

1540 Committee: Non-proliferation of Nuclear, Chemical and Biological Weapons

Comité 1540: no proliferación de armas nucleares, químicas y biológicas

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Abstract

This article is about the Mexican chairmanship of the 1540 Committee of the U.N. Security Council regarding the non-proliferation of nuclear, chemical, and biological weapons. It analyzes the context of challenges in the negotiations for the extension of the mandate of the Committee for ten years and the measures to prevent non-State actors and terrorists from acquiring or using weapons of mass destruction. It examines how the renowned diplomacy of Mexico allowed for the building of bridges and understandings even within the polarization of the Security Council.



Resumen

Este artículo trata sobre la presidencia mexicana del Comité 1540 del Consejo de Seguridad de la ONU sobre la no proliferación de armas nucleares, químicas y biológicas. Analiza el contexto de retos en las negociaciones para la extensión del mandato del Comité por 10 años y las medidas para evitar que actores no estatales y terroristas puedan adquirir o usar armas de destrucción en masa. Examina cómo la reconocida diplomacia de México permitió construir puentes y entendimientos aun con la polarización al interior del Consejo de Seguridad.



Keywords

Non-proliferation, weapons of mass destruction, terrorism, diplomacy, negotiations



Palabras clave

No proliferación, armas de destrucción en masa, terrorismo, diplomacia, negociaciones

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Context of resolution 1540 (2004)

In 2004, the U.N. Security Council unanimously approved resolution 1540, which obliges all countries to establish national controls to prevent weapons of mass destruction (nuclear, chemical and biological) and their precursors and components from being acquired by non-State actors, including terrorist groups. This occurred largely in response to the latent concern about terrorism after September 11 in the United States, and to possible new types of attacks, since some groups had already shown interest in chemical weapons and there were even incidents in which they were used. One such case was Aum Shinrikyo in Japan. The discovery of an international trafficking network of nuclear components in the hands of Pakistani scientist A.Q. Khan also raised alarm bells about the need to have global controls to counter this type of threat.

Although the objectives of the resolution appear to be common sense and of international interest or benefit, its negotiation and adoption was not free of controversy. This was notable within the Security Council (mainly due to the reluctance of some of its members about the scope it could have), but also for the rest of the 176 other member countries of the U.N. that had no say in its negotiation and yet are legally obliged to implement it. These two factors are important to understand the critical points over the almost two decades since the regime was created by resolution 1540 (2004).

The resolution also established a subsidiary body of the Security Council, commonly known as the 1540 Committee, charged with monitoring the implementation of the resolution by States and facilitating the provision of assistance to those countries that require it to comply with the obligations established therein. The Committee relies on a group of nine experts who produce substantive analyses of countries' compliance measures, in addition to participating in international conferences and regional workshops on the resolution's provisions.

Since its adoption, technological advances and changes in international dynamics have arisen that require the context of its application to adapt to new realities. For this reason, the 1540 Committee carries out five-year reviews—known as “comprehensive reviews”—on the status of the implementation of resolution 1540 (2004) and to assess possible adjustments to its mandate, in order to keep it relevant to and consistent with the demands of the international community. Within the framework of these five-year reviews, those dissatisfied or less enthusiastic countries try to exert influence to redefine the parameters of application and scope of the regime of resolution 1540 (2004).

Rough start to the Mexican presidency

At the beginning of each year, Security Council members negotiate which countries will chair the various committees the Council has created. This negotiation is done first among the non-permanent members and later with the block of five permanent members (P5). These are non-transparent and highly politicized negotiations. Although the 1540 Committee is one that resonates with Mexico's interests, due to our tradition that opposes weapons of mass destruction, at the beginning of 2021 the Mexican delegation focused its negotiation efforts on simultaneously chairing other committees and groups of the Council of Security, while another elected member (India) had expressed its particular interest in the 1540 Committee.

The P5 disagreed on allowing that country to chair the Committee. It became necessary to resume negotiations to agree on this presidency and thereby unlock a broader package of presidencies of other committees.

Our country has extensive credentials as it is part of all the international disarmament and non-proliferation treaties, in addition to participating in export control regimes for dual-use materials (that is, those with legitimate civil-industrial applications as well as for the development of weapons of mass destruction). Additionally, Mexico had previously headed the 1540 Committee in 2010. Taking charge of the comprehensive review again represented an interesting diplomatic challenge.

However, Mexico's historical activism around nuclear disarmament also met with some reluctance within the P5 bloc to head the Committee, since all five countries possess nuclear weapons¹ and have no intention of disarming. In the end, a Mexico that can cause discomfort on the nuclear issue was probably preferable to a country that is not part of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). The presidency of Mexico began in January 2021.

