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Research Paper

United Nations Security Council Resolution 1540: The Legal Landscape and Issues of Implementation

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Abstract
The United Nations Security Council Resolution 1540 (2004) is not sufficiently novel to confront the herculean global challenge posed by the WMDs illicit transfer, considering the preceding legislative efforts. Manifestly, the state parties bear the onerous obligation to initiate appropriate legislative and enforcement mechanism for its implementation against non state actors (NSAs). In prescribing such modus operandi, sight is lost of the perennial unholy alliance or conspiratorial partnership between some governments and these groups fashioned in violation of human rights and multilateral arms embargoes and the states' constitutional and judicial approach to international treaties. Although national constitutions decide how effect are given to treaties and customary international law, their choice of methods however are extremely variedin the resolution of the practical problems of co-existence. Some states, outrightly, reject the application of ratified treaties unless and until the need for international obligation to be 'transformed' into rules of national laws is complied with, yet such domesticated treaties are subjugated to the national constitution. This paper examines the application, implementation and effectiveness of UNSC1540 in its non-proliferation pursuit within the states.

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It has been decades that the battle to curtail arms proliferation has been raging and considerable legislative efforts has been advanced to meet this challenge. The non-state actors have been most culpable in the illicit acquisition and misuse of arms. The reality and consequences of their heinous acts will be dire if terrorists avail themselves of the nuclear, chemical, and biological weapons. The security council committee established in furtherance to the Resolution 1540 (2004) affirms that the proliferation of these weapons, as well as their means of delivery to and by non state actors continue to constitute a threat to global peace and security. This is the context in which the United Nations Security Council resolution 1540 (2004) call on state parties to implement effective regulations to prevent terrorists from gaining access to WMDs[1].

It is curious to note that most preceding non-proliferation resolutions and treaties enacted, including the Arms Trade Treaty (ATT) and United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and light Weapons in All Its Aspect (POA) all adhered to similar pattern of provisions in the UNSCR 1540 (2004) and relied on the goodwill, honesty and integrity of the United Nations member states for implementation[2]. While some of these agreements are political assemblage and binding in honour only, other legally binding treaties are bereft of legal sanctions[3], but placed the obligation upon the individual states to criminalise breaches of the treaty provisions[4].This account for the wanton disregard or non-

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1 United Nations Security Council Resolution 1540, UNDOC. S/RES/1540 (2004).

2 Geneva Academy, "2001 UN Programme of Action on Small Arms" 15th August, 2017. https://www.weapons law.org/instruments/2001-UN-Programme-of-action-on-small-arms. (Accessed on the 2nd October, 2024).

3 "Laws Crackdown on handguns". The Sunday Mail (Queensland) 13 May, 2003, Vincent Cabreza et al, "Linda: Cops can accost anyone with 'bulge", Philipine Daily Inquirer, 7 February, 2003 Pg A4.

4 Marian B. and Angus U, 'Transparency and Accountability in European Arms Export Control: Towards Common Standard and Best Practices.' London-Safer world (2000), Miller D., 'Understanding Small Arms Transfer Dynamics' Background paper, Geneva: Small Arms Survey 2001.

commitment of some states to these treaties, particularly the key state parties. A recent study[5] of the Middle East shows that six governments have supported more than 19 non-state armed groups in the region over the last ten years. This trend has not abated[6] and the uncontrolled flow of arms to NSAs has been widely recognized to exacerbate global conflict and violence. There is therefore the urgent need to impress it upon the states to be transparent and show high level of commitment to meet the objectives of the UNSCR 1540(2004). It is recommended that the UNSCR 1540 (2004) should be accompanied with punitive sanctions holding erring states accountable, for instance, criminalising breaches of the provisions of the UNSCR 1540 (2004) under the Rome statute and liable to be prosecuted before the international criminal court (ICC).[7]

