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## **The Implementation of Resolution 1540 in the Middle East**

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## Abstract

The threat emanating from non-State actor proliferation of weapons of mass destruction is an issue that was ignored until recently. The United Nations Security Council Resolution 1540 is the first international instrument that addresses this gap. It obliges the United Nations Member States to adopt numerous measures to counter this threat. The effectiveness of these efforts to counter non-State proliferation depends on how the countries comply with their obligations. The overall implementation by the countries in the Middle East is poor in comparison to other regions. In order to come up with suggestions on how to ameliorate the situation, this paper analyzes the implementation reports of the countries in the region. They show that the countries can be split into three coherent sub-regions, which share significant commonalities. Regional organizations can play an important role in the implementation process but their potential has not yet been utilized. Non-State proliferation is a problem without borders; therefore, cooperation and information exchange on several levels is an essential component of the countering strategy that must be increased among the countries in the Middle East and with other actors.

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## Acronyms

BTWC	Biological and Toxin Weapons Convention
CPPNM	Convention on the Physical Protection of Nuclear Material
CTBT	Comprehensive Test Ban Treaty
CWC	Chemical Weapons Convention
EXBS	Export Control and Related Border Security Assistance
GCC	Gulf Cooperation Council
GRC	Gulf Research Center
IAEA	International Atomic Energy Agency
LAS	League of Arab States
NAM	Non-Aligned Movement
NPT	Treaty on the Non-Proliferation of Nuclear Weapons
NSC	Nuclear Safety Convention
NWFZ	nuclear weapon-free zone
OP	operative paragraph
P5	five permanent members of the United Nations Security Council
PSI	Proliferation Security Initiative
UAE	United Arab Emirates
UN	United Nations
UNSC	United Nations Security Council
VERTIC	Verification, Research, Training and Information Center
WMD	weapons of mass destruction
WMDFZ	weapons of mass destruction-free zone



## Introduction

On April 28, 2004, the United Nations Security Council (UNSC) unanimously adopted Resolution 1540 on non-State actors and weapons of mass destruction (WMD). It was welcomed by the United Nations (UN) Secretary-General, Kofi Annan, as a supplement to the nonproliferation regime.[1] Others regard the resolution not just as a supplement, but as the most far-reaching international policy reorientation since the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) entered into force 37 years ago.[2]

The UNSC decided to establish a committee that was tasked to report to the Council at the end of its two-year mandate on the implementation of this resolution. This report was presented on April 25, 2006. [3] Two days later, the UNSC decided to renew the mandate of the 1540 Committee for another two years in Resolution 1673.

This paper will first provide background information on UNSC Resolution 1540 and its implementation on the global level. (This comprehensive background is necessary to understand the differences between the global implementation and the Middle East regional implementation.<sup>i</sup> Following that is information about the 1540 Committee's report to the UNSC. Next is a description of how the resolution is perceived by the countries of the Middle East and how these countries have implemented the obligations stemming from the resolution. The analysis is based on the Committee's final report and the national reports that countries were called upon to submit to the Committee. Special attention is paid to the commonalities that exist among a larger number of countries' implementation approaches and related problems. The role that regional organizations play is also addressed. Finally, the question of whether the resolution has had a catalytic function is discussed. This catalytic function might have encouraged Middle Eastern countries to fulfill their obligations stemming from various WMD-related treaties or to intensify their work of creating a zone free of nuclear weapons or even free of WMD. The paper concludes with recommendations regarding future steps.

## Content of UNSC Resolution 1540

### General Remarks

Resolution 1540 is the latest initiative of the UNSC to combat the global threat of terrorism. Its adoption was motivated by a heightened sensitivity to the security of WMD and from WMD and the risk of non-State actor (terrorists, businesses, unauthorized country officials) acquisition of and trafficking in WMD-related items. The awareness grew significantly after the revelations in February 2004 of the nuclear proliferation network market run by Pakistani scientist A.Q. Khan.[4] As one attempt to counter these threats, the UNSC adopted Resolution 1540. It acted under Chapter VII of the UN Charter, thus unmistakably conferring a mandatory character to the obligations.

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<sup>i</sup> For the purpose of this paper, the region is defined as containing the following countries: Algeria, Bahrain, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Saudi Arabia, Syria, Tunisia, United Arab Emirates, and Yemen.

## Content

The content of the resolution addressed in its main operative paragraphs (OP) can be roughly summarized as follows:

- OP1: States shall not support non-State actors' efforts to access<sup>ii</sup> WMD
- OP2: States shall adopt national laws prohibiting non-State actors from accessing WMD
- OP3: States shall adopt appropriate effective measures to prevent WMD proliferation
- OP6: States are called upon to set up national control lists
- OP7: States are invited to offer implementation assistance
- OP8: States are called upon to promote universality and cooperation in the field of WMD treaty regimes
- OP9: States are called upon to promote dialogue and cooperation on non-proliferation
- OP10: States are called upon to take cooperative action to prevent illicit trafficking

## Concerns

Although the main goal of the resolution—to prevent non-State actors from getting access to WMD—is non-controversial and indeed universally endorsed, there are several points of concern that should be highlighted:[5]

1. Role of UNSC as legislator: Usually, the resolutions of the UNSC oblige States to take concrete measures to deal with an individual case. In this resolution, the UNSC acted as a global legislator and prescribed States to adopt and enforce national laws and measures in response to a problem, namely non-State actors and WMD. This had an abstract-general nature.<sup>iii</sup> The question of whether such an action is within the competencies of the UNSC is widely discussed among international lawyers and will not be further elaborated here.<sup>iv</sup>
2. Legal basis for the Proliferation Security Initiative: Concerns arose that the sole purpose of this resolution is to function as a legal basis for the Proliferation Security Initiative (PSI).<sup>v</sup> Although an earlier draft of the resolution did contain an OP that dealt with interdiction, this paragraph was deleted prior to the adoption.[6] A diluted version is the

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<sup>ii</sup> In this context, “access“ is used as shorthand for the language used in the resolution covering the development, acquisition, manufacture, possession, transport, transfer, or use of WMD.

<sup>iii</sup> Legal norms can be categorized by two sets of criteria: a norm is abstract rather than concrete in the case it does not command specific actions. A norm is general rather than particular in the case it does not single out a specific person.

<sup>iv</sup> For an example, see Stefan Talmon, “The Security Council as World Legislature” in *American Journal of International Law*, vol. 99, 2005, p175; Eric Rosand, “The Security Council as ‘Global Legislator’: ultra vires or ultra innovative?” *Fordham International Law Journal*, vol. 28, 2005, p542; Andres Zimmermann / Björn Elberling, “Grenzen der Legislativbefugnisse des Sicherheitsrates – Resolution 1540 und abstrakte Bedrohungen des Weltfriedens,” *Vereinte Nationen*, vol. 52, 2004, p71.

<sup>v</sup> Mr. Gual of Cuba specifically cautioned against the use of UNSC Resolution 1540 to support PSI interdiction: “[I]t cannot be ruled out that some power might interpret the adoption of this text under Chapter VII of the United Nations Charter to be a pre-authorization or a justification for the unilateral use of force against given States because of the alleged suspicions of proliferation of WMD or their components...The text of the draft resolution is ambiguous enough for some States to proclaim that, in it, the Security Council legitimizes the interception of ships and of aircraft in the framework of the so-called Proliferation Security Initiative.”

current OP10, which calls upon States to prevent illicit trafficking in a way that is consistent with international law. Although any reference to interdiction is missing, most scholars agree that the “legal footing for high seas interdiction is manifestly stronger after adoption of S. Res. [UNSC Resolution] 1540 than before.”[7]

3. Product of the five permanent members of the UNSC is not democratically legitimate: Several sides voiced concerns about the fact that the drafting of the resolution was initially only an issue among the five permanent members of the UNSC (P5). In close connection with this point, several country representatives and scholars stated that an unrepresentative and undemocratic body such as the Council is arguably unsuitable for international lawmaking. [8]
4. Unclear language and abrogation of higher standards: Even though the resolution defines the terms “means of delivery,” “non-State actor,” and “related materials,” the definitions are still very vague and leave a broad margin for discretion. This leads to the fear that while implementing the resolution, States may abrogate from higher standards, which were developed in other contexts, such as treaty regimes or export control agreements.

## **Implementation of UNSC Resolution 1540 in General**

In OP4, Resolution 1540 calls “upon all States to present a first report no later than six months from the adoption of this resolution to the committee on steps they have taken or intend to take to implement this resolution.” Only 51 countries met that deadline. By January 2005, 86 reports had been submitted; by June 2005, the number had reached 119. Close to the end of the two-year mandate on April 19, 2006, the number of reports reached 130 (one of which was submitted by the European Union); by August 2007, six additional countries submitted their first reports. An analysis [9] conducted one year after the adoption of the resolution assessed a certain number of the first reports that were submitted by the countries. This analysis showed that the reporting on the OPs varied significantly. The best reporting behavior was on OP2 and OP3d (export controls), to which 90 percent of the assessed country reports made a reference. On the other side of the spectrum were OP8d and OP10 with 63 and 67 percent, respectively. In its conclusions, the analysis found that there has been a high level of participation in reporting,<sup>vi</sup> and that the resolution has inspired at least a modest increase in activity relevant to preventing non-State actors from getting access to and using WMD. This was particularly the case in complying with existing requirements of treaty regimes and in cooperating with other countries. Several countries reported that they took further steps to implement the Chemical Weapons Convention (CWC).

