

# VERIFICATION RESEARCH, TRAINING AND INFORMATION CENTRE

Development House, 56–64 Leonard Street  
London EC2A 4LT, United Kingdom

Tel +44 (0)20 7065 0880

Fax +44 (0)20 7065 0890

Website [www.vertic.org](http://www.vertic.org)

## STATEMENT ON THE OCCASION OF VERTIC'S 25<sup>th</sup> ANNIVERSARY CELEBRATION

### The evolution of national implementation of the international CBRN legal regime

*Scott Spence, Senior Legal Officer, VERTIC  
Geneva, 14 December 2011*

Excellencies, distinguished delegates, ladies and gentlemen,

I will speak today about ways to improve international co-operation and assistance, particularly in the area of national implementing legislation. I will do this by giving an overview of where we have been and where I think we are going in this area.

#### *National implementation of the nuclear and chemical weapons treaties*

Years before national implementation of the BWC was being systematically addressed by organisations such as VERTIC, the Office of Legal Affairs (OLA) at the International Atomic Energy Agency was providing legislative assistance to IAEA member states to implement the nuclear treaties. OLA published the *Handbook on Nuclear Law* in 2003 and the *Handbook on Nuclear Law: Implementing Legislation* in 2010.

Work on national implementation of the Chemical Weapons Convention (CWC) started shortly after the entry into force of the Convention in 1997. Initial steps included surveys of national legislation in 1998 and 2001, workshops on legislative issues in 2000 and 2001, and legislation checklists and questionnaires in 2002 and 2004. The work of national implementation originated in the Office of the Legal Adviser (LAO) and continues to be carried out by LAO to this day, in co-ordination with the Implementation Support Branch in the International Co-operation and Assistance Division.

LAO's work gained momentum after the adoption of a *Plan of Action Regarding the Implementation of Article VII Obligations* by the Eighth Conference of the States Parties in October 2003<sup>1</sup>. The Article VII Action Plan, as it is known, set the stage for a dramatic expansion of LAO's engagement with CWC member states to help them draft and enact laws and regulations to give effect to various requirements in the Convention including, for example, penal measures, scheduled chemicals transfer controls and extraterritorial application. The plan included four main elements: identification of problems and needs; resources for implementation support; overall time-frame, intermediate steps and target date; and oversight by the Executive Council and the Conference of the States Parties. It was not a coincidence that the plan coincided with the adoption of a universality action plan, which energized expansion of the OPCW's membership to 188 states parties today.

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<sup>1</sup> OPCW Document C-8/DEC.16 (2003).

The Article VII Action Plan led to a number of initiatives coming out of the Office of the Legal Adviser, including a *National Legislation Implementation Kit*, developed by your speaker in 2004. We also started travelling around the world at an increased and sometimes hectic pace, particularly in 2005 and 2006, working with countries in all regions to amend existing legislation or prepare new laws for the effective implementation of the CWC. This international co-operation and assistance produced results: in 2003 we started with 61% of states parties having made an Article VII, paragraph 5 submission on any measures that they had taken to implement the Convention, to 68% states in 2009 making such a submission. The comprehensiveness of CWC implementing legislation increased from 33% in 2003 to 46% in 2009, the year for which the most recent data is publicly available.

Notably, there was great resistance to the idea of model legislation and technical assistance visits in the early years but this resistance eventually broke down as state after state passed tailored laws which drew from the materials produced by LAO and our direct work with government officials responsible for getting their national legislation in order.

#### *National implementation of the BWC – green shoots*

Though BWC implementation was not nearly as advanced as it was for the CWC in 2003, green shoots were starting to emerge. VERTIC produced the paper *Time to Lay Down the Law* that year, which for the first time gave a broad overview of BWC implementing legislation in states parties around the world. And the very first set of intersessional meetings in 2003 after the Fifth Review Conference addressed national implementation.

There were other activities underway as well. In 2004, the UN Security Council adopted Resolution 1540 – with the 1540 Committee’s term recently extended by Resolution 1977 to the year 2021– which requires all UN member states to adopt measures to prevent and prohibit non-state actors from engaging in any activities involving nuclear, biological and chemical weapons; and to establish adequate and effective measures to account for and secure related materials.

