

# National Implementation Measures for the Chemical Weapons Convention & UN Security Council Resolution 1540

Yasemin Balci, Senior Legal Officer, VERTIC

Workshop on Security, the Implementation of the Chemical Weapons Convention, and Cooperative Threat Reduction in Africa

2-6 March 2015, Pretoria, South Africa

# What is VERTIC?



VERTIC is an independent not-for-profit organization located in London, United Kingdom that promotes the effective verification and implementation of international agreements and related regional and national initiatives.

VERTIC's National Implementation Measures (NIM) Programme advises States on national implementation of the provisions in the following international instruments:

- the Biological Weapons Convention (“BWC”);
- the Chemical Weapons Convention (“CWC”);
- the Convention on the Physical Protection of Nuclear Material (“CPPNM”) (as amended);
- the International Convention for the Suppression of Acts of Nuclear Terrorism (“ICSANT”);
- the Code of Conduct on the Safety and Security of Radioactive Sources and other instruments for the security of nuclear and other radioactive (“RN”) material;
- as well as UN Security Council Resolution 1540 (2004) (“UNSCR 1540”).

# The CWC



## The 1993 Chemical Weapons Convention

- prohibits chemical weapons and regulates activities with scheduled chemicals
- currently has 190 States Parties, 2 signatories, 4 non-signatories
- establishes the Organisation for the Prohibition of Chemical Weapons (OPCW) ([www.opcw.org](http://www.opcw.org))
- includes an implementation obligation in Article VII



# CWC Implementation: Art VII

## Article VII *National Implementation Measures*

“1. Each State Party shall, in accordance with its constitutional processes, **adopt the necessary measures** to implement its obligations under this Convention. In particular, it shall:

- a) **Prohibit** natural and legal persons anywhere on its territory or in any other place under its jurisdiction as recognized by international law from undertaking **any activity prohibited to a State Party** under this Convention, including enacting penal legislation with respect to such activity;
- b) Not permit in any place under its control any activity prohibited to a State Party under this Convention; and
- c) **Extend its penal legislation** enacted under subparagraph (a) to any activity prohibited to a State Party under this Convention undertaken anywhere by natural persons, possessing its nationality, in conformity with international law.

# CWC Implementation: Art VII



## Article VII *National Implementation Measures*

2. Each State Party shall cooperate with other States Parties and afford the appropriate form of **legal assistance** to facilitate the implementation of the obligations under paragraph 1.

3. Each State Party, during the implementation of its obligations under this Convention, shall assign the highest priority to ensuring the **safety of people** and to **protecting the environment**, and shall cooperate as appropriate with other States Parties in this regard.



# CWC Implementation: Art VII



## Article VII *National Implementation Measures*

4. In order to fulfil its obligations under this Convention, each State Party shall designate or **establish a National Authority** to serve as the national focal point for effective liaison with the Organization and other States Parties. Each State Party shall notify the Organization of its National Authority at the time that this Convention enters into force for it.

5. Each State Party shall **inform the Organization** of the **legislative** and administrative **measures taken** to implement this Convention.

6. Each State Party shall treat as **confidential** and afford special handling to information and data that it receives in confidence from the Organization in connection with the implementation of this Convention. ...”

# CWC Implementation: Art VI



## Article VI *Activities not Prohibited under this Convention*

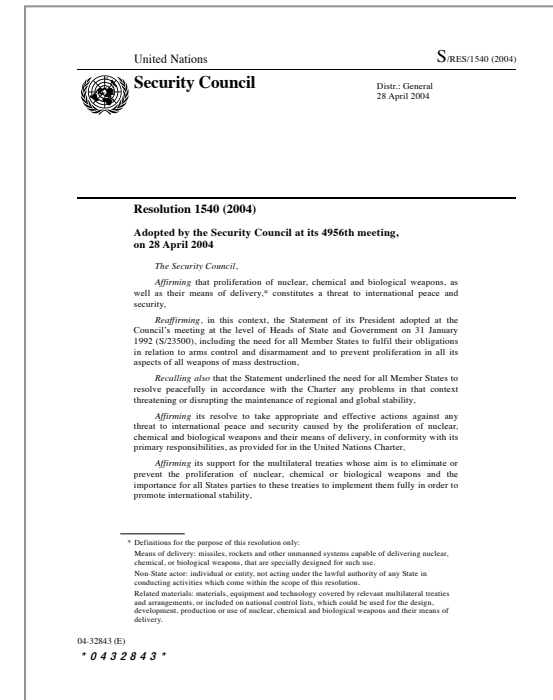
“... 2. Each State Party shall **adopt the necessary measures** to ensure that **toxic chemicals and their precursors** are only developed, produced, otherwise acquired, retained, transferred, or used within its territory or in any other place under its jurisdiction or control for purposes not prohibited under this Convention.