After receiving the first series of national reports, the 1540 Committee set up a matrix for the assessment of the completeness of each country report. They were also an indicator for the reports’ shortcomings. The matrices were sent to the countries along with a request to provide additional information that would close the gaps in the first series of reports. The committee received 79 additional reports. While some countries did not respond at all to this request, others submitted up to three additional reports. Many countries filled out the empty slots of the matrix and handed it in as a second report.

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<sup>vi</sup> The analysis takes all reports into consideration that were submitted up to that point of time and is not limited to the reports that were handed in prior to the deadline.

## Final Report of the 1540 Committee

The final report of the 1540 Committee to the UNSC was submitted on April 27, 2006. As explained in its summary, the report built on the examination of data submitted in the national reports, the additional information provided by countries, and the information available in a legislative database developed by the Committee containing national laws and regulations.

In its report, the 1540 Committee described its findings in generic terms. A geographical reference was made in only one case; this reference occurred when the Committee mentioned the shortcomings of certain countries. Even in this specific reference, a judgment was not made: the report mentioned [10] that of the 62 countries that have yet to submit their first report to the Committee, 55 belong to three geographical regions—Africa, the Caribbean, and the South Pacific.

In the summary of the report, the Committee stated that the implementation is “an ongoing process that may not always lead to immediate results” [11] and that “much needs to be done to fulfill the implementation obligations of Resolution 1540.” [12] In line with this, the Committee called upon the UNSC, in the majority of its recommendations, to encourage the countries to continue or to intensify their reporting and implementation of the resolution. Although the report lauded the results achieved so far, it stated that “the positive response by the majority of States cannot be considered entirely satisfactory.” [13]

The report also provides detailed recommendations for the UNSC and for countries to continue fulfilling the requirements under the resolution. Some of the main recommendations contained in the report to the UNSC include the following:

- The UNSC should share the examination findings of the information provided for further clarification, where it is considered necessary;
- The UNSC should use the legislative database to assist non-submitting States in the preparation of their national reports;
- States and International Organizations should increase their outreach activities and tailor them to meet the needs of individual States; in general, regional and sub-regional outreach efforts should be widened and intensified;
- The UNSC should raise the awareness that the lack of legislation as required by Resolution 1540 places States at risk by providing a potential safe haven for non-State actors;
- States should make use of action plans, guidance, and model legislation offered by International Organizations;
- The UNSC needs to encourage States to develop road maps or plans of action to address legislative and enforcement measures required to fully implement the resolution.

In the context of various interviews that the author conducted in July 2005, several unnamed Non-Aligned Movement (NAM) diplomats predicted that the committee would only be able to review the additional reports in the second half of its first two-year mandate. They stated that the committee would be in no position to come to a point where it would be possible to say that the work is finished. The final report shows that these assumptions were correct. In Resolution 1673, the UNSC extended the mandate of the 1540 Committee by two years and decided that the Committee shall intensify its efforts to promote the full implementation of the resolution.

In Resolution 1673, the UNSC reaffirms its call upon States to submit their first report [14] but only “encourages” [15] States to submit additional information. The way the UNSC resolutions are typically drafted, the use of the term “encourages” expresses a lesser level of support than a “call” upon States. According to the 1540 Committee’s recommendation in its report, the resolution should have been phrased as the following: “encourages States to provide additional information on national implementation as an ongoing process [...]” [16] The phrase “ongoing process” is missing in Resolution 1673. In other words, the only reporting obligation that countries have is to submit their first report; the submission of additional information continues to be voluntary. Therefore, the Committee is in no position to comprehensively assess whether the countries closed the gaps that the 1540 Committee identified in the first reports. Out of the 136 countries that submitted their first reports by August 2007, only 86 provided additional information. In consequence, the effectiveness of using the reporting as a tool to increase the implementation of the resolution and the standard of national nonproliferation mechanisms is highly reduced by the lack of a binding obligation to submit follow-up information.

In conclusion, it can be said that the report clearly summarizes the submitted national reports and evaluates their shortcomings. Potential reasons for insufficient reporting behavior are addressed briefly in the report. These include a lack of understanding, different national priorities, and a lack of resources. In addition to the general recommendation to continue and intensify the work done so far, the report also clearly outlines new steps that can help achieve the goals set up in UNSC Resolution 1540.

To help to streamline its work, the Committee approved during its first mandate four programs of work, each covering three to four months. Those programs set goals and guidance on issues the Committee wanted to undertake in the relevant period. In order to be in a position to address broader issues and deal with them more comprehensively, the Committee intended during its second mandate to work on the basis of two one-year programs of work. The discussions on the details of this first one-year program proved to be very troublesome. Because the countries could not agree on which issues to prioritize, the adoption of the program was delayed and the fourth program of the first mandate was extended in time. After three months of discussions, a provisional program was adopted. Finally, on October 1, 2006, the negotiations on the new program concluded with the adoption of the new program. According to this program, the Committee focuses, but not limits, its attention on two major areas of work. The first area aims at an increase of the Committee’s knowledge by examining the information on the status of the implementation of Resolution 1540; the second area encourages outreach, dialogue, assistance, and cooperation to promote implementation of all aspects of the resolution. It remains to be seen whether changing from the short programs of work to the one-year option was worth the delay. It is furthermore open in how far this new approach facilitates the realization of the steps that were suggested in the final report of the 1540 Committee.

## **Implementation of 1540 in the Middle East**

### **Quantitative Overall Analysis**

At the very beginning of the quantitative analysis, it must be mentioned that every country of the Middle East submitted at least one report to the 1540 Committee. Counting both first reports and additional reports, 32 documents were submitted. This is a very positive response for two reasons: first, only two-thirds of *all* countries handed in a report; second, in its final report, the 1540

Committee “deplored” that the majority of non-reporting countries came from Africa and Asia, [17] which are the two continents the Middle East spans.

The national reports of the Middle East contain references to 15 planned or ongoing measures and to 14 measures that have been already taken. The OPs on which countries reported the largest number of measures are OP2 and OP3a—these OPs account for more than 50 percent of all reported measures either taken or planned.

The following paragraphs focus on the prevention of non-State actors accessing WMD and appropriate effective accounting measures for WMD and related materials, respectively. This is a positive sign when assessing the completeness of the implementation of the resolution, because these paragraphs not only contain essential provisions of the resolution but also deal with the legislative power of the UNSC, which was and still is under severe criticism. [18]

Algeria reported the most measures in the Middle East. In its first report, Algeria stated that it had already taken three new measures to implement OP 2, 3a, and 8c and that four more measures are ongoing or are planned to be implemented on OP 1, 2, 3c, and 8d. This high number of measures shows that Algeria’s legal system contained major gaps in regard to non-State actor proliferation, and that Algeria had a very good understanding of how these gaps had to be closed and what measures to report back to the 1540 Committee. It can be assumed that Algeria gained this understanding in its capacity as one of the first members of the Committee.

Syria also excels in its quantitative reporting behavior; altogether, it listed six measures in its four reports: three they had already taken and three in the planning phase. In contrast to the Algerian report, Syria focused its implementation action on the OPs 2 and 3a, to which all its measures refer.

These two examples cannot belie the fact that 10 of the 18 countries in the region did not report about any measure taken. Of the remaining six countries, Iran and Iraq reported three measures; Egypt, Jordan, Libya, and Qatar reported only on one or two measures each.

The OP that countries reported the least on (without regarding the question of whether any measures were taken or planned) was OP3d—transshipment and end-user controls. Only 17 percent of the countries in the Middle East referred to this provision in their national reports. The aforementioned study [19] that analyzed 47 reports found that 71 percent of all countries provided information on this norm. So the discrepancy between the general reporting behavior and the Middle East reporting behavior is quite large (54 percent). The poor compliance with the reporting behavior on this norm is of special significance for major trading hubs—such as the United Arab Emirates (UAE)—that experience a huge turnover in goods, mainly containerized shipments. Dubai is the eighth largest container port in the world and it has doubled its container turnover in the four years between 2002 and 2006. [20] Even though Dubai hosts by far the largest container port in the region, with roughly nine million containers turned over per year, the importance is not limited to this port; other ports in the region have also significantly increased their turnover. An example is Sharjah, which has doubled its turnover within only six years. Even though it is impossible to control all of the many million standard containers that enter each port every year, improved transshipment and end-user controls, better detection methods and equipment, and improved cooperation will lower the proliferation risk by increasing the likelihood that illicit shipments will be detected and intercepted. However, it is not solely up to the countries in the region to extend their controls. In general, a need exists to improve transshipment and end-user controls. This is a shared responsibility among the seller, the shipper,

the trans-shipper, and the relevant ports. The higher the number of controls that the freight experiences on its way to the end-user, the greater the possibility that illegal trafficking can be interdicted. Effective transshipment and end-user controls at the trading hubs in the Middle East would constitute another important link in that chain.

A second significant reporting gap exists in regard to OP8b, which regards compliance with key multilateral nonproliferation agreements. Here, the gap is even larger; it reaches 57 percent. This can also be seen as an indicator of the non-universality of the treaty regime, especially the fact that many countries in the region are not State parties to the treaties (see Annex 4). The smallest gap in reporting behavior is on OP3d (export controls), where the gap reaches only 12 percent. This small gap highlights that export controls are a very tangible subject that countries deal with outside the nonproliferation context. An average difference of 30 percent exists. This demonstrates that all positive aspects are only relative; it is very important that this gap be narrowed and that the countries in the region increase their general reporting behavior on all OPs.

