

National Implementation of the Biological Weapons Convention: A Tailored Approach

Cédric Apercé, Legal Officer

Side-event to the BWC Meetings of Experts: Different Perspectives on Strengthening National Implementation

13 August 2018, Palais des Nations, Geneva, Switzerland

About VERTIC

The Verification Research, Training and Information Centre (VERTIC) is an independent not-for-profit organization located in London, United Kingdom, established in 1986. VERTIC 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 material;
- as well as UN Security Council Resolution 1540 (2004) (“UNSCR 1540”).

Outline

- What is “national implementation”?
- Approaches to national implementation
- Benefits of national implementation
- VERTIC’s legal services and examples of legislative assistance
- VERTIC’s BWC national implementation tools



What is “National Implementation”?

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.”

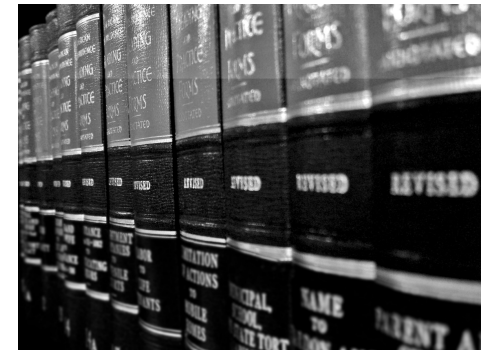
Final Declaration of the **Eight BWC Review Conference**

“11. The Conference reaffirms the commitment of States Parties to take the necessary national measures under [Article IV]. The Conference also reaffirms that the enactment and implementation of necessary national measures under this Article, in accordance with their constitutional processes, would strengthen the effectiveness of the Convention. In this context, the Conference calls upon States Parties *to adopt, in accordance with their constitutional processes, legislative, administrative, judicial and other measures, including penal legislation (...)*”

National Implementation Measures

Which measures do States need to adopt in order to implement the BWC?

- 1) Definitions
- 2) Prohibitions and penalties
- 3) Jurisdiction
- 4) Biosafety and biosecurity
- 5) Transfer control
- 6) Enforcement



VERTIC's Report on National Implementing Legislation (November 2016)

- 146 surveys completed (131 States Parties or 73% of the 2016 BWC membership)
- Irregular levels of implementation among States Parties

Approaches to national implementation (1/4)

- No “one size fits all”: each State will decide the type of implementing measures it requires in accordance with its constitutional processes and national situation
- Possibility to combine approaches
- Relevant areas of law:
 - Criminal law
 - Biosafety and biosecurity laws
 - Export control laws
 - Mutual assistance in criminal matters law
 - Etc.

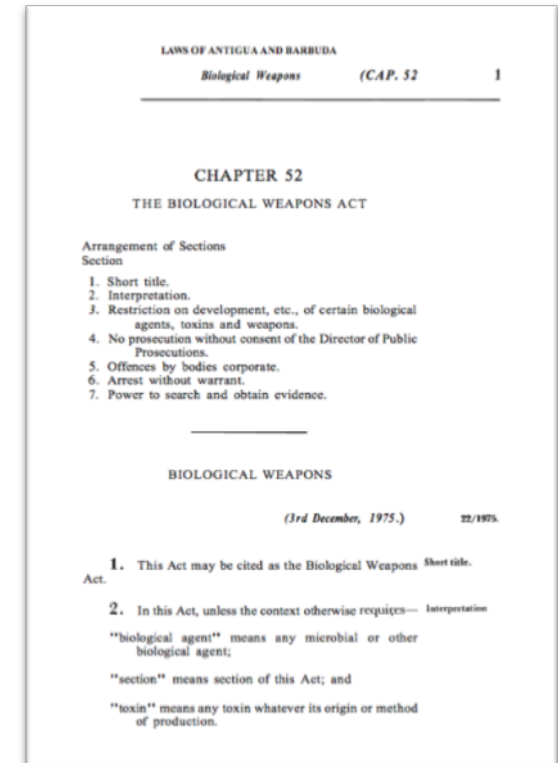


Credit Carlton Stoiber

Approaches to national implementation (2/4)

Comprehensive stand-alone BWC law:

- Law that only contains the necessary penal provisions for the BWC (*e.g., Antigua and Barbuda*)
- Comprehensive law containing penal provisions, biosafety/biosecurity measures, transfer control provisions, and enforcement measures (*e.g., Czech Republic, Singapore*)

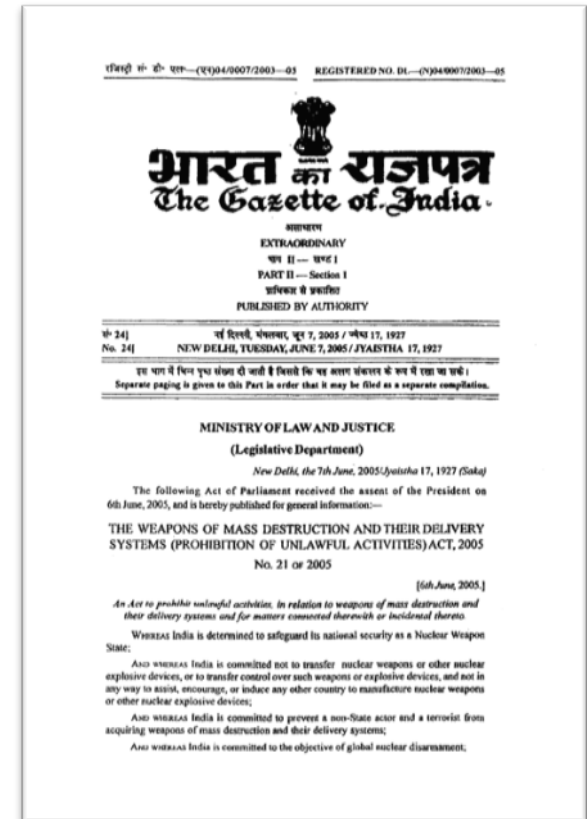


Approaches to national implementation (3/4)