To this end, and in order to verify that activities are in accordance with obligations under this Convention, each State Party shall subject toxic chemicals and their precursors listed in **Schedules 1, 2 and 3 of the Annex on Chemicals**, facilities related to such chemicals, and other facilities as specified in the Verification Annex, that are located on its territory or in any other place under its jurisdiction or control, to verification measures as provided in the Verification Annex. ...”

# UN Security Council Resolution 1540



- Aims to prevent and prohibit proliferation of nuclear, chemical and biological weapons to non-state actors
- Adopted on 28 April 2004 under Chapter VII and extended most recently in 2011 until 25 April 2021
- Includes legally binding decisions on all UN Member States





# UN Security Council Resolution 1540



## Requirements:

- 1) To ***prohibit*** any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use NBC weapons and their means of delivery, as well as attempts, etc. (*OP2*);
- 2) To adopt measures to ***prevent*** the proliferation of NBC weapons and their means of delivery, including controls over dual-use materials (*OP3*);



# UN Security Council Resolution 1540



3) Regarding dual-use items, States are required to:

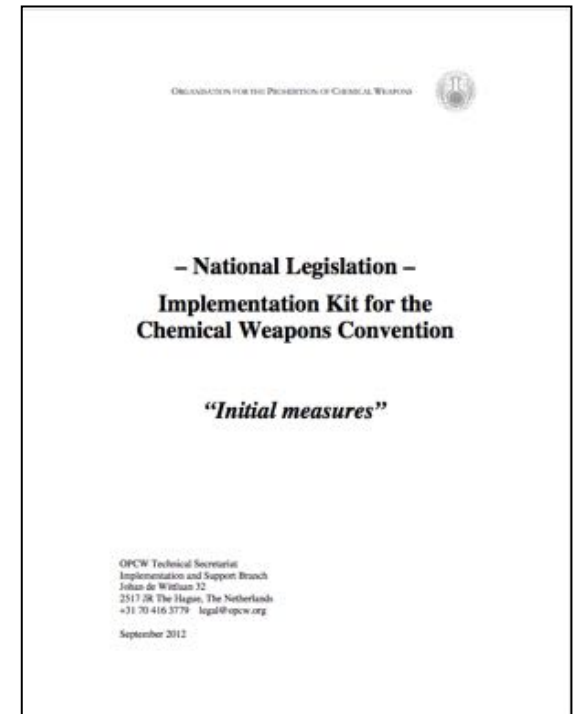
- Develop and maintain appropriate effective measures to **account** for and **secure** items in production, use, storage or transport (*OP3a*);
  - Develop and maintain effective **physical protection** measures (*OP3b*);
  - Develop and maintain appropriate effective **border controls** and **law enforcement** efforts (*OP3c*);
  - Establish, develop, review and maintain effective national **export** and trans-shipment controls (*OP3d*).
- 
- Security Council Committee and a Group of Experts to assist them with the promotion and monitoring of UNSCR 1540's implementation, and to facilitate offers and requests for assistance (*OP 4*)
  - Website: [www.un.org/sc/1540](http://www.un.org/sc/1540)

# National Implementation Measures



Which measures do States need to adopt in order to implement the CWC and chemical weapons-related requirements of UNSCR 1540?

- 1) Definitions
- 2) Prohibitions relating to chemical weapons
- 3) Prohibitions relating to scheduled chemicals
- 4) Jurisdiction
- 5) Control measures
- 6) Chemical safety and security
- 7) Legislative enforcement



# National Implementation Measures



## 1) Definitions (*Article II*)

- chemical weapon, toxic chemical, precursor, purposes not prohibited, riot control agent, discrete organic chemical etc.