In 2005, VERTIC and the International Committee of the Red Cross (ICRC) developed a model law to implement the BWC. In 2006, the Sixth Review Conference of the BWC “...reaffirm[ed] the commitment of States Parties to take the necessary national measures under Article [IV]. The Conference also reaffirm[ed] that the enactment and implementation of necessary national measures under this Article would strengthen the effectiveness of the Convention”. That same year, I started the Biocriminalization Project at Interpol, with the objectives of analyzing laws and regulations for the prevention of bioterrorism and working with states to improve their legislation to prevent biological weapons proliferation. Angela Woodward and I also developed a more comprehensive model for implementation of the BWC, at the time an Interpol-VERTIC product, with biosecurity and transfer control measures and enforcement mechanisms.

In 2007, the Meeting of the States Parties to the BWC “...agreed on the fundamental importance of effective national measures in implementing the obligations of the Convention”. That same year, VERTIC staff cooperated with the ICRC and the first European Union Joint Action for the BWC – implemented by the Bioweapons Prevention Project – for legislation assistance activities in Peru and Nigeria.

#### *VERTIC’s National Implementation Measures Programme*

For lack of staff capacity and time, the surveys of legislation for implementation of the Chemical Weapons Convention that the OPCW had carried out in 1998 and 2001 did not continue. Instead, the OPCW’s Office of the Legal Adviser relied on self-reporting by states through the legislation questionnaire which came out in 2002, but their answers were not always in-depth nor necessarily accurate. Moreover, the Technical Secretariat – and this fell largely to LAO – was tasked by the Eighth Conference of the States Parties in 2003, under the Article VII Action Plan, to begin drafting outreach fairly quickly.

At Interpol, I decided that it would still be useful to carry out gap analysis of laws and regulations related to the BWC in a systematic way, before moving towards working with states on legislative drafting. This included looking at definitions, criminal offences, jurisdiction, control lists, biosecurity and biosafety measures, transfer controls and enforcement. Two years later, in 2008, this work would continue and expand at VERTIC under a fully revamped National Implementation Measures Programme.

Under this Programme, we have so far completed 130 analyses, also known as legislation surveys, of countries' national laws and regulations to implement the BWC. These surveys are based on a template with 96 criteria covering the areas I just mentioned. On the basis of the data, we have provided direct legislative assistance to over 20 countries in all regions of the world, with several draft laws currently under inter-ministerial review or being considered by national assemblies. And we have developed a comprehensive 'BWC legislation toolkit', including the legislation models I noted earlier and a publicly-available database of over 2,000 BWC-related laws and regulations in a range of languages.<sup>2</sup> I should note here how very honoured we are to have with us today the Deputy Minister of Justice of Afghanistan, Dr Hashimzai, with whom we worked to prepare draft laws to implement both the Chemical and Biological Weapons Conventions.

In an interesting twist, we found that it was quite effective and relatively easy to undertake outreach on universality of the BWC, by adding a ratification or accession package to our legislation survey packages for non-states parties, in national languages. These have gone out to ten non-states parties in the past two years and will go to seven more in 2012. This universality-cum-legislative assistance activity echoes the steps called for in the CWC action plans from 2003.

#### *Emerging developments in international co-operation and assistance*

I have briefly laid out the activities undertaken by the IAEA and OPCW, and the convergence of activities, actors and methodologies for implementation of the BWC since 2003. I would now like to turn to where I think we are headed: a convergence of activities, actors and methodologies for international assistance and co-operation across the CBRN regimes. I will direct my remaining comments to this convergence in relation to legislative assistance, and there is a lot of good news.

Those of us in the field have gotten a lot better at what we are doing. For instance, models and guidelines have been developed for states to develop laws and regulations across the CBRN spectrum and most of these are now in several languages, including less common ones such as Dari and Georgian. We all more or less know each other in the assistance community and communicate informally on a regular basis, or at least we bring one another up to date on our work at conferences and workshops. In this way, we are also learning how to avoid duplication of effort and are making sure that we are not stepping on one another's toes. In addition, VERTIC hosted a workshop, in London, in January 2008 on co-ordination of legislative assistance facilitators and providers in the nuclear, chemical and biological weapons field, and co-organised a workshop with the Clingendael Institute in The Hague, in March 2009, on this theme but with an added focus on UN Security Council Resolution 1540.

