



# UNSCR 1540 AND INDIRECT PROLIFERATION FINANCING

© Wu Zhongyi – Trade in luxury goods can indirectly finance proliferation.

## ABSTRACT

UN Security Council resolution (UNSCR) 1540 has played a significant role over the past two decades in curbing the proliferation of weapons of mass destruction (WMD) by non-State actors. However, its effectiveness is hampered by a lack of clarity and specificity in addressing the financing of WMD proliferation, particularly indirect financing through, for example, the trade of luxury goods. To enhance the resolution's impact, it is crucial to address these ambiguities, expand the scope of proliferation finance in the context of UNSCR 1540, and strengthen international cooperation and capacity-building initiatives.



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Twenty years on, and UNSCR 1540 has made significant progress by requiring all States to implement controls to prevent the proliferation of weapons of mass destruction (WMD) and their delivery systems by non-State actors.<sup>1</sup> To date, the resolution is one of the most powerful legal instruments in the wider arsenal

for curbing weapons proliferation by non-State actors.<sup>2</sup> Yet, when it comes to the financing of WMD proliferation, UNSCR 1540 falls short.

The resolution attempts to provide a broad structure to the counter-proliferation finance mechanism through operative paragraph 3. This paragraph

requires all States to enforce effective controls on “providing funds and services related to such export and trans-shipment such as financing...”, essentially assigning a “catch-all” provision to encompass controls on the financing of WMD proliferation in accordance with national procedures.<sup>3</sup> However, this is a broad and

1 UNSC Res. 1540 (28<sup>th</sup> April 2004), UN Doc S/RES/1540 (2004).

2 Benjamin Kienzle and Daniel Salisbury, ‘The United Nations Security Council and the 1540 Committee’, in Christopher Hobbs, Sarah Tzinieris, and Sukesh K. Aghara (eds), *The Oxford Handbook of Nuclear Security* (2024; online edn, Oxford Academic, 22 May 2023), <https://doi.org/10.1093/oxfordhb/9780192847935.013.12>, p.163.

3 Sarah Shirazyan, *Building a Universal Counter-Proliferation Regime: The Institutional Limits of United Nations Security Council Resolution 1540* (February 11, 2019). *Journal of National Security Law and Policy*, Vol. 10, 2019, < <https://ssrn.com/abstract=3339096> > p. 14.

non-specific interpretation of proliferation finance, limited only to an implication and with no explicit obligation for States. The Financial Action Task Force –the global money laundering and terrorist financing watchdog– also attempts to provide a working definition of proliferation finance by including the funds and financial services used, but this still does not encompass indirect financing of proliferation.<sup>4</sup>

Indirect financing of proliferation is often analogous with revenue-raising activities and notable examples include the broad range of activities engaged in by North Korea to fund their WMD programme.<sup>5</sup> In this regard, one activity consistently reported by the UN Panel of Experts on North Korea is the trade and export of *luxury goods*.

Luxury goods contribute to indirect proliferation financing, but they could also be included within the conceptualization of proliferation finance by UNSCR 1540.<sup>6</sup> However, this is unlikely to become a reality, predominantly because of a lack of political will, assessment capabilities and legal systems to support better implementation of provisions, as well as a narrow scope of understanding of what constitutes luxury goods.<sup>7</sup>

### LIMITED DEFINITION OF LUXURY GOODS

The most interesting cluster of prohibited goods mentioned in UNSCR 1718 –the resolution adopted following North Korea’s first nuclear test in 2006– was *luxury goods*.<sup>8</sup> It occupies the least amount of space, as there is no description of what constitutes luxury goods and the intent for inclusion. It was

not until UNSCR 2094, adopted in 2013, that an annex of products was incorporated. This annex limits the definition of luxury goods to only two categories: *Jewellery and Transportation items*; and describes the lists as *non-exhaustive*.<sup>9</sup> However, an obvious limitation of this narrow and non-exhaustive definition is that it permits a wide degree of interpretation.

