

**Security Council**

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**Letter dated 23 December 2014 from the Chargé d'affaires a.i.
of the Permanent Mission of Germany to the United Nations
addressed to the President of the Security Council**

Within the framework of the “Wiesbaden process”, the Government of Germany hosted a third industry outreach conference on Security Council resolution 1540 (2004) in Frankfurt, Germany, on 20 and 21 November 2014. The international conference was organized in cooperation with the Office for Disarmament Affairs of the United Nations Secretariat and the Outreach in Export Controls of Dual-Use Items Programme of the European Commission.

This year’s conference focused on non-proliferation-related compliance strategies and management within companies. In the tradition of the “Wiesbaden process”, it brought together private sector representatives and regulators in order to encourage discussion and exchange of effective practices. The majority of the approximately 70 participants represented industry associations and initiatives as well as global enterprises, operating in multiple jurisdictions. Other participants included compliance experts, as well as representatives from relevant international organizations, including the Chair of the Security Council Committee established pursuant to resolution 1540 (2004), government authorities and academia. Participants engaged in lively and constructive debates on addressing proliferations risks throughout the two-day conference focusing on effective practices of compliance management in various areas, including biological, chemical and nuclear security, as well as transport, brokering and export control.

The outcome of those valuable debates is summarized in the report, which is attached to this letter and which was drafted under our responsibility (see annex). We would be grateful if you would circulate the present letter and its annex among the members of the Security Council and have them issued as a document of the Council.

(Signed) Heiko Thoms
Ambassador
Chargé d'affaires a.i.



Annex to the letter dated 23 December 2014 from the Chargé d'affaires a.i. of the Permanent Mission of Germany to the United Nations addressed to the President of the Security Council

Conference report

**Non-proliferation risks: governance and compliance management
Dialogue with industry in support of implementing Security Council
resolution 1540 (2004)
20 and 21 November 2014, Frankfurt, Germany**

Background

Security Council resolution 1540 (2004) of 28 April requires States to close any loopholes so as to prevent non-State actors, such as terrorists, from obtaining access to weapons of mass destruction. The resolution establishes legally binding obligations on all States to have and enforce appropriate and effective measures against the proliferation of nuclear, chemical and biological weapons and their delivery systems. More specifically, resolution 1540 (2004) complements non-proliferation treaties and conventions to prevent terrorists and criminal organizations from obtaining the world's most dangerous weapons. The role of industry and the private sector is crucial in implementing regulatory frameworks based on resolution 1540 (2004). Only through the cooperation of the private sector with industry can the risk of proliferation of weapons of mass destruction to non-State actors be effectively addressed. The Security Council, in its resolution 1977 (2011), explicitly encourages the Committee established pursuant to resolution 1540 (2004) to draw — among other sources — on relevant expertise of the private sector. This is why Germany, in cooperation with the Office for Disarmament Affairs of the United Nations Secretariat, initiated the “Wiesbaden process” hosting two major international industry dialogue conferences, one each in 2012 and 2013. While the conference in 2012 aimed at strengthening partnership between government and industry in general, the conference in 2013 focused on detailed aspects of implementation of Security Council resolution 1540 (2004) in the area of biosecurity. The conference in November focused on non-proliferation-related compliance strategies and management within companies.

Goals and composition

In the tradition of the “Wiesbaden process”, the conference in November on the theme “Governance and compliance management” brought together private sector representatives and regulators in order to encourage discussion and exchange of effective practices. The majority of the approximately 70 participants represented industry associations and initiatives as well as global enterprises, operating in multiple jurisdictions, such as AREVA, Commerzbank, General Electric, Lufthansa, Philips and Rolls Royce. Other participants included compliance experts, as well as representatives from relevant international organizations, including: Panels of Experts of United Nations sanctions committees, government authorities and academia (see enclosure).

The goals of the conference were

- To enhance awareness and understanding of cross-sectional non-proliferation strategies
- To encourage and facilitate dialogue between industry and regulators, i.e. government authorities and the committee established pursuant to Security Council resolution 1540 (2004)
- To provide a global forum for the dissemination of best or effective industry non-proliferation-related practices and experiences across various sectors
- To inform Governments about industry trends, including on non-proliferation-related industry compliance strategies and practices
- To support regulators in providing better guidance and regulation.

The individual conference panels considered the following topics and issues

- Proliferation risk management through corporate governance and internal compliance management
- Obtaining information on proliferation risks
- Corporate governance, rules and best practice guidelines on compliance management
- Industry expectations of what authorities need to deliver.