Where we have not been able to make as much progress, however, is in joint legislative drafting missions, for example: OPCW-VERTIC or OPCW-IAEA or IAEA-VERTIC and so on. Despite this, there is another trend emerging, which in my mind is a positive one. We of course continue to co-ordinate our efforts with the OPCW, the IAEA and the ISU and EU Joint Action for the BWC, in matters related to the CWC, nuclear weapons treaties and BWC, as I alluded to above. But, increasingly, we are co-ordinating and co-operating with the 1540 Committee and its experts, the OSCE, CARICOM, SICA, UNICRI/JRC CBRN Centres of Excellence, UNODC and the UNODA-New York on assistance directly related to comprehensive implementation of Resolution 1540. This development comes at a time when VERTIC is expanding its National Implementation Measures Programme to include legislative drafting support for Resolution 1540, for

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<sup>2</sup> <http://www.vertic.org/pages/homepage/databases/bwc-legislation-database/introduction.php>.

those states interested in this approach. The final piece for this expansion is nearly complete, namely a report on the legislative approach to handling illicit trafficking of radioactive and nuclear materials.

Why is this development important? In the past couple of years, we have noticed during our outreach efforts that states are increasingly reconsidering how best to implement their obligations under the BWC, CWC, the nuclear weapons treaties and Resolution 1540. In some cases, they have communicated that they would like to draft CBRN implementing legislation and establish CBRN National Authorities. For many states, this makes a lot of sense as it centralises resources and streamlines implementation of 1540 at the national level and we have already worked with one country, Chile, through this approach. A country in the Balkans stated at a recent workshop that their government has also concluded that this is the way for them to go, and there is enormous interest in the Pacific, Central America and the Caribbean in moving forward on comprehensive 1540/CBRN legislation. Indeed, CARICOM and SICA – the regional trade and integration organisations for the Caribbean and Central America – have appointed 1540 implementation co-ordinators in their secretariats. And our Legal Officer and Associate Legal Officer were in Saint Lucia and Bishkek last week for meetings to discuss integrated approaches under Resolution 1540. This approach is also helpful in drawing in the remaining non-states parties to the Conventions, especially those which have not joined for political reasons.

This evolution towards comprehensive 1540 legislation has been complicated, however, by the way assistance has been structured. The international organisations providing assistance in the CBRN area, including the most obvious ones such as the OPCW and the IAEA, but also the UNODC and the ICRC, are restricted in their mandates as to what kind of legislative assistance they can provide, and as I noted before there have been no joint drafting missions involving more than one assistance-providing organisation. Moreover, the 1540 Committee and its experts serve as a clearinghouse for assistance activities related to CBRN legislation, but they cannot provide drafting assistance themselves.

States can of course continue to choose from a menu of legislative assistance providers across the CBRN spectrum, including the IAEA, OPCW, and VERTIC, and can mix and match assistance to implement their remaining obligations under the CBRN treaty regimes and Resolution 1540. Now, however, if states are interested in working on comprehensive Resolution 1540 implementing legislation at once, including dealing with the illicit trafficking of radioactive and nuclear materials, VERTIC will be in a good position to do this with its expanded National Implementation Measures Programme, starting in early 2012. Indeed, VERTIC was identified as a legislative assistance provider in the UN Counter-Terrorism Implementation Task Force's 'Report of the Working Group on Preventing and Responding to Weapons of Mass Destruction Attacks: Interagency Coordination in the Event of a Terrorist Attack Using Chemical or Biological Weapons or Materials'.

Our more immediate concern is the Review Conference. VERTIC calls on the Review Conference to take a strong decision on national implementation, to encourage all BWC member states to enact comprehensive legislative frameworks during the period leading up to the Eighth Review Conference in 2016, and to regularly discuss state practice, assistance needs and progress made.

Thank you.