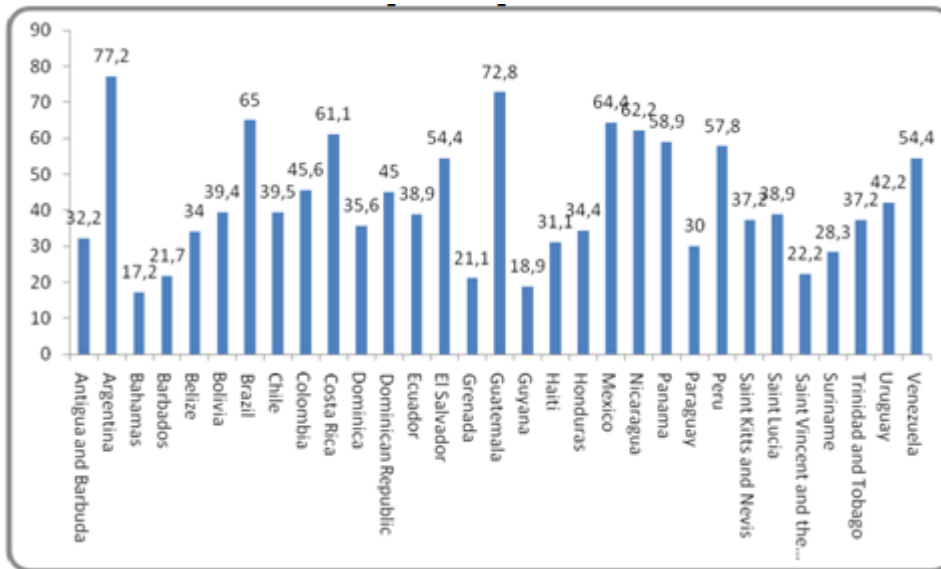
Figure 1 / GSNP WMD / GSCDNP



Source: 1540 Committee - The 1540 Matrix

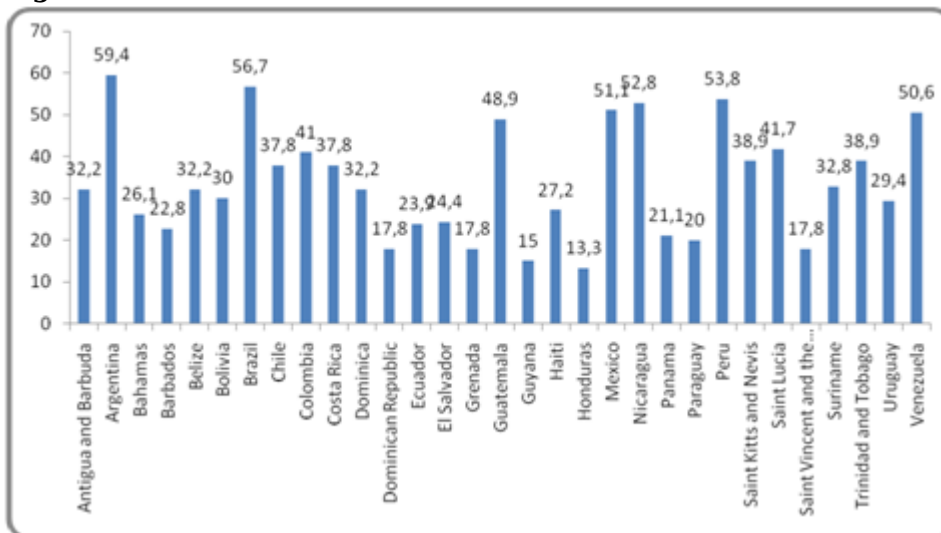
The matrix of Resolution 1540 requests the collection of information on two specific variables: legal frameworks and enforcement legislation. The countries in the region show a gap between their strong participation in international treaties to stop WMD proliferation and disarmament and the legal frameworks applied in their own zones of direct influence. Barbados, Guyana and the Bahamas are the weakest countries (22.7; 18.9 and 17.2, respectively); while the strongest are Argentina, Guatemala and Brazil (77.2; 72.8 and 65, respectively). The average legal framework of Resolution 1540 in the region stands only at 43% (**Figure 2**). In the case of enforcement, the outcome is even worse. The regional average achievement is only 33.7%. With this variable, the weaker countries are Honduras, Guyana, Saint Vincent and the Grenadines, Grenada and Dominica Republic (13.3; 15; and 17.8, respectively); while the strongest are Argentina, Brazil and Peru (59.4; 56.7 and 53.8, respectively) (**Figure 3**).

Figure 2 / Legal Framework



Source: 1540 Committee - The 1540 Matrix

Figure 3 / Enforcement



Source: 1540 Committee - The 1540 Matrix

The interesting aspect of this data is that it could be more complicated and represent a deeper concern for the international system, and specifically for UNSC Resolution 1540 objectives in the region. Analysis of the matrices submitted by the Latin American states reveals that there are several nations that are not sure if their legal or enforcement legislation actually addresses the essence of Resolution 1540.