Participants engaged in lively and constructive debates on addressing proliferation risks throughout the two-day conference focusing on effective practices of compliance management in various areas, including biological, chemical and nuclear security as well as transport, brokering and export control. They highly appreciated the cross-sectional approach combined with the conference programme, which provided ample opportunity for dialogue, advice and feedback. Numerous participants voiced interest in a framework for continued dialogue.

Key findings

- Larger companies, especially those that operate globally, are aware of non-proliferation-related compliance risks addressed in Security Council resolution 1540 (2004)
- A key motivation for compliance efforts is the risk of falling into disrepute; in that context, monetary penalties imposed by Governments in implementing Security Council resolution 1540 (2004) serve as a deterrent
- Transport and freight forwarding sectors face the particular challenge of finding ways to effectively identify critical shipments without creating additional security risks or unduly hampering trade
- Organizational culture is a key driver in non-proliferation efforts. There is a need to enhance a non-proliferation culture within organizations and across industry sectors
- There is broad agreement among companies that, despite business competition, non-proliferation-related information-sharing is in the interest of all private sector actors

- Industry requires clearer, standardized and harmonized legislation, particularly regarding export control lists, to facilitate compliance without hampering business procedures
- Compliance programmes have to be adapted to the size and scale of the individual business, and small- and medium-sized enterprises especially require more support
- There was broad agreement that cooperation between industry and regulators needs to be further enhanced
- The idea to create a global industry compliance network was welcomed by many participating companies. Ideally, existing networks should be connected and/or consolidated and be made more effective
- Government authorities should provide more resources to the private sector for industry outreach activities
- Industry representatives highlighted the need to establish an international forum for discussions with national regulators.

Highlights of presentations and discussion

Opening statements were delivered on behalf of the Federal Foreign Office of Germany, the Chair of the Committee established pursuant to resolution 1540 (2004), the Office for Disarmament Affairs of the United Nations Secretariat, the European Commission, the United States Department of State and the Federal Office for Economic Affairs and Export Control. Speakers emphasized the implications of the current international security landscape on Security Council resolution 1540 (2004) and emphasized that the “Wiesbaden process” has helped to strengthen awareness for matters of non-proliferation on a global level. Ambassador Oh Joon, Chair of the Committee, stressed the need for a continuous dialogue between industry and Governments and placed a high value upon the continuation of the “Wiesbaden process”, which has become instrumental in this regard. Speakers also highlighted the significance of this conference series for the upcoming comprehensive review on the status of implementation of resolution 1540 (2004) in 2016. The “Wiesbaden conferences” constitute an important forum in which to include industry in this process.

Proliferation risks: corporate governance and internal compliance management

Representatives from key industrial sectors which are typically affected by controls and regulations related to Security Council resolution 1540 (2004), i.e., nuclear, biological/chemical, aerospace engineering, telecommunications/information technology, and transport, presented the complex regulatory backgrounds in which they are operating — often in different jurisdictions — and the effective practices of their compliance strategies. They also highlighted respective compliance issues and challenges. By way of example, the nuclear industry reacted to increased scrutiny and fears of terrorists acquiring weapons of mass destruction after the attacks on 11 September 2001 and proactively addressed non-proliferation-related concerns. The transport industry had to develop sophisticated strategies and systems to screen transactions for critical shipments; the daily screening process remains a major challenge. Further exchanges of experiences and information, as well as a dialogue with regulators on the weaknesses of regulations, would be useful. It was noted,

however, that too much transparency might inadvertently provide proliferators with information to develop “effective” diversion practices.

All speakers acknowledged the importance of non-proliferation of weapons of mass destruction and stressed the need to establish a common understanding of the importance of non-proliferation, especially within supply and distribution chains. Some effective practices for compliance management include:

- Buy-in and support by top management is essential and can be communicated through codes of conduct
- Internal compliance programmes need to be sufficiently flexible to adjust global standards to local regulatory environments in order to control shipments that may be of concern (e.g., by having staff expertise in place, by developing risk-based internal release processes or by adjusting structures to specific local needs)
- Assignment of clear roles and responsibilities as well as clear internal guidelines, motivate assigned staff (and motivated staff members are more valuable and effective than any information technology system)
- Codes of conduct commit suppliers and customers to the same principles, e.g., by making such codes part of contractual relations.

According to the assessment of the speakers, compliance efforts are facilitated by cooperation and information-sharing between — also competing — companies and by avoiding or minimizing uncertainties in legislation. The clearer the regulations are, the more effective is their implementation by the private sector. Regulators should also consider if and how compliance efforts could be rewarded.