As examined in detail through the 2015 UN Panel of Experts report on North Korea, there are multiple interpretations of luxury goods.<sup>10</sup> This is because not all Member States uniformly follow either the resolution’s or each other’s lists of prohibited goods.<sup>11</sup> For example, Singapore covers only precious jewellery, but not precious metals and stones. Canada, on the other hand, covers jewellery, gems and precious metals, but does not specify the stones or even jewellery that is clad with

4 FATF, ‘Combating Proliferation Financing: A Status report on Policy Development and Consultation’, 2010, < <https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/Status-report-proliferation-financing.pdf> > p. 5; See also, Anagha Joshi, Emil Dall and Darya Dolzikhova, ‘Guide to Conducting a National Proliferation Financing Risk Assessment’, Royal United Services Institute (RUSI), 2019 < [https://static.rusi.org/20190513\\_guide\\_to\\_conducting\\_a\\_national\\_proliferation\\_financing\\_risk\\_assessment\\_web.pdf](https://static.rusi.org/20190513_guide_to_conducting_a_national_proliferation_financing_risk_assessment_web.pdf) > p.6.

5 *Ibid*, p.13.

6 Darya Dolzikhova, “Strengthening the Role of UNSCR 1540 in Countering Proliferation Financing”, RUSI NewsBrief, < <https://www.rusi.org/explore-our-research/publications/rusi-newsbrief/strengthening-role-unscr-1540-countering-proliferation-financing> >.

7 *Ibid*, p.13.

8 United Nations Security Council (UNSC) Res. 1718 (14 October 2006), UN Doc S/RES/1718 (2006).

9 UNSC Res. 2094 (7 March 2013), UN Doc S/RES/2094 (2013).

10 UNSC, ‘Final report of the Panel of Experts submitted pursuant to resolution 2141 (2014) (UNSC POE Report),’ S/2015/131, 23 February 2015, p.102-108.

11 UNSC Res. 2094 (7 March 2013), UN Doc S/RES/2094 (2013).



© Jonathan Francisca – Luxury goods can encompass a broad variety of products, including watches.

precious metals. Moreover, this list is non-exhaustive. While variations were added to the categories via the successor resolutions, 2270 (2016) and 2321 (2016), the additions cease here.<sup>12</sup>

Considering these differences, it is possible to classify a broad variety of products as 'luxury goods,' rendering the phrase extremely ambiguous. Subsequently, very few Member States maintain their own prohibited goods list. As a result, regulations are implemented unevenly, and enforcement capacities vary across several

jurisdictions.<sup>13</sup> Not to mention, the gap widens due to the absence of protocols and measures prohibiting transshipment and re-export of these luxury goods from various third jurisdictions.<sup>14</sup>

### **SIGNIFICANCE OF LUXURY GOODS**

Indirect proliferation financing through luxury goods is an important category when comprehending how other activities—that do not involve direct procurement of proliferation-sensitive goods—support the funding of a WMD programme.

As luxury goods are sold and re-sold due to their high-value, it creates opportunities to fund the procurement of proliferation-sensitive goods.

However, the narrow application of indirect proliferation financing set forth in UNSCR 1540 also enables non-State actors—especially transnational criminal organizations—to collaborate with State actors and operate in silos to procure proliferation-sensitive goods and evade sanctions. These transnational organized criminal groups have historically collaborated with State actors, such as North Korea, to build

<sup>12</sup> UNSC Res. 2270 (2 March 2016), UN Doc S/RES/2270 (2016); UNSC Res. 2321 (30 November 2016), UN Doc S/RES/2321 (2016).

<sup>13</sup> UNSC POE Report, S/2010/571, 5 November 2010, p.28.

<sup>14</sup> *Ibid*, p.29.