Another study [21] that also focused on the implementation progress came to a similar conclusion based on a different methodology. This study considered the process used in 85 key countries by analyzing the matrices used by the 1540 Committee.<sup>vii</sup> Among these 85 are 10 countries in the Middle East: Algeria, Egypt, Iran, Iraq, Israel, Libya, Oman, Saudi Arabia, Syria, and UAE. In accordance with the approach of the 1540 Committee, this study divided the fulfillment of key obligations into three categories: criminalization (OP2), accounting and security (OP3a, b), and border and export controls (OP3c, d). The average fulfillment rates for these categories among the 85 countries are 23.3%, 27.9%, and 22.2%, respectively. The average score for the 10 Middle Eastern countries was always below these figures. Their fulfillment rate deviates by 6.0%, 13.7%, and 10.5%, respectively. However, on an individual country basis, there are some exceptions to the poor performance. In the first category, which is criminalization, two countries significantly achieved higher results than the average: Algeria (30.8%) and Iran (47.4%). In the second category, which is accounting and security, Iran again meets the overall average. In the third category, which is border and export controls, only Israel achieves a higher value than the average, at 30.8%. It is interesting to note that this is the only figure where Israel exceeds. In the other two categories, Israel's fulfillment levels are below overall average levels, and even fall below the Middle Eastern average levels. Syria's fulfillment levels also leave a positive impression: even though they do not match overall standards, they are higher than the average value of the region in all three categories. The good results of Iran and Syria might be surprising for some, especially as suspicions were raised that Iran and Syria engage in proliferation activities, foremost in the light of the Iranian nuclear program. [22] Some countries may entertain the suspicion that Iran and Syria might have especially used the reports submitted to the 1540 Committee as a means to show their commitment to nonproliferation and thereby tried to invalidate the allegations that were brought forward.

In a ranking of the total fulfillment of the key obligations among the 85 countries, Iran would take the highest position and end up in the 41<sup>st</sup> place.<sup>viii</sup> Following Iran are Israel (47), Algeria

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<sup>vii</sup> These matrices are not open source information. It was therefore not possible to add the information of the eight countries of the Middle East that are not included in this study. The selective information is used nonetheless in order to have a second study in addition the one mentioned earlier—see footnote 13.

<sup>viii</sup> The selective approach of this study poses again a problem of comparability. The given ranking positions are based on a group of 85 states and not on the 192 member states of the UN. Therefore, their position would change in an overall ranking. However, their position in relation to each other would remain. Even though among the 85

(53), Iraq (55), Egypt (56), Syria (58), Libya (65), UAE (70), Oman (76), and Saudi Arabia (84). In regard to this ranking, the study notes that “[o]f particular concern is the fact that the states that have not fulfilled any of their key obligations (Oman, Saudi Arabia, and the United Arab Emirates) are all on the Arabian Peninsula and encompass many of the primary import/export and transshipment points in the Persian Gulf.”<sup>ix</sup>

## Analysis of Individual Reports

In this section the reports of the Middle East are analyzed on an individual basis. In the subsequent section, their commonalities will be described. The current analysis will be grouped by three sub-regions—Maghreb, Mashriq and Egypt, and the Gulf Region.

### Maghreb

Morocco [23] reports only on a limited number of the obligations under the resolution, namely on OP3a, 3b, 3c, and OP 8. It refers to several draft acts on physical protection, accounting, and security, but it is not clear whether the drafting of these acts was initiated before the adoption of Resolution 1540. In its additional report, [24] which was submitted in the form of the completed matrix, Morocco gives information about legal acts containing provisions required by Resolution. It also refers to a Dahir<sup>x</sup> dating back to 1914, the text of which is not attached to the report. Therefore, it cannot be assessed whether the Dahir fulfills the requirements of Resolution 1540. However, it is hard to imagine that any legal act over 90 years old that was adopted 24 years before Otto Hahn discovered nuclear fission is suited to deal with the various issues that are covered by OP 2 of the resolution, even if the act is interpreted in very broad terms. It thus can hardly be regarded as an “appropriate effective” law as required. The Moroccan report contains no reference to a Middle Eastern WMD-free zone (WMDFFZ) or a nuclear weapon-free zone (NWFZ).

As previously mentioned, Algeria reported the most measures of the Middle East in its first report. Consequently, the additional information provided by Algeria was very short and consisted mainly of details on provision OP2 in regard to chemical weapons. However, the information provided did not complete the remaining gaps according to the 1540 Committee’s matrix. Furthermore, the second report contains few references to legislation concerning nuclear issues. This comparatively good reporting behavior can be viewed in light of the fact that Algeria was a member of the UNSC during 2004 and 2005. Algeria was thereby involved in the final period of negotiations prior to the adoption and also a member of the 1540 Committee. It thus had a deeper insight into the reporting requirements than many of the other countries in the region. This is also reflected in the fulfillment ranking, in which Algeria is in the second highest position of the Middle East countries.

Libya submitted two complementary reports. [25] While the first report completely neglected OPs 1–3 and contained only information on some of the other provisions, the second report fills these gaps, so that these two documents together give a good overview of Libya’s

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countries that were selected for this study are the major actors in the field in terms of trade and international political and nonproliferation activity, this does in no way imply any qualifying statement on the fulfillment level of the states whose reports were not analyzed or those that have not submitted a report.

<sup>ix</sup> Ibid.

<sup>x</sup> In Morocco, a Dahir is a royal decree. All laws and legislation must be promulgated by Dahir.

implementation. It is also mentioned that Libya is working collaboratively with its two neighbors, Egypt and Tunisia, on export and border control issues.

Tunisia belongs to the group of countries that have submitted only one report so far. Its report is comparatively short and contains no reference to new measures. Like the Moroccan report, the Tunisian report contains no reference to a Middle Eastern WMD or NWFZ.

## **Mashriq and Egypt**

Syria was one of the first to submit a report. [26] Although the report is not as comprehensive as the report of Iran, Syria excels in the additional information it provides. [27] Altogether Syria has submitted three additional reports. Every one of these contains information on new measures that were taken or are planned. The additional reports were submitted almost in a monthly sequence. Syria also submitted the completed matrix to the Committee. In its report, Syria reiterated its earlier calls “for ridding the Middle East region of weapons of mass destruction, in particular nuclear weapons.” [28] The emphasis that it put on nuclear weapons is clearly directed toward Israel, which is the only country in the region that possesses this type of weapon. The focus on the destruction of nuclear weapons would offer a strategic advantage for Syria: while it could maintain its chemical weapons stockpile and its bio-weapon research program, Israel would be obliged to undertake disarmament measures. Considering Israel also possesses chemical and biological weapons, the scale would be more level afterward.

Iraq submitted a nearly complete first report; [29] in it, Iraq reported on all main provisions except for OP3b, which deals with physical protection. Iraq delineated in its additional report [30] the action it planned to take to close this gap. In particular, Iraq lists article 9 paragraph 1 (e) of its newly adopted constitution, which reads: “The Iraqi Government shall respect and implement Iraq’s international obligations regarding the nonproliferation, non-development, non-production and non-use of nuclear, chemical and biological weapons and associated equipment, material, technologies and delivery systems for use in the development, manufacture, production and use of such weapons.” [31] By granting these principles the status of a constitutional provision, Iraq underlines the importance of these principles and its commitment to comply with these obligations. This indicates a stronger commitment and a stronger legal stance than a normal national law adopted by parliament. A constitutional provision of this kind still requires detailed regulations on how the relevant international legal documents are to be implemented; however, the commitment to do so is expressed on the highest legal level and future national law has to be interpreted in the light of the constitution.

Neither the first report submitted by Lebanon nor the additional information it provided contained any reference to a new measure for the implementation of Resolution 1540. The submitted documents were mediocre in terms of completeness and substance. They contain no reference whatsoever to OP3a and b (physical protection and accounting). A short note on export controls is included, [32] in which Lebanon states its willingness to further develop its existing legislative system and draft new laws and regulations pertaining to control of the export, transit, and cross-border transport of WMD. In contrast to this willingness stands the far-reaching Lebanese assessment that the security and customs procedures applied in all ports and at all border crossing points guarantee the impossibility of introducing WMD or any other weapons into Lebanon illegally. Lebanon elaborates very briefly and in general terms on this point. It provides no reason as to why it assumes that its borders are impermeable: “the public prosecutor’s offices and public security and customs authorities coordinate and cooperate with

one another with a view to tightening control operations so as to prevent the entry or transit of any such weapons or materials or any trafficking in them in accordance with the applicable laws and regulations.” [33] By others, the Lebanese borders are regarded as less impregnable. For example, the Israeli press reported that Syria and Iran have smuggled truckloads of long-range missiles into Lebanon. [34]

The report of Jordan [35] is quite complete. It adequately addresses the main obligations of the resolution; only a reference to end-user controls and transshipment is missing. The gaps in regard to OP5–OP9 that existed in the first report were filled in the additional report, [36] which contained several references to nuclear issues. Jordan stated its intention to endorse the International Atomic Energy Agency (IAEA) Code of Conduct on the Safety and Security of Radioactive Sources and noted that action has been taken in that direction. Jordan also intends to participate in other activities such as the IAEA Database on Illicit Trafficking of Nuclear Materials and other Radioactive Sources. Jordan also reported that it signed the Nuclear Terrorism Convention in 2005. It is interesting to note that these steps were announced or taken almost two years before King Abdullah II publicly expressed Jordan’s intention to start a civil nuclear program.<sup>xi</sup> Therefore, one can assume that—contradictory to what the King said—the events of the summer 2006 were not the reason for the increased interest in a nuclear program. Rather, the idea for such a program circulated several years prior to that. Jordan’s participation in these legal instruments can, in this regard, be seen as laying the legal ground for the upcoming program.