UNSC Resolution 1540, Latin America and Nuclear Energy

It is an irrefutable fact that the energy demand in the world has today surpassed the installed capacity. One of the outcomes of this scenario has been the renewed worldwide political interest in nuclear energy. Latin American nations are part of this discussion and have stated (up until the Japanese nuclear crisis) their interest to study nuclear energy as an alternative for their energy mix. This situation evokes apprehension about the security and management of nuclear issues, refocusing international attention on the region.

Brazil and Argentina are both seen as stable and responsible nations that reliably control and manage nuclear technology (while Mexico, the other nuclear nation in Latin America, is under the

United States' inclusive area of influence). In the international system both are nuclear technology powers: while Brazil dominates the Uranium enrichment process, Argentina has achieved the technological knowledge to produce and sell nuclear reactors worldwide.

In the case of the well known Brazilian [14] nuclear program, it is assumed that behind this policy is an attempt to establish a clear strategic global position. Argentina also has openly announced its new Nuclear Plan. For this country there are two variables surrounding its nuclear project: technical pragmatism and energy strategy. In this respect, Argentina, like Brazil, has been clear and totally transparent in response to international demands about its nuclear project. Argentina is interested in and available to analyze and study the necessary procedures in order to offer the highest levels of nuclear security and prevent any terrorist crisis, but also has firmly said that it will not accept preventive measures that hamper the autonomy and development of its nuclear program.

The remaining nations in the region do not have a similar access to or experience with nuclear technology or development as Brazil and Argentina. However, during the last few years the following nations have stated a real interest in studying the nuclear option as a solution to their energy constraints: Venezuela, Bolivia, Chile, Ecuador and Uruguay.

It is also important to note that Brazil, Argentina, Bolivia and Venezuela are not part of the Safeguards and Verification Additional Protocol of the International Atomic Energy Agency. In addition, even though the Nuclear Fuel Bank was approved by the Board of Governors, it is interesting to observe how South America voted. While Chile and Peru approved the initiative, Argentina, Brazil, Ecuador and Venezuela abstained from voting. The creation of the Nuclear Fuel Bank was crucial for non-proliferation aims. According to Joshi (2010), it has taken more than 55 years for the world to attain an agreement to institutionalize the nuclear fuel cycle. It seems clear why Argentina and Brazil abstained from voting, but what motivated Ecuador and Venezuela is a big enigma.

III. Notes

[1] Johnson, R. (2004). Is the NPT up to the Challenge of proliferation? The 2005 NPT Review Conference. Disarmament Forum. Retrived from <http://www.unidir.org/pdf/articles/pdf-art2186.pdf>

[2] Lehrman, T. (2004). Rethinking Interdiction: The Future of the Proliferation Security Initiative. The Nonproliferation Review/Summer

[3] The UNSC Resolution 1540:

http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1540-%282004%29

[4] Crail, P. (2006). Implementing UN Security Council Resolution 1540: A Risk-Based Approach. Nonproliferation Review, Vol. 13, No2, July

[5] Scheinman, L. (2008). Implementing Resolution 1540: the Role of Regional Organizations.

UNIDIR. Retrived from <http://www.unidir.ch/pdf/ouvrages/pdf-1-978-92-9045-190-7-en.pdf>

[6] Heupel, M. (2008). Surmounting the Obstacles to Implementing UN Security Council Resolution 1540. Nonproliferation Review, Vol. 15, No1, March.

[7] Perkovich, G., and Acton, J. (2008). Abolishing Nuclear Weapons. The International Institute for Strategic Studies. ADELPHI PAPER 396,

[8] Herz, M. (2008). Resolution 1540 in Latin America and the Role of the Organization of American States in Implementing Resolution 1540: The Role of Regional Organizations. UNIDIR. Retrieved from <http://www.unidir.ch/pdf/ouvrages/pdf-1-978-92-9045-190-7-en.pdf>

[9] In addition, other multilaterals initiatives must be considered: Comprehensive Nuclear Test-Ban

Treaty (CTBT); Outer Space Treaty; Seabed Arms Control Treaty; Pelindaba Treaty; Tlatelolco Treaty; Rarotonga Treaty; Semipalatinsk; Antarctic Treaty and Bangkok Treaty.

[10] Herz, M: op.cit., p.9

[11] Steyn, B. (2005). Understanding the implications of UN Security Council Resolution 1540. African Security Review 14(1)

[12] Ware, A. (2005). Nuclear Terrorism and UN Security Council Resolution 1540: A comprehensive approach. The Carter Center. Document presented at "Atlanta Consultation II on the Future of the NPT" - January 26-28.

[13] To Argentina's Action Plan: <http://www.un.org/sc/1540/pdf/ArgentinaActionPlan.pdf>

[14] At the present Brazil has two nuclear plants (Angra I and II) and is building a third one (Angra III). The new Brazilian nuclear program has been developed in the frame of the National Energy Plan 2030, which has projected the construction of 4 new plants to fulfill the energy demand in the next 20 years.

IV. Nautilus invites your responses

The Northeast Asia Peace and Security Network invites your responses to this essay. Please send responses to: bscott@nautilus.org. Responses will be considered for redistribution to the network only if they include the author's name, affiliation, and explicit consent.

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