

## United Nations Security Council resolutions and export controls

In discharging its primary responsibility of maintenance of international peace and security, the United Nations Security Council has adopted several resolutions pertaining to weapons control and other measures, which may have an effect on trade in certain products, especially when the resolutions seek to control the proliferation and transfer of nuclear, chemical and biological weapons. While some of these resolutions are of general application, others are specific to certain UN members. Security Council resolution 1540, which was adopted in 2004, is a key instrument that affirms that the proliferation of nuclear, chemical and biological weapons and their means of delivery constitutes a threat to international peace and security and established a framework that obliges all states, *inter alia*, to refrain from supporting by any means non-state actors from developing, acquiring, manufacturing, possessing, transporting, transferring or using nuclear, chemical or biological weapons and their means of delivery. This chapter delves into this resolution, discussing the obligations UN members have undertaken and the institutional mechanisms established thereunder, with an emphasis on export controls.

## Background

The Security Council is one of the primary organs of the United Nations. The Charter of the United Nations confers the Security Council with the “primary responsibility [of] the maintenance of international peace and security”.<sup>1</sup> It has fifteen members, including the five permanent members (China, France, Russian Federation, United Kingdom, United States) and ten non-permanent members elected by the General Assembly<sup>2</sup>, with each member having one vote.<sup>3</sup> Under the UN Charter, all UN members are obligated to comply with decisions of the Security Council.<sup>4</sup>

Resolutions adopted by the Security Council are binding on all UN members. Security Council resolutions are formal expressions of the opinion or will of UN organs. It is an official document accepted by fifteen members of the Security Council and is adopted by a vote of its members. The resolution is adopted if nine or more of the fifteen members vote for the resolution, “including the concurring votes of the permanent members”<sup>5</sup>; that is, it is not vetoed by any of the five permanent members. Security Council resolutions may concern current UN activities (e.g. elections to the International Court of Justice), but are more often adopted as part of its work to ensure the peaceful settlement of international disputes and eliminate threats to international peace and security. Security Council resolutions may also impose sanctions aimed at maintaining peace and security, some of which may require UN members to introduce trade restrictive measures or controls.

## Security Council resolution 1540 (2004)

Security Council resolution 1540, which was adopted on 28 April 2004, is a key instrument to prevent the proliferation of nuclear, chemical and biological weapons and their means of delivery.<sup>6</sup> This resolution obliges UN members, *inter alia*, to refrain from supporting by any means non-state actors from developing, acquiring, manufacturing, possessing, transporting, transferring or using nuclear, chemical or biological weapons and their means of delivery. While this resolution does not prescribe specific trade-related measures, several UN members have introduced export controls and other trade-related measures to comply with these obligations.

### *Bodies under Security Council resolution 1540 (2004)*

The resolution establishes a subsidiary body called the 1540 Committee that reports to the Security Council on the implementation of the resolution.<sup>7</sup> It comprises the 15 members of the Security Council, and its mandate and scope of activities are derived from Security Council resolution 1540 (2004) and other subsequent resolutions of the Security Council. Broadly, the 1540 Committee works in the areas of monitoring and implementation of the resolution, provision of related assistance, cooperation with other international organization and transparency and outreach.

The working groups are open to all members of the 1540 Committee established pursuant to Security Council resolution 1540 (2004).<sup>8</sup> The current 20<sup>th</sup> programme of work of the 1540 Committee covers the period from 1 February 2023 to 31 January 2024.<sup>9</sup>

The 1540 Committee is assisted by the Group of Experts.<sup>10</sup> The Experts and its Coordinator are appointed by the UN Secretary-General following the approval of their recruitment by the 1540 Committee. The UN Department for Political and Peacebuilding Affairs and the UN Office for Disarmament Affairs provide support to the 1540 Committee and its Group of Experts.

### ***Export controls under Security Council resolution 1540 (2004)***

While Security Council resolution 1540 (2004) does not prescribe the export controls to be followed by UN members, it requires them to 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. They are also required, in accordance with their domestic procedures, to adopt and enforce appropriate effective laws that 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.

UN members, under the resolution are required to<sup>11</sup>:

- (i) develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport;
- (ii) develop and maintain appropriate effective physical protection measures;
- (iii) 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 domestic legal authorities and legislation and consistent with international law;
- (iv) establish, develop, review and maintain appropriate effective domestic export and transshipment controls over such items, including appropriate laws and regulations to control export, transit, transshipment and re-export and controls on providing funds and services related to such export and transshipment 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.

It is important to note that neither the resolution nor the 1540 Committee endorse or require any control lists that UN members must adopt. Each of them may adopt the lists of materials, agents or technology that it considers appropriate. However, the 1540 Committee recognizes that several international conventions, intergovernmental organizations and multilateral or regional agreements or arrangements have already adopted lists of sensitive goods that are in the public domain.

### *Domestic implementation of Security Council resolution 1540 (2004)*

The 1540 Committee seeks to promote implementation of the resolution by all UN members through dialogue, outreach, assistance and cooperation. To this end, it uses several tools in these efforts, including the so-called 1540 Committee Matrix, an assistance template<sup>12</sup>, participation in workshops and events relevant for the implementation of the resolution and information posted on its website.