In both reports, Jordan stated its intentions to join the Convention on the Physical Protection of Nuclear Material (CPPNM). Even though Jordan originally stated its intention to do so in February 2005, Jordan has thus far not signed the convention. [37]

When it comes to the assistance that is foreseen in OP7, Jordan reports on nonproliferation training that was provided to the Jordanians by the American Government through the Export Control and Related Border Security Assistance (EXBS) program. The aim was to create an integrated program in the Kingdom to enhance the performance of border posts to prevent smuggling or the entry of cargo that might be used for the production of WMD and to ensure the safety of dual-use goods and materials. The program seeks, *inter alia*, to institutionalize cooperation through the formation of a national committee, including national agencies charged with classifying materials that require special control and issuing import and export control lists.

The second Jordanian report also contains information specifying that the government is making earnest efforts to conduct a complete review of national legislation, including laws, regulations, and directives relevant to the implementation of Resolution 1540. By May 2007, this review was completed and Jordan currently perceives its legal body as satisfactory. [38]

Israel submitted a nearly complete report [39] to the 1540 Committee. The document addresses almost all obligations contained in OP1 to OP3d. Israel is even one of the three countries that mentioned end-user controls and transshipment. The only downside is that the report contained no reference to OP3a, which deals with accounting and security, nor to OP8a, which promotes the universality of the international WMD treaty regime. Because Israel is a signatory to the

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<sup>xi</sup> King Abdullah II announced his plans for a peaceful nuclear program in an interview with *Haaretz* on January 9, 2007, <http://www.jordanembassyus.org/hmka01192007.htm>. The other States in the region include Egypt, Saudi Arabia, the states of the Gulf Cooperation Council and Turkey. In some sources, Northern African States are listed.

CWC but has signed neither the Biological and Toxin Weapons Convention (BTWC) nor the NPT, it is consistent that Israel does not give any information on this OP.

One characteristic that distinguishes Israel from the other countries in the region is its relatively high level of economic development. Israel engages in more trade with countries both inside and outside the region than other Middle East countries. Due to this interaction, there is a requirement for a different set of regulations than those needed in a developing country, in which a subsistence economy or an import-based economy tends to outweigh industry and services. In addition, Israel's special security situation is a factor that differentiates the country from many other countries in the region. It tries to protect itself not only from internal conflict, but also—especially in light of the intifadas and last year's Lebanon war—from terrorist attacks. These considerations contribute to the fact that Israel had a comprehensive legal regulatory body in force long before the adoption of UNSC Resolution 1540. An example of this occurred when Israel stated that the “most recent legislative development [that preceded UNSCR 1540] is the adoption of a new order controlling chemical, biological and nuclear exports, thereby upgrading existing national legislation and consolidating current practice.” [40] This shows that Israel had already reached a level where it could improve an existing set of norms and is not limited to setting up these norms.

In its report, Israel states that its “legal infrastructure in relation to non-proliferation is based upon an extensive set of legal instruments which are designed to effectively prevent the proliferation of items related to nuclear, chemical and biological weapons and their means of delivery.” [41] Therefore, Israel will adopt only a few new measures. The only measure that is specifically mentioned in the report is the development of a computerized system to build profiles for identifying cargo/shipments suspected of violating customs laws and regulations, including those concerning WMD. The nature of this measure also exemplifies the level of sophistication inherent in other already existing regulations.

In August 2007, the Israeli parliament, the Knesset, was about to approve a new law titled “Export Control Act, 2007.” According to an internal assessment, this law constitutes an important step taken by Israel to strengthen its export control system. [42] Details on this draft law, the provisions it envisages to amend, and the gaps it is intended to close were not available at the time of this writing.

The reports Egypt submitted were of mediocre quality. First, the Egyptian reports were very short; the first report consisted of only five pages, and the second report consisted of one page. Second, the substantive content is limited. Egypt spent almost one-fourth of its first report listing the international nonproliferation and counter-terrorism instruments and initiatives in which it is involved. In the first report, Egypt covered the main obligations except for OP3a and OP3d (end-user controls). The first gap was closed by the additional report, in which Egypt stated that it is in the final phases of drafting a national act to establish a national system for accounting and control of nuclear material, which will be responsible for monitoring and controlling all nuclear material in Egypt. [43] This progress might have contributed to Egypt's scores in the second study mentioned above: it fulfills the criminalization and accounting provisions and secures obligations, while reaching in both categories a score of 25.6%. This score is significantly higher than the regional average and even hovers around the overall average. In contrast to this positive note is the remaining gap of OP3d (export controls, end-user controls), which Egypt did not report on in either document. Due to this missing information, the mentioned study allocates Egypt only 9.0% for this section, well below both the overall and regional averages.

## Gulf Region

The quality of the Gulf Region's reports strongly varies. The one extreme is Yemen's report, [44] which is by no means satisfactory and offers a perfect example of what a report should not look like. Yemen submitted only one sentence: "The Permanent Mission of the Republic of Yemen to the United Nations presents its compliments to the Chairman of the Committee and, in reference to the Committee's letter dated 9 December 2004, has the honor to inform the Committee that the Republic of Yemen does not possess nuclear, biological or chemical weapons." It is laudable that Yemen does not possess WMD, but this information is only of limited importance for the purpose of Resolution 1540 and it certainly does not fulfill the reporting requirement. The report of Yemen is not an individual case: there are similar submissions from outside the Middle Eastern region. Namibia's report, for example, was quite homologous, [45] though insignificantly longer.

The report of Bahrain is of equal quality to that of Yemen and therein also an example of what a report should not look like. Even though the country elaborates slightly more on nuclear issues, it contains almost no substance.

On the other side of the scale, Iran's submission is an example of a rather complete report. Its first report [46] directly references every OP and furthermore delineates the steps it has taken to implement the CWC. In its second report, [47] which was submitted one year later, Iran commented on all of the OPs, as in its first report. It also amended a passage in the first report for better understanding. Iran attached the Committee matrix to its report and diligently filled the gaps.

The reports submitted by Qatar [48] contain information about implemented and envisaged measures, but these are of general nature and by no means comprehensive. The reports contain only one reference to OP2; no aspect of OP3 is addressed. However, Qatar mentions that it established a National Weapons-Ban Committee that is tasked to offer "advice to competent governmental agencies on all questions pertaining to the ban on weapons of all types, including nuclear, biological and traditional weapons." [49] The mandate of this committee is very broad and was—at the time of the submission of the first report—involved in the implementation of the CWC. Issues that are of relevance for the first three OPs of Resolution 1540 are not listed. This poor reporting behavior is surprising, at least in terms of the second report, since Qatar has been a non-permanent member of the UNSC since the beginning of 2006, and therefore is automatically represented in the 1540 Committee. This means that Qatar is involved in assessing the submitted reports and gained insight into the work of the committee and the kind of information that it expects the countries to report on.

The UAE submitted a very short and meager report, in which it only referred to four sub-paragraphs of the resolution. The second above-mentioned study based on the 1540 Committee matrices assigned UAE 0.0% fulfillment for the reporting on OP2 and 3a and b. Even though UAE submitted its first report very early, in December 2004, and was made aware of its gaps by the 1540 Committee, it has not thus far provided follow-up information.

In early September 2007, UAE announced its long-promised export law. [50] This law forbids the unlicensed export of precursors for biological and chemical weapons and dual-use items. It also contains a so-called catch-all clause. Some authors attribute the adoption of the law solely to continuing complaints from the US that sensitive exports to Iran have been funneled through the UAE.[51] These authors neglect the fact that the European Union also conducted a major project

with the UAE that aimed at the adoption of export controls, especially in the field of dual-use goods. The work of the project will be carried on beyond 2007 in another pilot project after concluding a contract with the European Commission.[52]

Like the UAE, Oman also submitted two very short reports. While the first report only addressed the implementation of the international nonproliferation treaties and the WMDFZ in the Middle East, the follow-up report contains a few references to OP3c. However, the second report still hardly fills the gaps. As a result, the Sultanate also scores 0.0% in fulfillment for the reporting on OP2, 3a and b. In regards to OP3c and d, it has a slightly higher score: 1.7%. Overall, this brings Oman to the 76<sup>th</sup> place out of 85 assessed countries.

Kuwait handed over the second longest first report of the Middle East. However, this report contained only very limited substance. Kuwait laid out extensively and in detail its various national legislative acts and how they were amended to comply with Resolution 1540. In some cases, the full text of the regulations is provided, which still does not contribute to increased understanding. The report contains no direct information on the main OPs.

The largest country on the Arabian Peninsula, Saudi Arabia, joined the majority of countries in the sub-region and submitted a short and low-quality report. The kingdom scores the lowest of all countries, with figures of 0.0% in all three categories. The report contains only very general information. For example, it stated that “[no chemical and radioactive] materials may be brought into the country without prior authorization by the competent authority.” That is what one hopes for, but because Saudi Arabia has 4431 kilometers of land boundaries and a 2640-kilometer coastline, one could hope to receive more detailed information on how it assures that these vast borders are kept under control and WMD are kept outside. The additional information that the Kingdom provides contains only one reference to a national law that was adopted to implement the CWC.

