

Ratification and National Implementation of the Biological Weapons Convention

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About VERTIC

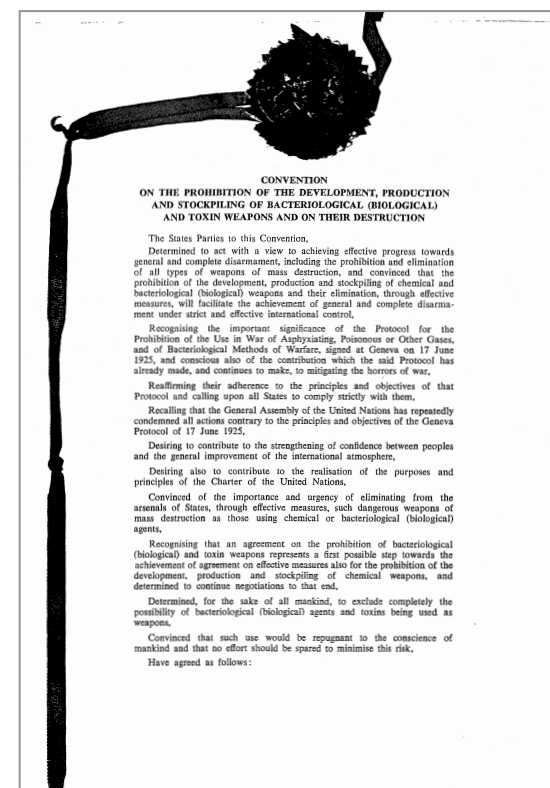
VERTIC is an independent not-for-profit organization located in London, United Kingdom that promotes the effective verification and implementation of international agreements and related regional and national initiatives.

VERTIC's National Implementation Measures (NIM) Programme advises States on national implementation of the obligations 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 Biological and Toxin Weapons Convention (BWC)

- The Convention entered into force on 26 March 1975
- A disarmament and non-proliferation Convention calling on States Parties to adopt measures to prohibit and prevent biological weapons
- The BWC Implementation Support Unit (ISU) supports the Convention through facilitation of assistance activities, confidence-building measures, and convening treaty meetings
- Review Conferences every five years - Seventh Review Conference took place in 2011
- Inter-sessional meetings: Meeting of Experts and Meeting of States Parties
- It has 170 States Parties and 10 Signatory States
 - Nepal is a Signatory State (10 April 1972)
- BWC website: www.unog.ch/bwc



Why Should a State join the BWC?

- To demonstrate its commitment to the prohibition of biological weapons;
- To support the global norm against biological weapons;
- To take up numerous capacity-building, training and development opportunities available to States Parties to this Convention.



Process of Ratification of the BWC (1 of 2)

- Signature
 - Nepal is a Signatory State (10 April 1972)
- Ratification
 - To become a party to the BWC, ratification is required after signing of the Convention
- Ratification at the national level
 - In accordance with national law and procedure: e.g. Nepal Treaty Act

Process of Ratification of the BWC (2 of 2)

- Ratification at the international level
 - Signature of an ‘Instrument of Ratification’
 - by Head of State, Head of Government, Minister of Foreign Affairs or person with ‘full powers’
 - Delivery (deposit) of the ‘Instrument of Ratification’ to Depository
 - United Kingdom
 - Russia
 - United States
 - Date of deposit = entry into force of the BWC for the State in question = State is now a party to the BWC
- Model ‘Instrument of Ratification’ available