There is the vexed issue of the implementation of the UNSCR 1540 (2004) in various state jurisdictions to give effect to it within the domestic legal domain. It is acknowledged that the UNSCR 1540 demonstrate improvement on law-making in the international system, acting on chapter v11 of the UN charter. Holistic as this legislative procedure may be, it may not be binding enough to hold the member states to their international obligations under UNSCR 1540 (2004). This impression ispredicated on the problem of co-existence between the international agreement and the national laws and the possibility of conflict. Granted that in the event of conflict between international obligation and national laws, the international rule prevail, or that a party may not invoke the provisions of its internal laws as justification for its failure to perform a treaty, it is permissible for a state to argue that its consent to a treaty was invalidated by violation of its internal law of fundamental importance[7a]. While the principles applied by international tribunals to the relationship between international law and national laws are uniform and reasonably straightforward, the approach taken by national parliaments or by national courts is not the case. They perceive that the way in which international law is integrated into and applied within their own legal order is the prerogative of their constitutions. Some states operate kelsen's monist regime, postulating a single legal system with international law at its apex and all other national constitutional and other legal norms below it in the hierarchy. There is no necessity for international obligation to be domesticated or transformed into rules of national law, and in case of any apparent conflict, the international rule prevail.

Most Commonwealth and common law countries come under the dualist legal concept wherein international law and national laws operate on different levels. International law is a horizontal legal order based on and regulating mainly the relations and obligations between independent sovereign states, and to be effective it require to be applied at national level. Most West African states, including Nigeria, may not constitutionally permit the application and implementation of the UNSCR 1540 (2004) in their jurisdictions except to the extent to which it has been enacted into law by the parliaments[8]. Although the constitution of the Federal Republic of Nigeria is silent on the position of international treaties on the hierarchy of norms, it is implied that treaties, after domestication, should apply *pari passu* with other national laws, all being subject to the constitution of the Federal Republic of Nigeria.

The confusion as to the position of treaties in Nigeria legal jurisprudence played out in the much contested case of GENERAL SANNI ABACHA V GANI FAWENHIMI[9] where the issue of the supremacy of the constitution over the African Chapter on human and peoples' rights and the power of the national Assembly to modify or repeal it came up for consideration. Per Ogundare JSC held:

No doubt Cap 10 (The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 1990 is a statute with international flavor. Being so therefore, I think that if there is a conflict between it and another statute, its provision will prevail over those of that other statute for the reason that it is presumed that the legislature does not intend to breach an international obligation. To this extend, I agree with their Lordships of the court below that the Charter possesses ' a greater vigour and strength' than any other

5 Chivers, CJ, "How many Guns DId the US lose Track of in Iraq and Afghanistan? August 24th, 2016. https://www.nytimes.com/2016/08/23/magazine/hundreds-of-thousands html. (Accessed on the 29th September, 2024).

6 Enomoto Tara, 'Controllign Arms Transfer to Non-States Actors: From the Emergence of the Sovereign State system to the Present, 2017. https://www.kisc.meiji.ac.jp/-transfer/paper/pdf/c3/ienomoto pdf (Accessed on the 24th September, 2024).

7 Gillard E., 'What's Legal? What's illegal? In Lora Lumpe, ed. Running Guns: The Global Black Market in Small Arms' London: Ze11b Books (2000)pp 27-52.

7a. Article 46 of the Vienna Convention on the law of Treaties

8 Section 12 of the Constitution of the Federal Republic of Nigeria 1999 (As amended).

9 (2000)51 WRN 29.

domestic statute. But that is not to say that the charter is superior to the constitution as erroneously, with respect, was submitted by Mr. Adegboruwa, learned counsel for the Respondent. Nor can its international flavor prevent the National Assembly or the Federal Military Government to remove it from our body of municipal laws by simply repealing Cap 10 nor also is the validity of another statute necessarily affected by the mere fact that it violates the African Charter or any other treaty for that matter.

Considering the foregoing pronouncement, It is my opinion that the states' implementation of the UNSCR 1540 (2004) begin with the constitutional reconciliation of the UNSCR 1540 (2004) with their national laws,[10] and states should be enjoined to amend their constitutions to accommodate the provisions of the UNSCR 1540 (2004) so that its provisions become self-executing and prevail over inconsistent domestic laws.

[10] Enabulele A. O. 'Implementation of Treaties in Nigeria and status Question: Whither Nigeria Courts Vol. 17 African Journal of International and Comparative law (2009) P328.