## **Commonalities of the Country Reports**

In this section, the reports of the countries in the Middle East will be assessed for commonalities in terms of successes and gaps. The goal is to contribute to the effectiveness and efficiency of the resolution’s implementation and of relevant implementation assistance. Once key issues are identified, lessons learned can be shared more easily among the State community and common outstanding issues can be addressed jointly to facilitate the implementation of Resolution 1540. This leads to a very positive side-effect for the involved countries: they do not have to spend the same amount of time and resources, both in terms of finances and personnel, to reach an acceptable standard of implementation. They can instead share the work and also the (financial) burden. This is an especially attractive approach for small countries because their resources are per se more limited than those of larger countries. A joint approach would furthermore create more sustainable results: problems in regard to the neighboring countries that might arise after unilateral action can already be addressed in the forefront.

## **Lack of Understanding**

According to the 1540 Committee, [53] the reasons for not submitting national reports, and the reasons for the gaps in national implementation result in part from insufficient understanding, different national priorities, and a lack of capacity. Other possible explanations include time shortage and a lack of personnel experience, competence, or diligence in gathering and

formatting the necessary information. However, taking a position in favor of the countries and assuming their general will to cooperate, poor reporting quality can primarily be seen as a major indicator of a lack of understanding regarding the extent of the obligations that arise from the resolution, at least in the initial period after the adoption of the resolution in April 2004.<sup>xii</sup>

This assumption is bolstered by the fact that Resolution 1540 defines the obligations only vaguely and in imprecise terms, so that the extent of the obligations was disputed not only prior to the resolution's adoption but is still being discussed by the members of the 1540 Committee up to the time of this writing. Keeping this in consideration, it is only natural that not a single country was in a position to submit a report that reached a completeness level nearing 100 percent. In fact, there were only two countries, namely the US and Germany, that scored over 56 percent. [54] Therefore, the committee was required to ask every single country that complied with the reporting obligation for additional information and clarification. These follow-up requests also served as explanations for many countries. They provided the State community with additional insight regarding the reporting requirements.

All countries in the Middle East region under consideration submitted at least one report to the 1540 Committee. This means that all countries also received, in return, the matrix that showed what they reported, the information that was expected, and accordingly, the locations of the main gaps in their reports. This removed the ambiguities and the lack of clearness of the resolution's language that might have caused a misunderstanding. Consequently, all countries had the opportunity to submit a follow-up report with the required information to close the existing gaps. Therefore, the vagueness of the resolution's text cannot serve as justification for the countries in the Middle East to submit reports that score significantly below the global average in terms of completeness. Aside from Iran, this is especially true for the countries in the Gulf Region. Their reports contained hardly any usable information, regardless of the length of the reports. As mentioned above, the report of Kuwait contained 13 pages, but is of poor quality.

The lack of understanding of the reporting obligation is exemplified by the report of Yemen, in which the country solely declares that it does not possess WMD. This one-sentence report does in no way comply with the requirements set up in the resolution, namely to give an account of Yemen's system of "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" (OP3).

It has to be noted that the results in the discussed sub-regions vary significantly: the Maghreb and the Mashriq regions, including Egypt, scored comparatively well for regional standards. In these two sub-regions, only four of 10 countries did not elaborate on all aspects of OP3.<sup>xiii</sup> These countries are Israel, Lebanon, Libya, and Tunisia. With their follow-up documents, all but Jordan (which submitted a very complete first report) closed at least some of the gaps that existed in the first series of reports. This indicates an increase in understanding of the extent and nature of the obligations.

In stark contrast to the Maghreb and the Mashriq regions are the Gulf Region countries. Seven of the eight countries in the Gulf, again leaving aside Iran, achieved the worst results of all 18 assessed countries. The reports of the Arab countries in the sub-region also contained significant gaps, although not to the extent of the report submitted by Yemen. All of the remaining seven

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<sup>xii</sup> For a summary of the resolution's obligations, see "Content," pg. 8.

<sup>xiii</sup> Except the issue of end-user controls, see "Reporting on OP3d," pg. 24.

Gulf countries, except UAE, make only one or, in some cases, no substantial reference whatsoever to OP3 measures. Qatar and Saudi Arabia, which both submitted additional information as requested by the 1540 Committee, did not close even parts of the wide gaps that their first reports left. Only Oman provided basic information on its border control measures under OP3c. In these cases, it seems that a lack of understanding still persists.

The lack of understanding of the 1540 obligations appears even wider if one takes into consideration the nature of the obligations under OP3, which requires countries to report on export controls. Of the seven Gulf countries, only Kuwait and UAE did so. It can be assumed that each country is engaged in international trade, and thus possesses some kind of export control system, regardless of the level of sophistication. If countries recognize that their system is inadequate during the process of preparing the report to the 1540 Committee, including a short note that explains the countries are aware of this gap and are working on methods to close it would suffice the reporting requirements. However, even such brief notes are not contained in the large majority of the Gulf country reports.

For this reason, it is highly recommended that the efforts of the international community and organizations focus on increasing the understanding of the resolution's obligations among the countries in the Gulf Region. A good example of these endeavors is a workshop that was held in May 2006 in Dubai and was organized by the London-based Verification, Research, Training and Information Center (VERTIC) along with the Gulf Research Center (GRC). [55] This workshop was entitled "Laying the foundations for a WMDFZ in the Gulf: approaches to national legislation for WMD agreements," and attracted participation from all Gulf countries, including Iran. This event provided an opportunity for representatives to learn about legal aspects of the national implementation of international nuclear, biological, and chemical weapons agreements, as well as UNSC Resolution 1540. It also provided the VERTIC and GRC with an opportunity to learn more about the positions and concerns of participating countries regarding nonproliferation of WMD in the Gulf region, including identification of areas in which technical and/or legal assistance would be useful in implementing appropriate national measures. As indicated by the above reporting results, more workshops of this kind are needed to ensure that the events are not solely one-time meetings where countries present their positions. Follow-up actions are necessary.

After the assessment of the first reports, the Committee distributed the matrix in order to offer countries a better understanding of their reporting obligations. This consequently resulted in an increase of relevant information received by about 67 percent on the global level. Considering the fact that several outreach activities have already been conducted or will soon be held, the lack of understanding cannot serve indefinitely as an excuse for gaps in the additional reports. Again, taking a viewpoint in favor of the countries, if the gaps continue to exist, likely a lack of capacity or different national priorities can be seen as the reason. The latter point will be assessed in the next section.

## **Setting Priorities**

The lack of understanding of the resolution's obligations is closely connected to another problem that is widespread among the countries in the region—this problem deals with the fact that many countries do not believe Resolution 1540 is important to them, so they do not set its implementation high on its list of priorities. This second problem might also be seen as one of the reasons for the first. Many countries are not aware of the motivations underlying the adoption

of Resolution 1540, so they do not comprehend why the resolution was added to the nonproliferation regime and the nature of the threats the resolution is intended to mitigate. For these countries, the resolution is just another element of the nonproliferation regime, and plays an equally (un)important role as the other instruments. They are not aware of the fact that Resolution 1540 does not duplicate existing obligations in a form of a UNSC resolution but that it possesses a new character by addressing non-State proliferation, something that is not included in the existing WMD treaties.

In many cases, a kind of “island thinking” prevails, which can take two forms. In the first form, certain countries are under the impression that proliferation activities outside their territory do not affect them. In the second form, countries might also believe certain non-State actors that find a safe haven in their territory but direct their activities against another country or entity pose no risk to them. However, through the easy transfer of goods and especially knowledge, this very narrow-minded way of thinking can backfire: countries may experience a threat from a third party that has contact with the group on the country’s territory.

These “islander” countries have missed out on the developments of recent times, namely that the process of globalization also extends to non-State actors—including terrorists<sup>xiv</sup>—and that terrorist planning, procurement, and training phases are not bound to any region where they later plan to conduct their terrorist act. Instead, these activities can happen anywhere. The bombings of Djerba, Riyadh, Casablanca, Sharm al-Sheikh, and Amman show that terrorism also stretches out to the Middle East. Technology and especially knowledge are no longer static. The role time and distance play is far diminished in comparison to the Cold War era. Nonetheless, many countries behave as if the problems stop at their borders; but here, the (adapted) quotation of John Donne holds true: no country is an island.

In the course of international transport, State and non-State actors alike ship WMD and related materials into or through third countries. If there is a lack of legislation prohibiting and penalizing non-State actors’ possible use of a State’s territory as a safe haven for activities related to WMD and their means of delivery, the likelihood increases that the State’s territory will be used for exactly those purposes. The same is true if enforcement measures are weak or nonexistent. This not only poses a threat to the national security of the State in question, but also to international security in general.