Obtaining information on proliferation risks

Participants representing different industry sectors highlighted the central role of obtaining and managing sensitive data in addressing proliferation. Information-sharing enhances the proliferation risk-assessment of business opportunities. Therefore, information-sharing is crucial to the interest of all private sector actors and benefits companies with fewer resources such as small- and medium-sized enterprises. Information-sharing has to take place among all stakeholders: among companies, among government authorities and among government authorities and companies. In this regard, speakers pointed out that sharing company data regarding “suspicious business enquiries” would benefit government authorities. It was stressed repeatedly that the value of human resources, e.g. the availability of an experienced export control officer, is hardly replaced by computerized list-based screenings, since the latter lacks sufficient data quality assessment.

Corporate governance, rules and best practice guidelines on compliance management

There are a number of prime examples of industry initiatives or public-private partnerships that support companies’ compliance with international non-proliferation-related regulations or foster voluntary measures, such as the Nuclear Power Plant Exporters’ Principles of Conduct Initiative or the International Centre for Chemical Safety and Security. Those initiatives provide valuable lessons, e.g., the need to consider anti-trust issues.

Those examples also highlight the key role of industry associations in supporting and enabling their members' compliance efforts. In that vein, close and trustful cooperation between government authorities and relevant international and regional organizations are crucial.

Currently, a standard for compliance management systems is being developed by the International Organization for Standardization. It was stressed that proliferation risks should be an integral part of each company's compliance management system. Interventions from India and Africa highlighted regional challenges in emerging markets and lack of expertise and/or institutional memory.

What authorities need to deliver — industry expectations

Participants called for practical, clear, implementable and enforceable regulating frameworks instead of "political language". At the same time, non-proliferation compliance should become "part of the DNA of the global industry and trade". Therefore, international standard-setting and perhaps a more prominent role of the Committee was suggested. Participants criticized the myriad international regulations that are implemented differently across the globe. More consistent approaches and standards — such as common control lists or approaches vis-à-vis end-user controls — are required to balance market disparities and to create a level field of play. Consequently, the private sector should be included early in drafting and setting international regulations or even sanctions. Existing instruments, such as the Harmonized System codes, could be leveraged to help track and target critical shipments throughout the supply or distribution chain.

Participants emphasized their willingness to support the development of global standards. They called for more cooperative arrangements between regulators and industry ("public-private partnerships") to simplify procedures and standardize end-user controls. They repeatedly stressed the need for a continued dialogue between government authorities and the private sector on local and international levels. They suggested further networking or linking of existing networks and stressed the importance of face-to-face meetings and exchanges of peers. Participants recommended considering the "Wiesbaden process" in this regard.

Enclosure

List of participants

States and Government authorities: Germany (Federal Foreign Office, Federal Ministry for Economic Affairs and Energy, Federal Office for Economic Affairs and Export Control), Italy (Ministry of Economic Development), Malaysia (Ministry of International Trade and Industry), United States of America (Department of State).

International and regional organizations: Caribbean Community secretariat, European Commission, European External Action Service, Organization for Security and Cooperation in Europe, Organization for the Prohibition of Chemical Weapons, Panel of Experts of the Security Council Committee established pursuant to resolution 1737 (2006), Office for Disarmament Affairs of the United Nations Secretariat, the Committee established pursuant to resolution 1540 (2004), and Group of Experts, International Criminal Police Organization, World Customs Organization.

Companies and industry associations: African Biological Safety Association, AREVA (France), Asia-Pacific Biosafety Association, Biosafety Association of Central Asia and the Caucasus, German Aerospace Industries Association, Center for Information on Security Trade Controls (Japan), Commerzbank AG (Germany), Compliance Academy GmbH (Germany), Compliance and Capacity International, LLC (United States of America), Ericsson AB (Sweden), Fédération Internationale des Associations de Transitaires et Assimilés (Switzerland), General Electric (United States of America), Indian Chemical Council (India), Infineon Technologies AG (Germany), International Federation of Biosafety Associations, Julius Kriegl Consultancy (South Africa), Lufthansa Cargo AG (Germany), Merck KGaA (Germany), Rolls Royce (United Kingdom), Philips International (Netherlands), Verband der Chemischen Industrie (Germany), World Nuclear Association Secretariat (United Kingdom).

Academia, think tanks and other entities: Institute for Defence Studies and Analyses (India), Project Alpha Kings College, London (United Kingdom), Korea Strategic Trade Institute KOSTI (Republic of Korea), Leibniz Institut DSMZ (Germany), Monterey Institute of International Studies (United States of America), Pacific Northwest National Laboratory (United States of America), Nuclear Power Plant Exporters' Principles of Conduct Secretariat (Italy), Stimson Center (United States of America), Stockholm International Peace Research Institute SIPRI (Sweden), Center for International Trade and Security University of Georgia (United States of America), Centre for Interdisciplinary Compliance Research European University Viadrina (Germany), Wisconsin Project on Nuclear Arms Control (United States of America).