Initially, the Mexican presidency of the 1540 Committee was complicated by the impacts of the COVID-19 pandemic on the functioning of the U.N. Activities at United Nations headquarters were conducted remotely and it was virtually impossible to hold in-person meetings, given the physical restrictions arising from the pandemic. Some members of the Security Council considered that, while the 1540 Committee deals with issues of extreme political sensitivity and international security, videoconference meetings were not appropriate, and considered unsafe, which slowed down the daily work of the Committee.

The pandemic was the reason for the indefinite suspension of the 2020 comprehensive review, which should have been completed when Indonesia was still chairing the Committee. This meant that Mexico had to take on a review process that had already begun under previously defined parameters, by means of negotiations in which we had not taken part.

In addition, it was necessary to deal with the growing polarization among the P5, a situation that was aggravated in 2022 by the invasion of Ukraine. The 1540 Committee had been characterized in previous years

¹ The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) of 1968 recognizes China, the United States, France, the United Kingdom and Russia as the only nuclear weapon states, under the premise that they would enter into good faith negotiations for general and complete nuclear disarmament at an early date.

by a strategic dialogue among the P5, which basically resulted in prior agreements between them and limited interference from the other 10 non-permanent members. These agreements in no way meant that this forum was free of competition between the P5, but at least they reflected some high-level communication between their respective capitals. However, at the beginning of 2021, this dialogue broke down and the 1540 Committee became an arena of rivalries.

The traditional P5 agreements were put to the test almost immediately, with the Committee's initial negotiations over its annual work program. Some members of the P5 had informally warned the Mexican presidency that the bloc would agree on the work program, in such a manner that the 10 non-permanent members would merely endorse it. Mexico was clear in stating that, under its leadership, the Committee would negotiate and make decisions among its 15 members, and the relegation of non-permanent members would not be permitted.

The breakdown of dialogue among the P5 meant that this bloc was unable to agree on the central content of the work program and had to resort, reluctantly, to the rest of the Committee members to overcome their differences. Even under negotiations between the 15 members, the disagreement of one of them was enough for the Committee to be unable to make agreements. The work program, like all decisions of the Committee, must be unanimously approved by its 15 members. What was clear from the beginning was that the traditional working methods of the Committee would no longer operate and that the dynamics of the group would then depend, to a large extent, on the direction that Mexico would give to the Committee in the months to follow.

Comprehensive review of resolution 1540

As noted, the Committee carries out extensive reviews of the application of resolution 1540 to ensure that countries are compliant or, where appropriate, to identify gaps. It also seeks to ensure that the work of the Committee is fit to address the current challenges and any necessary adjustments to its mandate can be carried out. It also considers the evolution of international trends that make it easier for terrorist groups to partially or fully

acquire weapons of mass destruction. Likewise, it acts as a forum to hear the opinions of the international community, both from U.N. member States and international organizations, industry and civil society.

The 1540 Committee already held extensive information on the degree of compliance by countries with the provisions of the resolution and held regular meetings to discuss these issues. However, the preparation of conclusions and recommendations would be incomplete without a consultation process with all interested actors. To achieve this, it was necessary to organize a three-day public session of the Committee, with the presence of delegations from all countries, with one segment dedicated to the participation of international organizations, and another informal segment for members of industry, academia and civil society. That is what the comprehensive review, designed by Mexico in 2010, consists of.

The pandemic made it impossible to host a meeting of such significance at the United Nations headquarters, with space for at least 193 delegates, corresponding to each of the member States, and at least twenty more representatives from the other invited organizations. The idea that consultations might be carried out virtually or in hybrid form did not meet with success. Instead, it was necessary to wait for the right moment to call the meeting, with all the uncertainty around the pandemic ending, or at least the relaxation of the restrictive physical distancing measures that prevailed.

However, this wait was against the clock since the Committee's legal and administrative mandate expired April 2021, and was originally scheduled in a timely manner with the conclusion of the comprehensive review in 2020 and the negotiation of a new resolution in early 2021. The technical extension of the Committee's mandate therefore required a Security Council resolution that recognized the effects of the pandemic, authorized the Committee to maintain its mandate unchanged, and entrusted it with the conclusion of the comprehensive review.

A resolution of this nature, simple in appearance, turned into intense diplomatic haggling, sometimes involving arbitrary arguments aimed at postponing the mandate. Most favored a conservative one-year extension, while other proposals ranged from 8 to 24 months. The final negotiation culminated in agreeing on a period of 10 months, and resolution 2572 (2021), drafted and presented by Mexico, was unanimously adopted

by the Security Council in April 2021. The pandemic continued and open consultations could not be convened during this period, which required a second technical extension.

