

National Implementation Measures for the Biological Weapons Convention and UNSCR 1540

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Countering Biological Threats

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What is VERTIC?

VERTIC is an independent, non-profit making, non-governmental organization located in London, United Kingdom, that promotes the effective verification and implementation of arms control, disarmament and environment agreements.

VERTIC's National Implementation Measures (NIM) Programme, with funding and in-kind assistance from Canada and the United Kingdom, has been developed to assist States in understanding what measures are required at the national level to comply with the prohibitions in a wide range of nuclear, chemical and biological weapons treaties and UN Security Council resolutions and how to implement them.

Implementing the BWC

- Basics about the Biological Weapons Convention (BWC)
 - The Convention entered into force on 26 March 1975
 - It has 163 States Parties and 13 Signatory States
 - The BWC Implementation Support Unit (ISU) supports States Parties in implementing the Convention through co-ordination of assistance activities, confidence-building measures, and convening treaty meetings
 - Bi-annual thematic meetings have taken place during 2003-2005 and 2007-2010; the 7th Review Conference will take place in 2011
 - The convention website is: www.unog.ch/bwc
- 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

Implementing UNSCR 1540

- UNSCR 1540 requires States to adopt and enforce appropriate and effective measures to prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery.
- Regarding dual use items, States are required to adopt and enforce appropriate and effective measures to:
 - Account for and secure items in production, use, storage or transport;
 - Develop and maintain physical protection;
 - Develop and maintain effective border controls and law enforcement; and
 - Establish national export and trans-shipment controls

National Implementation Measures

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) Biosafety and Biosecurity
- 6) Export Control
- 7) Reporting

National Implementation Measures

1) Definitions (biological weapon, toxin, etc.) and

2) Prevention and prohibition of certain activities

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

3) Extending the reach of the prohibitions

- to natural and legal persons
- extraterritorially (e.g. on the basis of nationality of perpetrator, nationality of victim, impact on State interests, etc.), and ensuring that a political defense is inadmissible

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 inspections of laboratories and other facilities where controlled pathogens 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, police
- 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

- Also:
 - Codes of conduct
 - Training and education

National Implementation Measures

5) National biosafety and biosecurity measures play a key role in preventing biological weapons proliferation.

- Biosafety measures help prevent unintentional exposure or accidental release of pathogens
- Biosecurity measures help prevent unauthorized access, loss, theft, misuse, diversion or intentional release of pathogens
- Specific measures are:
 - Controlled (or select) agent lists 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)
 - Notification of loss or theft
 - 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.)

National Implementation Measures

6) Export Control:

- Controlled (or select) agent lists 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 licensing system for individuals and laboratories wishing to carry out activities with controlled agents
- Internal and international transfer controls through permits (as well as customs/border controls and checks of documentation, end-use certificates, and detection equipment)

National Implementation Measures

7) Reporting

- States Parties to the BWC have a politically binding obligation to submit their Confidence-Building Measures each year to the ISU. The CBMs consist of the following forms:
 - CBM A Part 1: Exchange of data on research centres and laboratories; Part 2: Exchange of information on national biological defence research and development programmes.
 - CBM B Exchange of information on outbreaks of infectious diseases and similar occurrences caused by toxins.
 - CBM C Encouragement of publication of results and promotion of use of knowledge.
 - CBM D Active promotion of contacts
 - CBM E Declaration of legislation, regulations and other measures.
 - CBM F Declaration of past activities in offensive and/or defensive biological research and development programmes.
 - CBM G Declaration of vaccine production facilities.
- UNSCR 1540 calls upon all states to report to the Committee on steps they have taken or intend to take to implement the resolution.
- The benefit of having legislation on reporting is that it enables the efficient and accurate gathering of the necessary information.

Practical Process of Developing Legislation

- Identify a national Point of Contact to be responsible for the process
 - e.g. Ministries of Foreign Affairs, Defense, Health, Environment, Trade and Industry
- Identify which obligations are already covered by existing legislation
 - Through a VERTIC legislation survey
- Confirm which approach to implementation best suits the State's situation
 - One stand alone draft law, an omnibus WMD law, amendments to several laws
- Convene an awareness-raising workshop for national stakeholders to explain:
 - why implementation is needed and its benefits for national and international security
- Convene a legislative drafting workshop involving:
 - Key Ministries: Foreign Affairs, Health, Environment, Defense, Justice, Trade and Industry
 - Legislative drafting assistance providers (VERTIC (BWC/CWC), OPCW (CWC), IAEA (nuclear))
 - Agreement on an Action Plan: a timetable for reviewing and finalizing the draft

VERTIC's National Implementation Measures Programme

1) VERTIC's Legislation Survey

- We prepare 'legislation surveys' for Governments - a survey is an analysis based on 96 criteria (covering definitions, offences, preparations, jurisdiction, biosafety/biosecurity, transfers control, and enforcement)
- These surveys clearly identify the legislative gaps that need to be addressed to fully implement the BWC and related provisions of UNSCR 1540
- Relevant national legislation and regulations are thoroughly reviewed
- We work with Governments to obtain any legislation we cannot locate through open sources and incorporate this into subsequent surveys
- We track statistics on national implementation based on the surveys

2) VERTIC's Legislative Drafting Assistance

- At a Government's request, and with legislative analysis completed, we can provide direct on-site cooperation to draft legislation in capital, or cooperate remotely
- We can cooperate with the Government in developing —
 - a comprehensive **draft law** (using VERTIC sample acts as an option) to implement the BWC and BW-related provisions of UNSCR 1540 and to establish biosafety and biosecurity frameworks, and as a starting point for further inter-agency collaboration and development of the draft, and
 - a **National Implementation Action Plan**
- We can also comment on draft legislation
- VERTIC continues to work with the Government through **approval and adoption** of the draft law with comments on subsequent drafts (via fax, phone, email) and an additional visit if necessary
- The visit is at **no cost** to Governments and takes **2 business days**
- In addition, VERTIC works with States on their **CWC implementing legislation** on request

3) VERTIC's Drafting Tools

- The drafting tools are only a starting point - no one size fits all - and should be tailored to suit each State's circumstances; on-site drafting support is available if requested:
 - ICRC-VERTIC sample legislation: 'A **Model Law**: The Biological and Toxin Weapons Crimes Act' (*in Arabic, English and Spanish*)
 - VERTIC's '**Sample Act** for National Implementation of the 1972 Biological and Toxin Weapons Convention and Related Requirements of UN Security Council Resolution 1540' (*in Arabic, English, French, Portuguese, Russian and Spanish*)
 - VERTIC's '**Regulatory Guidelines** for National Implementation of the 1972 Biological and Toxin Weapons Convention and Related Requirements of UN Security Council Resolution 1540' (*in Arabic, English, French, Russian and Spanish*)
 - VERTIC's BWC National Implementation **Database**
 - We have **fact sheets** for the nuclear, biological and chemical weapons treaties as well as a BWC National Authority fact sheet (*in Arabic, English, French, Russian, Spanish*)
- All are available at www.vertic.org and on CDs distributed at this conference

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