Developing countries face, of course, a completely different set of problems than developed countries. The latter have more financial and human resources at hand that they can employ to address problems related to nonproliferation. The threats developing countries face are in many cases more tangible and more imminent, as they are more likely to turn into a widespread crisis. In contrast to this, nonproliferation-related threats are perceived by most developing countries

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<sup>xiv</sup> So far there is no internationally accepted definition of terrorism. The League of Arab States came up with the “The Arab Convention for the Suppression of Terrorism,” which was adopted in 1988. Terrorism was defined in the convention as: “Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize a national resources.” This definition is broad enough to cover the actions of the Israeli military against the Palestinians. These are titled as ‘state-terrorism.’ In contrast to that, the suicide bombings and other attacks on Israelis are seen as a legitimate struggle for independence. Once more, the saying that one man’s terrorist is another man’s freedom-fighter holds true. However, even the definition of the League of Arab States defines non-state actor behavior as terrorism.

only as hypothetical. Few leaders can imagine that inactivity or non-vigilance could harm their country because, for most, the memory of Hiroshima, Nagasaki, Halabja, and Tokyo seems very distant in time and space. Especially in the Middle East, the events of Halabja are primarily seen as another of the Saddam Hussein regime's atrocities and not as an attack with chemical weapons that could also be carried out by non-State actors.

This leads to the situation that the problems associated with Resolution 1540 are, in many cases, only addressed as a side issue; even the persons that work directly on its implementation say that the priorities of their governments lay on issues of greater importance, such as water. [56]

Another indicator of the low priority that the countries in the region attribute to the resolution is the amount of time that it took to submit their reports. The deadline for submission—October 28, 2004—was six months after the resolution's adoption. The deadline was met by only five Middle Eastern countries: Egypt, Lebanon, Morocco, Qatar, and Syria. Although Qatar was among one of the first countries to submit the report, the timely fulfillment of its reporting obligation is not paired with a high quality of the report, and the three pages of the document contained hardly any usable information. Libya and Iraq submitted their reports last, in mid-April 2005, which was almost six months after the deadline passed. But using time as an indicator also shows that the countries took the time to submit a report that is of adequate quality. For example, in the case of Iraq, it can be assumed that the late submission was no lack of political will. Since the March 2003 invasion by the US, Iraq suffers from political instability and civil war. Therefore, the new government understandingly had to concentrate its resources on issues other than the implementation of Resolution 1540.

Furthermore, the impression that the countries in the region do not put due emphasis on the implementation of the resolution is backed by the fact that only in very few cases a special coordinator was charged to oversee the whole implementation process. One of the few positive examples is Jordan, which is considering the establishment of a special body with members from all involved ministries for Resolution 1540 implementation. Since most countries do not have this type of central implementation organization, it is very difficult to find the person in charge. This is not only true for persons outside the system, but also for people inside the administration. In many cases, even those working in a related field of the government are not aware if a contact person or an implementation body exists. Moreover, individuals whose work covers issues related to Resolution 1540 are not willing or authorized to share information regarding the implementation process and the country's approach. This is not only an enormous hindrance for the emerging civil society that may want to become informed about the implementation progress, but also—and of far greater importance for the countries—for the internal coordination, the international community, and potential cooperation partners who want to assist in the implementation.

Differences cannot be made among the three sub-regions (Maghreb, Mashriq and Egypt, and the Gulf Region) in regard to priority-setting. The awareness of the new approach of the resolution, the need to take action, and the necessity to put the resolution higher on the countries' priority list all need to be increased throughout the region. This should be an essential component of ongoing and future outreach measures. A good way to do so would be to create Resolution 1540 programs in every country, provide them with case studies, and train them in a way that they can share their new knowledge and train other personnel. Furthermore, it should be encouraged that they connect with each other and share the relevant lessons learned and best practices among countries.

## The Bone of Contention: Israel

Israel is one point that is closely connected to priority-setting and clearly determines the way of thinking on many other points. Israel and its policies determine the threat perception of all other countries in the Middle East and, consequently, their security agenda. When Israel becomes involved, discussions become highly emotionalized and negotiations are soon deadlocked. The setting is not different in the nonproliferation context. Many of the reports that were submitted to the 1540 Committee contain references to Israel and the perceived threat it poses to other countries in the Middle East. [57] Actors in the region frequently stress the importance “that the international community does not turn a blind eye on Israel.” [58] It is equally noted that there is a strong nexus between Resolution 1540 and the NPT in the sense that it is not possible to be in compliance with the obligations stemming from Resolution 1540 if other problems, namely the NPT obligations, are not addressed. [59] Israel is not a signatory of the NPT and therefore not bound by its obligations. Furthermore, the NPT and Resolution 1540 are two completely separate legal regimes, one being an international treaty with voluntary membership, the other a binding resolution of the UNSC. These points underline the criticality of a political situation that is full of distrust: no involved party is willing to take the first step to break the impasse. Some Arab countries and Iran may even consider postponing the implementation steps that they are obliged to take in order to coerce Israel to adopt the NPT. In this case, they would not only act without any legal basis,<sup>xv</sup> but they would also act contrary to the overall aim of Resolution 1540. This would not only sustain the risk of non-State actor proliferation and its potential consequences, but impact the entire international community.

For this reason, all countries in the region must be reminded to differentiate between their various international obligations and nonproliferation instruments. It should be stressed that Resolution 1540 is, unlike the NPT, a non-discriminatory instrument that is equally binding to all countries. It even obliges countries that are not members of the international WMD treaty regime to take further measures than those of member States and to have a corresponding set of national legal instruments in place. Because Israel is the only country in the region that stands outside the NPT, the BTWC, the CWC, and the Comprehensive Test Ban Treaty (CTBT), its new obligations under Resolution 1540 are greater than those of other countries in the region that are already members of at least some of the treaties. Considering this, the adoption of Resolution 1540 has strengthened the position of the Arab countries and Iran. Full compliance with the resolution is in their national interests and attempting to use this as an instrument to influence or manipulate Israel’s policies would be counterproductive.

## Reporting on OP3d

One general deficit in the reporting behavior of almost all countries is the lack of any reference to the aspect of OP3d that deals with transshipment and end-user controls. Only Iran, Iraq, and Israel provided some information on this issue. In the case of the remaining countries, it can be assumed that there is a misjudgment about the importance of this issue. A threat is not only posed by the import of WMD and related materials into the country, but it is also imposed in cases in which the country serves as a stopping point on the way to the recipient. In these cases, the cargo stays also for a certain time in the country. This might be long enough to

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<sup>xv</sup> Leaving aside the problems of applicability in a multi-lateral framework, a potential *tu quoque* remedy is only applicable if the obligations stem from the same legal regime, namely a treaty. The presumably illegal behavior in form of Israel’s non-acceding to the NPT is outside the context of Resolution 1540.

(coincidentally) contaminate the region if the cargo is leaking or being released. The more means that are in place to interdict a shipment, the earlier interdiction can happen, increasing the chances of preventing non-State actors from gaining access to and using WMD. Therefore, the 1540 Committee highlighted that member States should be aware that unless they meet their obligations in full, such as by enacting and enforcing national legal and regulatory measures, their territories may be used for the transit or trans-shipment of WMD and related materials. [60] In contrast to the issue of transshipment, the recognition of export control measures is significantly higher: 13 out of the 18 countries of the Middle East reported measures in this field.

## **International Treaties**

The national reports also contained a number of references to the implementation of key treaties in fields that are relevant for the provisions of Resolution 1540. Iraq informed the Committee that it plans to accede to the CTBT and that it adheres to the provisions of the IAEA Code of Conduct on the Safety and Security of Radioactive Sources. Jordan intends to accede to the CPPNM, and Qatar reported that it is implementing the CWC. Libya reported about its ongoing efforts to strengthen the implementation of the BTWC. In its first report, Iran provided information about the implementation of the CWC but it was not obvious whether these efforts were made before or after the adoption of Resolution 1540. These are good examples that the resolution served as another incentive for the countries to comply with their treaty obligations. These obligations are in part identical with those of the resolution. Therefore, the countries can, while implementing their treaty obligations, implement the obligations of Resolution 1540.

In the Middle East, seven ratifications are still needed to achieve regional universality of the three main WMD treaties.<sup>xvi</sup> Many other countries that are members of the regimes still need to take additional steps to further implement the treaties. The various treaty regimes, the relevant international organizations such as the Organization for the Prohibition of Chemical Weapons, or other organizations in the field like VERTIC or the International Committee of the Red Cross, offer implementation assistance and model legislation. This assistance could be extended by showing these countries that full implementation of the treaties also fulfills many of the obligations stemming from Resolution 1540. This would have a synergistic effect, increasing the compliance level with several instruments simultaneously.

## **Sub-regions**

As seen during the analysis of the country reports, the countries of the three regional sub-groups—Maghreb, Mashriq and Egypt, and the Gulf Region—share commonalities. The countries show similarities not only in their reporting behavior, but also in their political outlook and economy.

The countries of the Maghreb region—Morocco, Algeria, Tunisia, and Libya—are all Northern African countries. As such, these countries are bound by the 1996 Pelindaba Treaty, which establishes a NWFZ on the continent. Furthermore, these countries all border the Mediterranean Sea and have close contacts to France, Spain, and other southern European Union countries. They are also involved in the Euro-Mediterranean Partnership. This creates the potential for increased cooperation in economic and nonproliferation issues.

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<sup>xvi</sup> One State still needs to join the NPT, five CWC ratifications are needed, and one State is still outside the BTWC regime.

The Mashriq region, which forms the heartland of the Arab world, has been strongly impacted by the political understanding and the identity of these Arab countries. The region not only hosts Israel with the above-mentioned related problems, but also contains several (self-perceived) major Arab countries such as Egypt, Syria, and Iraq. Since the fall of Saddam Hussein and the US invasion, the position of Iraq significantly weakened. However, these countries contest(ed) with each other for supremacy in the region, also on the military and security sector. They see—or in the case of Iraq, saw—their WMD arsenals as a tool to counter the Israeli WMD supremacy, which exists mainly due to its possession of nuclear weapons.