Although it seemed natural to copy the formula of the previous resolution, time was now against Mexico's continuance at the head of the 1540 Committee, since its mandate in the Security Council ended on December 31, 2022. For the Mexican presidency, it was imperative to complete the comprehensive review, approve a report with conclusions and recommendations, and negotiate the new mandate of the Committee before concluding its own mandate. This interest was also shared by Kenya, India, Ireland and Norway, whose membership in the Council coincided with that of Mexico, and these countries were pushing to be part of the decision-making related to the comprehensive review and the new mandate of the Committee. Mexico presented a second resolution that extended the deadline until November 30, 2022, granting a small margin of one month in case of any new unforeseen event. Resolution 2622 was also adopted unanimously by the Council on February 25, 2022.

However, it was not until the end of May 2022 that the necessary conditions were met to call open consultations. The agenda, the conceptual document and the invitations themselves were also the cause of intense negotiations. The primary objective of holding the meeting prevailed over the concessions that had to be made on these documents. During the open consultations, the members of the Committee listened carefully to reflections, proposals and certainly some criticisms, to be taken into consideration in the next stage of the comprehensive review.²

The U.N. High Representative for Disarmament Affairs opened the meeting by laying emphasis on the need for countries to decisively address new international risks arising from advances in emerging technologies, and recalled the central role of the 1540 Committee. The open consultations confirmed the international community's growing acceptance of the

² Documents related to open consultations can be consulted in 1540 Committee, "2022 Comprehensive Review", at <https://www.un.org/en/sc/1540/comprehensive-and-annual-reviews/2022-comprehensive-review.shtml> (date of access: June 7, 2023).

regime created by resolution 1540 (2004), with less opposition to its universal application. Clearly, some countries had strong opinions about the Committee's shortcomings, especially with regard to the offer of assistance by States and international organizations to those countries facing difficulties in complying with the central provisions of the resolution. A smaller group of countries emphasized that their commitment to the implementation of the resolution was unquestionable, but as their nuclear, chemical and biological capabilities were minimal or non-existent, creating an internal legal framework for the issue took a backseat to their urgent economic development needs.

Having overcome the obstacle of open consultations, the 1540 Committee dedicated itself in the short time available to completing its internal analysis of all the available information and the approaches of States, international organizations, industry and civil society. In the understanding that the final report of the comprehensive review would contain conclusions and recommendations that would serve as a basis for the new resolution on the future mandate of the 1540 Committee, negotiations on the report were crucial for the members of the Committee. It was then time to put forward expansions to the mandate or indeed to reduce it, as well as to introduce new concepts and areas of action.

Since multiple interests converged and, in some cases, they were diametrically opposed, it was necessary to find points of convergence and propose ambiguous formulas that would permit unanimous approval by the 15 members of the Committee. But given the need for unanimity, the attempt to impose certain visions also prevailed, which jeopardized the possibility of substantive recommendations. While it is true that Mexico had national interests to promote, its presidential role involved neutrality above all, as well as being perceived as a skilled and trustworthy facilitator.

The draft final report underwent numerous revisions that were analyzed in more than fifteen informal consultations. It is likely that few U.N. documents have been subject to such intense scrutiny or consultation. In each consultation it was difficult to glimpse areas of agreement, since the positions were so irreconcilable. Concluding the negotiation of the comprehensive review document seemed like it would be too complicated, given the race against time and the need to prioritize the new resolution and its adoption.

The final stretch and the future mandate of the Committee

With the draft final report negotiated in parallel, Mexico prepared a draft resolution to extend the mandate of the Committee for another 10 years, with its respective five-year reviews, as well as making some progress—modest but realistic—in the scope of its application, all as a result of the priorities identified in the comprehensive review. The Mexican delegation undertook the task of carrying out the necessary consultations among the 15 members of the Security Council. Two open fronts of negotiation made for a delicate balance in terms of the gains and concessions that could be achieved on each.

The Mexican delegation was subject to pressure at various levels from the countries with the most interest in the future of the 1540 Committee. Each phone call or bilateral diplomatic contact was aimed at influencing Mexico's wording prior to circulating a new revision of the draft resolution. As a result of consultations among the members of the Security Council, the text was adjusted three times, moving sensibly towards the limits of what each delegation would be willing to accept.

In the final few days before the conclusion of the Committee's mandate, the meeting room of the Permanent Mission of Mexico to the U.N. was the site of intense negotiations to save the final report of the comprehensive review. There was a small window of opportunity to agree on both the final report and the resolution, a negotiation that some described as a house of cards.