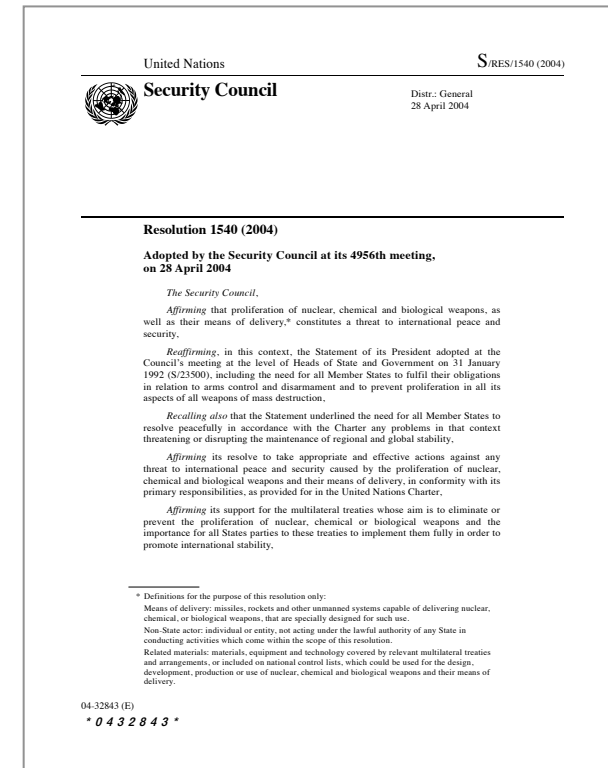
UN Security Council Resolution 1540

- Adopted on 28 April 2004 under Chapter VII of the UN Charter
- Legally binding on all UN Member States
- Extended most recently in 2011 (UNSCR 1977) until 25 April 2021
- Several aims:
 - 1) Requires States ***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) Requires States to adopt measures ***to prevent*** the proliferation of NBC weapons and their means of delivery, including controls over dual-use materials (OP3);



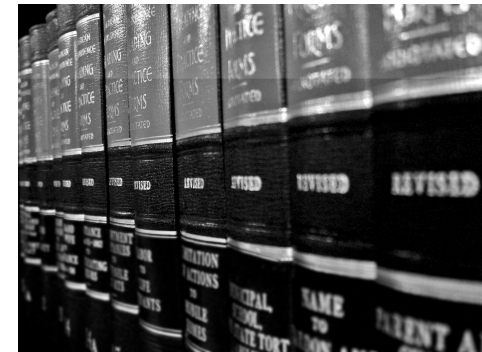
UN Security Council Resolution 1540

- 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



National Implementation Measures

- Under **Article IV** of the BWC...
Each State Party shall, in accordance with its constitutional processes, take *any necessary measures to prohibit and prevent* the development, production, stockpiling, acquisition, or retention of the agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention
- Which measures do States need to adopt in order to implement the BWC and UNSCR 1540?
 - 1) Definitions
 - 2) Prohibitions and penalties
 - 3) Jurisdiction
 - 4) Enforcement
 - 5) Transfer Control
 - 6) Biosafety and biosecurity



National Implementation Measures

1) **Definitions** (biological weapon, biological agent, toxin, etc.)

Article 1 of the BWC:

“(1) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;

(2) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict”

National Implementation Measures

2) Prohibition of certain activities and penalties

- development, production, acquisition, stockpiling, retention, direct or indirect transfers, and use of biological weapons
- preparations (attempts, directing, threats, financing, etc.) related to biological weapons
- unlicensed activities involving controlled biological agents (such as anthrax, botulinum, Ebola, plague, salmonella, etc.)

3) Extending the reach of the prohibitions

- to natural and legal persons
- extraterritorially (e.g. jurisdiction on the basis of nationality of perpetrator, nationality of victim, impact on State interests)

National Implementation Measures

4) **Legislative enforcement** to ensure non-proliferation of biological weapons:

- National Authority (and States are strongly encouraged to designate a national point of contact to the BWC's Implementation Support Unit)
- National licensing system
- Inspections of laboratories and other facilities where controlled biological agents may be found (as there is no regime in place for international inspections)
- Training and special powers for law enforcement officials including customs and other border officials, sea and air port authorities
- Disease surveillance; response capability in the event of a natural, accidental or intentional outbreak (and co-operation among law enforcement; health officials and doctors; Ministries of Health, Environment and Agriculture, etc.)
- International co-operation on judicial and criminal matters

National Implementation Measures

5) Transfer Controls:

- Adoption of a controlled (or select) agents list based on threat to public health and safety and national security (e.g. WHO risk-based approach; Australia Group lists for biological agents, animal and plant pathogens and dual-use technology)
- Establish transfer permit system
- Require end-user certificate
- Establish effective border controls