The countries of the Persian Gulf share both the low quality of their reports and also their economic situations as oil-exporting countries, which is a strong part of their political identity. In addition, all countries but Yemen are part of the Gulf Cooperation Council (GCC).<sup>xvii</sup> These countries are on the path toward ever-closer cooperation, including the free movement of persons and goods. This also enables them to cooperate more closely in the field of nonproliferation. As mentioned above, cooperation on nonproliferation issues among the GCC countries and Western organizations has already begun. Some of the Gulf countries, mainly UAE, also serve as major trading hubs, which underlines the need to have effective export controls in place. Furthermore, the Arabian Peninsula borders the conflict-prone Horn of Africa and Gulf of Aden. In some cases, the distance to the peninsula is less than 16 nautical miles, which means that illicit goods can easily be trafficked.

In many aspects, Iran stands apart from the Arab countries in the region. However, due to its oil-exporting industry and its regional proximity (including its bordering the Strait of Hormuz), it shares many interests with the peninsula countries, such as border controls.

These considerations demonstrate that common interests and existent cooperation within and among these sub-regions have the potential to facilitate the implementation of Resolution 1540: its aims can be achieved more effectively and efficiently. A common approach creates synergistic effects and lowers the costs so that full compliance should be in the interest of countries in the region as well as extra-regional powers, which may seek to assist in the implementation of Resolution 1540.

## **The Role of Regional Organizations**

The report of the 1540 Committee underlines the importance of outreaching to countries on a regional and sub-regional level and recommends that outreach activities should be broadened and intensified with a view to providing structured guidance to countries for implementing their obligations under the resolution. [61] In certain regions, this cooperation is given: the European Union, for example, submitted its own report [62] to supplement the reports of its member States. But one has to keep in mind that the European Union is a special case, due to its high level of cooperation and the transfer of national competencies to the European institutions. In the Middle East, no report contained any reference to the existing regional organizations, such as the League of Arab countries or the GCC. If cooperation is mentioned, as in the cases of the reports submitted by Morocco or Iraq, the IAEA or the US Department of Energy is named as a cooperation partner.

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<sup>xvii</sup> Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the UAE form the GCC.

All countries of the GCC submitted reports that contained large gaps. Cooperation among these countries, for example, in the exchange of information, lessons learned, or reporting assistance is advisable because these countries are not only in a direct territorial proximity, but they also share common economic interests and patterns. The GCC would be an ideal forum to coordinate this cooperation. According to article IV paragraph 2 of its statute, its objective is to “deepen and strengthen relations, links and areas of cooperation now prevailing between their peoples in various fields.” This very vague term is concretized in article 7 of “The Unified Economic Agreement between the Countries of the Gulf Cooperation Council,” which calls upon member States to coordinate their commercial policies and relations, especially in the field of import and export policies and regulations. Under this norm, countries could commonly address the important provisions of OP3c, 3d, and 6 of Resolution 1540. And because of the open way article IV paragraph 2 of the GCC Statute is phrased, cooperation is not limited and can easily be extended to other fields that are of relevance for Resolution 1540. To facilitate such cooperation, VERTIC and the GRC hosted the previously mentioned joint seminar.<sup>xviii</sup>

Seminars of this type can help provide countries in the Middle East with information on how to set up their national laws to comply not only with the WMD treaties but also with the obligations under Resolution 1540. Furthermore, countries can learn about their reporting obligations and how to jointly address common problems. A renowned non-governmental organization like VERTIC<sup>xix</sup> contributes expertise, and facilitates possible future requests for and offers of assistance under OP7 of the resolution.

Another framework in which the provisions of Resolution 1540 could be addressed is the League of Arab States (LAS). According to article 2 paragraph 2 of its Statute, one of the purposes of the LAS is the close cooperation of the member States, with due regard to the organization and circumstances of each country on economic and financial affairs, including commercial relations, customs, currency, and questions of agriculture and industry. Similar to the GCC, export controls, transshipment, and end-user controls and licenses can be subsumed under the terms “economic affairs,” “commercial relations,” and “customs.” But in contrast to the mentioned seminar, which is a good first step in the direction of further cooperation on these issues, the LAS has long been idle. The only item that is listed on its website [63] under the heading “nonproliferation” is the text of the UNSC Resolution 487 of June 19, 1981, in which the Council condemned Israel’s attack on the Osirak reactor. This highlights the pragmatic nature of the GCC countries’ approach.

However, there are indicators that the situation might begin to change in the near future. The LAS Group of Experts on Counterterrorism is scheduled to meet at the end of August 2007, to formulate a report that will be submitted to the Council of Nations, a group that consists of the Foreign Ministers of Arab nations. The Group of Experts has requested LAS member States to report on the steps taken to implement the counterterrorism resolutions, including Resolution 1540. This means that the resolution will at least be one point of discussion in the forum. It can be expected that the Group of Experts will try to coordinate national counter-terrorism efforts in the context of Resolution 1540. [64] The Group of Experts has not studied Resolution 1540 reports thus far, but has already addressed other aspects of WMD.

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<sup>xviii</sup> See “Lack of Understanding,” pg. 19, and “Content,” pg. 8.

<sup>xix</sup> VERTIC held seminars in the region and attracted participation from all states in the region, with the exception of Tunisia and Israel.

## **Nuclear Weapon-free Zone and WMD-free Zone**

Ten out of the 18 country reports contained a reference to a WMDFZ, in some cases making specific reference to a NWFZ in the Middle East. Among the supporters of such a zone are Iran, Egypt, Syria, and Libya—all countries that have been mentioned in recent times, albeit with varying intensity, in the context of possibly possessing a WMD program. It comes as no surprise that the Israeli report lacks any reference to a NWFZ or WMDFZ. Israel possesses all three types of WMD and is not party to any of the treaties for their regulation or prohibition.

Thus, the question of how Resolution 1540 could contribute to the establishment of such a zone arises. The resolution does not ban member State possession or deployment of WMD, as a WMDFZ would do, but OP8B does call for demonstrated compliance with key multilateral nonproliferation regimes. Resolution 1540 thereby only highlights the importance of existing treaties and the role they play in the endeavor to prevent proliferation to and by non-State actors. In this context, the resolution can only have an auxiliary impact, insofar as a high compliance rate with established treaties makes the establishment of WMDFZ more likely. Some potential benefits that effective national implementation can have on regional security, specifically for the development of a formalized WMDFZ, are as follows: [65]

- National implementation performed in a transparent manner increase States' confidence in the intentions of their neighbors, which may well lead, in turn, to a lowering of tension, the building of trust, and a consequent increase in regional security.
- Effective national implementation of the existing nuclear, biological, and chemical weapons treaties; norms; and relevant UNSC resolutions by all States in the region would go a long way toward fulfilling many (but admittedly not all) of the provisions of a proposed WMDFZ treaty. These advances could take place even before negotiations for such a treaty has begun.
- Such national implementation is something that all States in the region can work toward immediately: on an individual basis and irrespective of the activities of their neighbors. It is a process that the individual State has complete control over and that does not need to be tied up in a multilateral negotiating process.
- By moving forward now with national implementation, States in the region would be laying the foundation, in terms of building regional confidence and increasing compliance, for the consequent development of a formalized WMDFZ.

Another way that the resolution can contribute to fostering a WMDFZ is as a confidence-building measure. The previously mentioned VERTIC-GRC seminar was the third in a series as part of a project to promote declaring the Gulf region a WMDFZ. If the States meet and discuss their nonproliferation policies and their lessons learned, and assist each other with reporting obligations under Resolution 1540, mutual trust can be established over time.

Nonetheless, these are auxiliary factors that can have only an indirect impact. They do not remove the main hindrances that prevent a NWFZ/WMDFZ in the Middle East from becoming reality, such as threat perceptions, recognition of Israel, and the unsolved Palestine problem.

## **Conclusion / Outlook**

In summary, it can be said that the Middle Eastern countries have had a poor start when it comes to the implementation of UNSC Resolution 1540. Their general reporting behavior is significantly behind that of countries in other regions. The reports of Syria and Iran were

significantly better than the rest of the Middle Eastern countries. Other reports, even those of key players in the region including Egypt, were of rather mediocre nature, based on the results of the two above-mentioned studies. The reports of the Gulf Region countries were far from adequate and showed greater gaps than those of the other two sub-regions, the Maghreb and the Mashriq and Egypt regions. For this reason, efforts should focus on the Gulf sub-region. However, it is very promising that cooperation has commenced among these countries, which might lead to an increase in their level of implementation and in the quality and quantity of the reports submitted to the 1540 Committee. In an optimal case, work already initiated within this sub-region might serve as a model for regional outreach in other national implementation measures. However, one should keep in mind that many projects on export controls have already begun and have been conducted. Even though export controls are of utmost importance for the purpose of the resolution and for countries and organizations offering implementation assistance, other aspects of the Resolution 1540, such as physical protection or transshipment and end-user controls, must not be ignored.