## 2) Prohibitions relating to chemical weapons (*Article 1, Article VII and UNSCR 1540 OP2*)

- development, production, acquisition, stockpiling, retention, direct and indirect transfer, transportation and use of chemical weapons (*Article I 1 a and b, UNSCR 1540 OP2*)
- engaging in military preparations to use chemical weapons (*Article I 1 c*)
- assistance, encouragement, or inducing anyone to engage in prohibited activities (*Article I 1 d*)
- or using riot control agents as a method of warfare (*Article I 5*)

# National Implementation Measures



## 3) Prohibitions relating to scheduled chemicals (*Article VI 2*)

- For example:
  - transferring Schedule 1 and 2 chemicals to non-States Parties
  - producing, acquiring, retaining, using, transferring Schedule 1 chemicals without a license
  - transferring Schedule 3 chemicals to non-States Parties without an end-user certificate

## 4) Extending the reach of prohibitions

- to nationals outside of the State's territory (*Jurisdiction, Article VII 1 c*)
- to natural and legal persons (*Article VII 1 a*)

# National Implementation Measures



## 5) Control measures (*Article VI, Verification Annex and UNSCR 1540*)

- *Schedule 1 chemicals:*
  - licensing of production, acquisition, retention, transfer or use for research, medical, pharmaceutical or protective purposes
  - no transfers to non-States Parties and no retransfers
- *Schedule 2 chemicals:*
  - licensing or declaration of production, processing or consumption
  - permits for transfers
  - no transfers to or from non-States Parties

# National Implementation Measures



## 5) Control measures (*Article VI, Verification Annex and UNSCR 1540*)

- *Schedule 3 chemicals:*
  - licensing or declaration of production
  - permits for transfers
  - no transfers to non-States Parties without a permit and an end-user certificate
- *Unscheduled discrete organic chemicals:*
  - Licensing or declaration of production
- *Record-keeping, reporting and confidentiality requirements*

# National Implementation Measures



## 6) Chemical safety and security (*UNSCR 1540 OP3 (a) and (b)*)

- establishing a system for notification of accidents, loss or theft
- training for personnel at chemical facilities
- physical protection (external and internal)
- personnel background checks
- secure transportation (approved carriers, secure containers and packaging, labelling, shipment tracking, etc.)





# National Implementation Measures



## 7) Legislative enforcement

- establishment of a National Authority (*Article VII 4*)
- international legal cooperation and assistance (*Article VII 2*)
- international and national inspections (*Article VI 2, Verification Annex*)
- training and special powers for investigation by law enforcement officials and others



# Approaches to National Implementation



- **Comprehensive stand-alone law**
  - Law that only contains the necessary criminal provisions
  - Comprehensive law containing criminal provisions, control measures, safety and security measures, enforcement measures
- **Weapons of Mass Destruction law**

Chile, India, South Africa

  - Chapter divisions by type of weapon/material (RN, B, C)
  - Accountability and security measures are different for each type of regime
  - Criminal provisions are separated for each regime
  - Transfer permits can be combined for the three regimes
- **Implementation through several laws and regulations**

# Benefits of Implementation



- States can investigate, prosecute and punish any offences, including preparatory acts, associated with chemical weapons committed by non-state actors
- States can monitor and supervise any activities, including transfers, involving scheduled chemicals
- States will enhance their national security and public health and safety
- States with effective and adequate legislation will strongly signal to potential investors that they are a safe and responsible location for activities involving toxic chemicals
- States will be able to comply effectively with international reporting requirements
- States' obligations under the CWC and chemical weapons-related requirements of UN Security Council Resolution 1540 will be satisfied

# Our Legal Services



At a Government's request, we can provide cost-free legal advice to:

1) Assist States to adhere to the BWC, CWC, CPPNM (as amended) and ICSANT:

- Raise awareness of obligations through presentations at conferences and workshops, publications, or meetings with officials and other relevant national stakeholders;
- Prepare and/or supply accession and ratification instruments and related information on adherence procedures.



# Our Legal Services



2) Undertake comprehensive analysis of a State's existing legislation for the implementation of CBRN instruments:

- Legislation survey:
  - an analysis based on criteria covering definitions; prohibitions and penalties; jurisdiction; measures to account for, secure and physically protect material; measures to control transfers of material; measures for legislative enforcement;
  - Relevant national legislation and regulations are thoroughly reviewed;
  - Confidential.

Survey of [State's]  
National Implementation Measures for the  
1993 Chemical Weapons Convention and  
related requirements of UN Security Council Resolution 1540



# Our Legal Services



3) Organize and participate in awareness-raising workshops and technical assistance visits to:

- Draft/revise legislation;
- Elaborate national legislative action plans;
- Support national processes considering legislative development and treaty adherence (either in capital or at relevant workshops).

# Contact VERTIC



- National Implementation Measures Programme: [NIM@vertic.org](mailto:NIM@vertic.org)
- The Verification Research, Training and Information Centre (VERTIC)  
Development House, 56-64 Leonard Street  
London EC2A 4LT, United Kingdom  
Tel +44 20 7065 0880, Fax +44 20 7065 0890  
Web [www.vertic.org](http://www.vertic.org)