National Implementation Measures

- 6) **National biosafety and biosecurity** measures play a key role in preventing biological weapons proliferation.
 - Biosafety measures help prevent unintentional exposure or accidental release of biological agents
 - Biosecurity measures help prevent unauthorized access, loss, theft, misuse, diversion or intentional release of biological agents
- The Sixth and Seventh Review Conference called upon States Parties *to adopt, in accordance with their constitutional processes, legislative, administrative, judicial and other measures, including penal legislation, designed to... ensure the safety and security of microbial or other biological agents or toxins in laboratories ...*

National Implementation Measures

- 6) **National biosafety and biosecurity** measures play a key role in preventing biological weapons proliferation.
- Some specific measures could include:
 - Adoption of a controlled (or select) agents list based on threat to public health and safety and national security (e.g. WHO risk-based approach; Australia Group lists for biological agents, animal and plant pathogens and dual-use technology)
 - Establishing a system for notification of accidents, loss or theft mechanism
 - Comprehensive record-keeping
 - Biosafety and biosecurity training for personnel
 - Physically secure labs (externally and internally)
 - Personnel background checks
 - Secure transportation (approved carriers, secure containers and packaging, labelling, shipment tracking, etc.)



Benefits of Implementation

- States can investigate, prosecute and punish any offences, including preparatory acts, associated with biological agents or toxins committed by non-State actors;
- States can monitor and supervise any activities, including transfers, involving biological agents and toxins;
- 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 certain biological agents;
- States' obligations under the BWC and UN Security Council Resolution 1540 will be satisfied;
- States will be able to comply effectively with international reporting requirements.

Approaches to National Implementation

- Comprehensive stand-alone BWC law

Antigua and Barbuda, Australia*, Belgium, Brunei-Darussalam, Canada*, Cuba*, Czech Republic*, France, Japan*, Mauritius*, The Netherlands, Russian Federation, Saint Kitts and Nevis, Singapore, United Kingdom, United States

- Law that only contains the necessary penal provisions for the BWC
- Comprehensive law containing penal provisions, biosafety/biosecurity measures, transfer control provisions, and enforcement measures (indicated with *)

- Weapons of Mass Destruction law

Chile, India, South Africa

- Chapter divisions by type of weapon/material (RN, B, C)
- The accountability and security measures are different for each type of regime
- Criminal provisions are separated for each type of weapon
- Transfer permits can be combined for the three regimes

- Implementation through several laws and regulations



VERTIC's Assistance

At a Government's request, our multilingual team of common and civil law lawyers can:

- Undertake comprehensive analysis of the State's existing legislation for implementation of the BWC and UNSCR 1540
 - Legislation survey: an analysis based on 96 criteria (covering definitions, offences, preparations, jurisdiction, enforcement, transfer control, and biosafety/biosecurity)
 - Relevant national legislation and regulations are thoroughly reviewed
 - This has been done for Nepal
- We provide cost-free legislative assistance
 - We are in a position to work with States on drafting legislation to implement the BWC
 - We are also in position to work with States on implementation of the Chemical Weapons Convention, and certain international agreements relating to the security of nuclear and other radioactive material



VERTIC's Drafting Tools

- ICRC-VERTIC sample legislation: 'A **Model Law**: The Biological and Toxin Weapons Crimes Act'
- VERTIC's '**Sample Act** for National Implementation of the 1972 Biological and Toxin Weapons Convention and Related Requirements of UN Security Council Resolution 1540'
- VERTIC's '**Regulatory Guidelines** for National Implementation of the 1972 Biological and Toxin Weapons Convention and Related Requirements of UN Security Council Resolution 1540'
- VERTIC's '**Guide** to National Implementation of UN Security Council Resolution 1540 (2004)'
- VERTIC's BWC National **Legislation Database** (at www.vertic.org > Programmes > NIM Programme > Biological Weapons and Materials > BWC Legislation Database)
- We have **fact sheets** on the nuclear, biological and chemical weapons treaties as well as a BWC National Authority fact sheet
- All are available in various languages at www.vertic.org and on CDs distributed at this workshop



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