Through Security Council resolution 1540 (2004) and its follow-up resolutions, all UN members are required to present a report (the “first report”) describing the steps they have taken to implement the resolution and to submit such a report to the 1540 Committee.<sup>13</sup> Further information was sought from UN members, on a voluntary basis, through subsequent and related Security Council resolutions, such as on their laws and regulations<sup>14</sup> and national implementation action plans.<sup>15</sup> Several members are in the process of either providing or updating this information.

The information relating to the specific implementation by each UN member is compiled in matrices, referred to generally as the 1540 Committee Matrix, which is a reference tool for facilitating technical assistance and to enable the 1540 Committee to continue to enhance its dialogue with UN members on their implementation of Security Council resolution 1540 (2004) and other relevant Security Council resolutions.<sup>16</sup> A matrix for each UN member is prepared by the group of experts based on national reports, and is subsequently reviewed and approved by the 1540 Committee. While the information in the matrices originates primarily from national reports provided by UN members to the 1540 Committee, it is complemented by official government information, including that made available to intergovernmental organizations. The reports and the matrices are periodically updated. It should be noted that the matrices are not a tool for measuring compliance of states in their non-proliferation obligations but for facilitating the implementation of the relevant Security Council resolutions.

The 1540 Committee Matrix includes a section to review the “Border controls and export and transshipment controls to prevent the proliferation of nuclear, chemical and biological weapons and their means of delivery including related material”. It contains information for each UN member on issues such as border controls to detect, deter, prevent and combat illicit trafficking; law enforcement to detect, deter, prevent and combat illicit trafficking; border control detection measures; export control legislation in place; licensing provisions and authority; controls lists of materials, equipment and technology; end-user controls; transit controls; and transshipment controls, among other things. Once approved, the 1540 Committee Matrix for every UN member is made publicly available through the Security Council website.

The 1540 Committee further encourages states to review their existing legislation and practices, and to consider steps to fill any gaps.

## Security Council resolution 1540 (2004) and other weapons-related international treaties

The resolution affirms support for the multilateral treaties whose aim is to eliminate or prevent the proliferation of weapons of mass destruction and the importance for all states to implement them fully. It reiterates that none of the obligations in Security Council resolution 1540 (2004) shall conflict with or alter the rights and obligations of parties to 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, or the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction or alter the responsibilities of the International Atomic Energy Agency and the Organization for the Prohibition of Chemical Weapons.

Security Council resolution 1540 (2004) complements relevant multilateral treaties and conventions by requiring all states to comply with the obligations outlined in the resolution, irrespective of their status regarding such treaties and arrangements. Through its integrated approach, Security Council resolution 1540 (2004) aims at preventing proliferation of weapons of mass destruction (WMD) and their means of delivery as well as illicit trafficking in WMD-related materials, particularly with respect to the activities of non-state actors.

The resolution is particularly relevant at the practical level. For instance, by implementing Security Council resolution 1540 (2004) states better integrate their domestic capacities – such as with law enforcement and border control agencies – to prevent the proliferation of illicit trafficking of WMD.

### *Other Security Council resolutions*

As mentioned above, while Security Council resolution 1540 (2004) is broader in scope, other resolutions may impose sanctions on specific UN members and are aimed at maintaining international peace and security. To oversee such sanctions, the Security Council establishes sanctions committees, composed of all Security Council members, which are tasked with implementation of the “sanctions regimes”. The Security Council Affairs Division of the UN Department of Political and Peacebuilding Affairs provides substantive and secretariat support to these committees, in addition to also recruiting, managing and supporting groups of experts assisting these committees. These sanctions may typically include specific trade-related measures, such as trade embargos, or require in practice the introduction of export controls.

---

## Endnotes

- 1 UN Charter, Chapter V, Article 24(1).
- 2 UN Charter, Chapter V, Article 23(1).
- 3 See UN Charter, Chapter V, Article 27. The five permanent members of the Security Council have the so-called "veto powers".
- 4 UN Charter, Chapter V, Article 25.
- 5 UN Charter, Chapter V, Article 27(3).
- 6 *United Nations Security Council resolution 1540 (2004)*, UN document S/RES/1540 (2004), 28 April 2004.
- 7 Security Council resolution 1540 (2004), Operative para. 4.
- 8 See <https://www.un.org/en/sc/1540/about-1540-committee/working-groups.shtml>.
- 9 The complete list of current and previous programmes of work of the 1540 Committee are available at <https://www.un.org/en/sc/1540/about-1540-committee/programme-of-work.shtml>.
- 10 See <https://www.un.org/en/sc/1540/about-1540-committee/group-of-experts.shtml>.
- 11 See <https://www.un.org/en/sc/1540/faq.shtml#1>.
- 12 The 1540 Committee developed an assistance template and encourages states in need of assistance to use the template to submit their assistance requests. More information is available at <https://www.un.org/en/sc/1540/assistance/assistance-template.shtml>.
- 13 National Reports are available at <https://www.un.org/en/sc/1540/national-implementation/national-reports.shtml>.
- 14 The List of Legislative Documents is available at <https://www.un.org/en/sc/1540/national-implementation/legislative-database/list-of-legislative-documents.shtml>.
- 15 National Implementation Action Plans are available at <https://www.un.org/en/sc/1540/national-implementation/national-implementation-plans.shtml>.
- 16 Committee Approved Matrices are available at <https://www.un.org/en/sc/1540/national-implementation/1540-matrices/committee-approved-matrices.shtml>.