The two main points of contention in the resolution concerned an annex specifying in detail the mandate and tasks of the Committee's expert group, and a provision to include the full and equal participation of women in all its activities. While some countries advocated granting greater freedoms and flexibility to the group of experts in their daily activities, voices emerged arguing the contrary, to impose a strict limit on their participation in outreach events or their interaction with State governments. Similarly, there were competing positions on the need for the 1540 Committee to be responsive to gender issues in its activities. In particular, the Russian delegation had an alternative view on these issues.

As a result of new rounds of consultations, the Mexican delegation made additional adjustments, circulated a fourth version of the draft resolution

and tested the waters of acceptance with a no-objection procedure lasting two hours, which in U.N. jargon is commonly known as the “silence procedure.” However, the silence was broken and the annex to the resolution on the mandate of the group of experts was pointed out as an obstacle, which would require more time to negotiate each of the details of the experts’ framework for action.

Reaching what seemed to be the limit of the negotiation on the resolution, and with less than 24 hours to go before the expiry of the Committee’s mandate, Mexico officially registered the draft resolution to proceed to its vote the following day. In this version of the text, the decision was made to eliminate the annex that delimited the scope of the group of experts, deferring these negotiations to internal discussions of the 1540 Committee itself, once its new mandate was established. Inevitably, those delegations most interested in resolving the matter once and for all made their disagreement known, but finally accepted.

To the surprise of Mexico (and frankly the rest of the members of the Security Council), Russia presented an alternative draft resolution and asked for it to be voted on after the Mexican text. It was a relatively succinct text that only extended the Committee for 10 years and without any modification to the mandate. A resolution presented in competition by a permanent member of the Security Council is, in a sense, an attempt to veto the original project (Mexico’s), meaning it was an urgent time to change the terms of the negotiation.

Quick calculations in consultation with the rest of the members of the Security Council showed that the Russian project would not have sufficient support, since it did not reflect any of the substantive discussions emanating from the comprehensive review. This translated into an adverse scenario where the Mexican resolution was vetoed, the Russian project did not have the minimum number to be adopted, and the legal mandate of the 1540 Committee ceased completely.

The problem lay in a paragraph of the Mexican resolution that expressly requested the 1540 Committee to pay due attention to the full, equal and meaningful participation of women in all its activities. For both Mexico and the vast majority of delegations, it was impossible to accept the elimination of this issue. Some advocated substantively on the matter and others considered it to be a matter of principle.

The solution was found in changing the location of the paragraph from the operative section of the resolution to the preamble section. This maintains the Committee's due attention to the full, equal and meaningful participation of women, but the placement means it can be interpreted in a less prescriptive manner. In parallel, agreements were reached on the content of the final report of the comprehensive review, negotiations which had not ceased despite most efforts being focused on the resolution.³ With these agreements, Mexico made the modification to its draft resolution on the location of the paragraph on gender and, simultaneously, Russia withdrew its own draft resolution.

Even on the day of the vote (November 30, 2022), while the 15 delegations took their respective places in the horseshoe of the Security Council room, we were not clear about the number of favorable votes that the text would receive. All we knew for sure was that the veto scenario had been avoided. Minutes later, the Council unanimously approved resolution 2663 (2022) with the broad recognition of all delegations, both for the skill of Mexican diplomacy and for the balance achieved in the Committee's mandate over the following 10 years.

Conclusions

Mexico's presidency of the 1540 Committee during 2021-2022 consolidated Mexico as a key player in the history of the Committee, having guided for the second time a broad review and having forged diplomatic agreements on issues of strategic importance and even national security, among major actors in the international community. However, it is also important to highlight that during this period the Mexican presidency had to navigate issues largely unrelated to the central substance of the 1540 Committee. Polarization within the Security Council made the possibility of constructive dialogue more fragile, but it did not lead to an immovable obstacle.

³ The final document of the comprehensive review contains 196 substantive paragraphs and 22 annexes, and was published as "2022 Comprehensive Review of the Status of Implementation of Security Council Resolution 1540 (2004)," S/2022/899, December 1, 2022.

The voting explanations following the adoption of resolution 2663 (2022) reaffirmed acknowledgment of Mexico's seriousness and impartiality at the head of the 1540 Committee, also demonstrating that it was always inclusive, especially by fulfilling its promise of not letting non-permanent members be relegated from important decisions.

Thanks to the extension of the mandate of the 1540 Committee for another 10 years and with the adjustments made to its scope of application, the international community continues to move forward U.N. decisively with measures to prevent non-State actors from acquiring or using weapons of mass destruction. Thanks to this process and two years of intense negotiations, Mexico contributed tangibly to a safer world. It now remains to follow up on the national implementation of the agreements we reached with other countries, and to insist on our bilateral and multilateral conversations so that other partners do the same.