© Keith Luke – Both the EU and Switzerland classify pure-bred horses as luxury goods which are subject to sanctions controls.

complex corporate structures and move funds across multiple jurisdictions to fund their WMD programme.<sup>15</sup>

These multiple relations also highlight the shared characteristics between State and non-State actors in terms of techniques used to conceal finances and ownership structures, and the subsequent impact on enforcement of international sanctions and controls on non-proliferation.

Revealed through the historical cases of non-State actors –such as the A. Q. Khan network and its vast expanses, Al-Qaeda’s interest in procuring WMDs in 1998, and the use of chemical weapons by the Islamic State in Syria and Iraq in 2014– is the extensive use of procurement networks to share sensitive information, technology, obfuscate beneficial ownership details and move funds across borders to fund proliferation of WMDs.<sup>16</sup>

These cases outline the need to re-examine resolution 1540’s catch-all provisions, due to the growing risk of proliferation financing emerging through the sale and re-sale of luxury goods. However, it can be difficult for States to comprehend this risk because of principality issues, financial constraints, lack of technical expertise, and weak institutional support systems.<sup>17</sup> As a result, nations’ efforts to meet the requirements of UNSCR 1540 stagnate in the

15 Financial Times, North Korea and the Triads: Gangsters, Ghost Ships and Spies, FT film, 31 March 2023, <<https://www.ft.com/video/3a-6c06ee-14b7-4d6f-8b08-08cdd947c0a7>>.

16 Rolf Mowatt-Larssen, “Al Qaeda’s pursuit of weapons of mass destruction.” *Foreign Policy* 25 (2010); Bruce Hoffman, “The First Non-state Use of a Chemical Weapon in Warfare: The Tamil Tigers Assault on East Kiran,” *Small Wars & Insurgencies* 20, no. 3–4 (2009): 463–77; Markus K. Binder, Jillian M. Quigley, and Herbert F. Tinsley, “Islamic State Chemical Weapons: A Case Contained by Its Context?” *CTC Sentinel* 11, no. 3 (March 2018): 27–31.

17 United Nations Security Council, “2022 comprehensive review of the status of implementation of Security Council resolution 1540 (2004),” (November 2022).



© Gabrielle Henderson – Perfumes and jewellery are classified as luxury goods by many countries.

absence of best practices and guidance. Moreover, the 1540 Committee—the body in charge of monitoring and supporting resolution 1540 implementation—lacks the mandate to investigate and evaluate countries' performance in fulfilling their obligations under the resolution.<sup>18</sup>

Therefore, the underlying challenge for all these highlighted issues is the narrow definition of financing of WMD proliferation, inevitably impacting the efficacy of the 1540 Committee's monitoring capability. Further-

more, regarding luxury goods, there is still a lack of a single comprehensive list of products and insufficient classifications wherein a designation might be applied, such as price thresholds or ethical classifications.

In the last twenty years, to overcome these essential challenges and strengthen implementation, the resolution has been subject to several recommendations, including the development of a strategic matrix, leveraging on civil society and academia, seeking wider resourcing and funding opportunities for organizational efforts,

and widening themes of operation, etc.<sup>19</sup> However, these recommendations must further expand to incorporate indirect financing of WMDs to improve States' capabilities to meet UNSCR 1540 obligations. Finally, it is important to uphold bilateral and multilateral cooperation, implement capacity building activities and promote legislative backing to include a wide range of indirect proliferation financing activities,<sup>20</sup> as UNSCR 1540 and other non-proliferation regimes are essential in maintaining the UN Security Council's mandate of global peace and security.

18 Sarah Shirazy, *Building a Universal Counter-Proliferation Regime: The Institutional Limits of United Nations Security Council Resolution 1540* (11 February 2019). *Journal of National Security Law and Policy*, Vol. 10, 2019, < <https://ssrn.com/abstract=3339096> > p. 6.

19 *Idib*, p. 40-42.

20 United Nations Security Council, "2022 comprehensive review of the status of implementation of Security Council resolution 1540 (2004)," (November 2022), p. 93.