In general, it can be said that an increase in cooperation is necessary for all countries of the region. On the very lowest level, this means increased cooperation on a regional country-to-country level, which could take place on a bilateral or multilateral level. Increased cooperation will lead to more effective and sustainable results and furthermore reduce the required time and resources to achieve results, both in terms of finances and personnel. One potential scenario of the many options of increased cooperation is that Egypt, Israel, and Jordan work on joint border and export controls. Cooperation should also be pursued within the relevant regional organizations, such as the LAS and the GCC. This would enable the countries to utilize already established cooperation, coordination, and conflict resolution mechanisms. Cooperation within regional organizations would lead to an increased benefit, especially within the GCC, as the member States form a very coherent group and have already reached a comparatively high level of integration.

Cooperation should furthermore be pursued within the existing WMD treaty regimes. Due to the overlap in obligations and the implementation assistance that is offered by the regimes, countries would be able to achieve good results in a timely manner.

Algeria and Qatar are two Arab countries that have been non-permanent members of the UNSC since the resolution was adopted and have worked within the 1540 Committee. However, contrary to what one might expect, no increased exchange of information and guidance to other Arab countries occurred as a result. This is perceived by other Middle Eastern countries as normal, since they view the countries in the UNSC as representatives of their regional groups (Africa or Asia), but not as Arab representatives. While it is true that they were elected in their capacity as a member of a certain regional group and not as Arab countries, this does in no way prohibit them from simultaneously functioning as Arab representatives. They are also members of the LAS and/or the GCC. Within these groups, they could share the non-sensitive information and experiences they gained within the 1540 Committee. This would thereby serve a double purpose: on one hand they would contribute to the effective implementation of Resolution 1540, and, on the other hand, they would strengthen the cooperation among the member States of the regional organizations as foreseen in the relevant charters.

Currently in many Middle Eastern countries, various ministries are in charge of dealing with individual aspects of the resolution, such as the Ministries of Commerce, Justice, and Foreign Affairs. Coordination among these bodies is often lacking and structures are being doubled. This

leads to internal and external confusion and also reduces the efficiency. Countries in the Middle East should therefore consider setting up a special focal point, or point of contact, for the issues related to Resolution 1540. This focal point could work on alleviating the mentioned weak points and act as the main contact person for the communication and cooperation with regional peers and international partners. This would contribute to an improved exchange of information and best practices and facilitate the implementation assistance. The focal point could also work with and inform industry and the public regarding their obligations under the respective national laws implementing Resolution 1540. It would also be easier for these target groups to have one contact point than many in various ministries.

It remains to be seen how far the suggested measures will allow the countries of the Middle East to catch up with the rest of the world and bring their implementation level to a higher standard. It is especially important that the countries in the Gulf region reach at least to the implementation level of the Middle Eastern average. There is no question that a dire need exists to achieve success, in view of the crucial role the Middle East plays for the world economy and for regional and global security.

# Annex 1—Reporting Behavior of Countries in the Middle East

	submission	OP 1	OP 2	OP 3a	OP 3b	OP 3c, border control	OP 3c, law enforcement	OP 3d, export controls	OP 3d, End-user controls	OP 4	OP 5	OP 6	OP 7	OP 8a	OP 8b	OP 8c	OP 8d	OP 9	OP 10	PSI	NWFZ / WMD/FZ	pages	
Algeria	10-Nov-2004	P	T/P	T	x	x	P	x						x	T	x	P				x	12	
Add.1	7-Sep-2005		x																			3	
Bahrain	22-Dec-2004															x						2	
Egypt	28-Oct-2004		x		x	x	x	x														x	6
Add.1	17-Mar-2006			P	x									x								x	2
Iran	28-Feb-2005	x	x	x	x	x	x	x	x		x	x	x	x	T	x	x	x	x			x	12
Add.1	14-Feb-2006	x	P	x	x		x	x			x			P	x								32
Iraq	13-Apr-2005	x	x	T		x	x	x	x		x	x	x	x	x	x			x	x	x	x	9
Add.1	5-Feb-2006			P	P			P?			x		x						x				6
Israel	30-Nov-2004	x	x		x	x	x	x	x		x	x					x	x	x	x			7
Jordan	9-Feb-2005	x	x	x	x	x	x	x			x		T				P					x	14
Add.1	11-May-2006	x		T	T	x	x	x		x	P			x	x	x			x	x	x	x	21
Kuwait	31-Mar-2005							x															13
Lebanon	20-Oct-2004	x	x			x		x				x						x				x	5
Add.1	19-Jun-2006		x			x	x							x				x					2
Libya	12-Apr-2005									x	x	x	x					x	x			x	6
Add.1	6-Dec-2005		x		x	T	x	x								x		x					7
Morocco	28-Oct-2004			x	x	x	x									x		x					6
Add.1	13-Sep-2005	x	x	x		x		x		x	x	x	x	x	x	x			x				29
Oman	17-Dec-2004													x								x	2
Add.1	20-Mar-2006	x				x						x											2
Qatar	15-Sep-2004		P											T									3
Add.1	2-Feb-2006													x									3
Saudi Arabia	1-Nov-2004	x				x								x		x		x				x	3
Add.1	28-Mar-2006													x									8
Syria	14-Oct-2004	x	x	P	P	x		x			x	x	x	x	x	x							5
Add.1	26-Aug-2005		T	T																			1
Add.2	29-Sep-2005		P	P				x														x	4
Add.3	7-Nov-2005	x	x	T	x	x	x	T			x	x	x	x	x	x	x		x			x	33
Tunisia	10-Nov-2004		x			x		x						x									5
UAE	9-Dec-2004			x				x						x			x						3
Yemen	29-Dec-2004																						1

P: measure planned or ongoing; T: measure taken after adoption of UNSC Resolution 1540

Sub-regions: [Maghreb](#), [Mashriq and Egypt](#), [Gulf Region](#)

OP 1	no support to non-State actors	OP 8a	Universality
OP 2	preventing non-State actors from get access to WMD	OP 8b	compliance with main treaties
OP 3a	account and secure	OP 8c	cooperation with IAEA et al
OP 3b	physical protection	OP 8d	inform industry
OP 4	establishing of the Committee, reporting	OP 9	dialogue and cooperation
OP 5	relation to other treaties	OP 10	cooperative action
OP 6	control lists	PSI	Proliferation Security Initiative
OP 7	assistance		



## Annex 2—Comparative Reporting Behavior

All figures represent the percentages of the number of countries that, in at least one of their reports, referred to the provision “other regions.”

	OP 1	OP 2	OP 3a	OP 3b	OP 3c, border control	OP 3c, law enforcement	OP 3d, export controls	OP 3d, End-user controls	OP 4	OP 5	OP 6	OP 7	OP 8a	OP 8b	OP 8 c	OP 8d	OP 9	OP 10	PSI
Middle East:	56	67	50	50	72	50	78	17	0	11	44	50	67	28	44	28	33	33	11
Other regions:	88	90	83	85	88	73	90	71	6	38	79	71	83	85	77	63	71	67	48
Difference:	32	23	33	35	16	23	12	54	6	27	35	21	16	57	33	35	38	34	37

Average difference: 30

Refer to: Lars Olberg, “Implementing Resolution 1540: What the National Reports Indicate” in: Disarmament Diplomacy, issue No. 82, Spring 2006.



## Annex 3—Comparative Reporting Behavior

This chart compares the reporting behavior of the Middle Eastern countries that were included in the study “Implementing UN Security Council Resolution 1540 – A Risk Based Approach” by Peter Crail.

	OP2	OP3a,b	OP3c,d	Overall	Ranking #
Algeria	30,8%	25,0%	10,6%	19,4%	53
Egypt	25,6%	25,6%	9,0%	17,5%	56
Iran	47,4%	27,9%	18,6%	28,1%	41
Iraq	15,4%	22,1%	19,2%	19,1%	55
Israel	7,7%	8,1%	30,8%	22,2%	47
Libya	26,9%	11,6%	5,8%	12,5%	65
Oman	0,0%	0,0%	1,9%	1,9%	76
Saudi Arabia	0,0%	0,0%	0,0%	0,0%	84
Syria	19,2%	21,7%	13,5%	17,1%	58
UAE	0,0%	0,0%	7,7%	7,7%	70
average global	23,3%	27,9%	22,2%	23,5%	
average ME	17,3%	14,2%	11,7%	14,6%	
difference	6,0%	13,7%	10,5%	8,9%	

  

	below regional average
	above regional average
	above global average



## Annex 4—Membership of Middle Eastern Countries to Key Treaties

	NPT	CWC	BTWC	CTBT	CPPNM	NSC
Algeria	X	X	X	X	X	X
Bahrain	X	X	X	X		
Egypt	X		X	S		X
Iran	X	X	X	S		
Iraq	X		X			
Israel		S		S	X	X
Jordan	X	X	X	X		S
Kuwait	X	X	X	X	X	
Lebanon	X		X	S	X	X
Libya	X	X	X	X	X	
Morocco	X	X	X	X	X	S
Oman	X	X	X	X	X	
Qatar	X	X	X	X	X	
Saudi Arabia	X	X	X			
Syria	X		X			S
Tunisia	X	X	X	X	X	S
UAE	X	X	X	X	X	
Yemen	X	X	x	S		

NPT: Treaty on the Nonproliferation of Nuclear Weapons

CWC: Chemical Weapons Convention

BTWC: Biological and Toxin Weapons Convention

CTBT: Comprehensive Test Ban Treaty

NSC: Nuclear Safety Convention

S: signature only, the treaty awaits ratification

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## Distribution

1 Technical Library, 9536 (electronic copy)