A 'Weapons of Mass Destruction' law:

Characteristics:

- Chapter divisions by type of weapon (nuclear, biological, chemical)
- 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



Examples: India, South Africa

Approaches to national implementation (4/4)

- Implementation through several laws and regulations:
 - Criminal provisions: Penal Code or counter-terrorism legislation
 - CBRN material safety/security provisions: separate nuclear laws, bio laws, etc.
 - Export control of dual use items: in export control laws, customs codes or military/sensitive goods/dual-use items legislation
 - Enforcement: through criminal procedure codes, police laws, extradition laws, mutual assistance in criminal matters legislation
- Gaps can be filled with amending legislation
 - For example, amending the penal code, adopting control lists (preferably through regulation), adopting a CBRN material safety/security law, and/or reinforcing the export control regime

Benefits of National 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.

Challenges to strengthen implementation

- Identify what is already covered in national legislation
- Choose the most appropriate approach for national implementation
- Inter-ministerial co-operation and co-ordination
- Reasonable and realistic timeframes
- Drafting process requires capacity and time
- Co-ordination among assistance providers

VERTIC's Legal Services

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

- 1) Assist States to ratify or accede to the BWC
- 2) Undertake comprehensive analysis of a State's existing legislation for the implementation of the BWC
- 3) Organize and participate in awareness-raising workshops and technical assistance visits to:
 - Draft/revise legislation;
 - Elaborate national legislation action plans;
 - Support national processes considering legislative development and treaty adherence (either in capital or at relevant workshops)

Examples of legislative assistance (1/3)



Comprehensive CBRN approach through UNSCR 1540 Legislative Assistance Projects
funded by Global Affairs Canada – Global Partnership Program

Jamaica

- Comprehensive legislative gap analysis for the implementation of the BWC, CWC, and international instruments for nuclear security
- Workshop on the implementation of FATF Recommendation 7 (April 2016), Workshop on the preparation of drafting instructions for CBRN legislation (April 2016), Legislative Drafting Workshop (October 2017)
- Draft bill to implement the Biological Weapons Convention (BWC), Chemical Weapons Convention (CWC) and strategic trade controls thereto

Antigua and Barbuda

- Legislative Consultations (November 2017)
- Draft bill for the elimination and prevention of the proliferation of nuclear, chemical and biological weapons

Examples of legislative assistance (2/3)



EU CBRN Centres of Excellence Initiative

funded by the European Union

Project 8: Prerequisite to Strengthening CBRN National Legal Frameworks (2013 – 2015)
Cambodia, Lao PDR, Malaysia, the Philippines

- Comprehensive legislative gap analysis for each project country
- Drafting workshops conducted in each project country and adoption of Legislative Drafting Action Plans (LDAPs)

Project 53: Strengthening the National Legal Framework and Provision of Specialised Training on Biosafety and Biosecurity in Central Asian Countries (2016 – 2019)
Afghanistan, Kazakhstan, Kyrgyzstan, Mongolia, Pakistan, Tajikistan, Uzbekistan

- Comprehensive legislative gap analysis for the implementation of the BWC, IHR, and Codex Alimentarius under “One Health” approach for each project country
- Revision of draft legislation in some countries
- Regional report on emergencies response planning

Examples of legislative assistance (3/3)



Bilateral Legislative Assistance

Morocco *(funded by the United States)*

- Peer Review Exercise (May 2017)
- BWC Implementation Workshop (May 2018)
- Follow up legislative assistance (gap analysis, review of draft legislation) (ongoing)

Ghana *(funded by the United States)*

- BWC Implementation Review Exercise (October 2016)
- Legislative drafting workshop in Accra (October 2017)
- First draft BWC bill and National Action Plan produced

Further legislative assistance provided under Project 3 of European Council Decision 51 of 2016 in close collaboration with UNODA and BWC ISU

VERTIC's Tools

- **Fact sheets** on the BWC
- Comprehensive BWC **legislative analysis** template and statistics database (not publicly available)
- VERTIC's *Legislative Guide to National Implementation of UNSCR 1540 and Regulatory Guidelines for National Implementation of the BWC and UNSCR 1540*
- **Model legislation:** VERTIC's *BWC Sample Act*
- **Ratification/Accession** tools for the BWC
- VERTIC's **BWC Legislation Database**
- VERTIC's **Online Legislation Drafting Assistant**



VERTIC's Legislation Databases



Introduction | [A](#) | [B](#) | [C](#) | [D](#) | [E](#) | [F](#) | [G](#) | [H](#) | [I](#) | [J](#) | [K](#) | [L](#) | [M](#) | [N](#) | [O](#) | [P](#) | [Q](#) | [R](#) | [S](#) | [T](#) | [U](#) | [V](#) | [W](#) | [X](#) | [Y](#) | [Z](#)

BWC Legislation Database

Implementation of the Biological Weapons Convention

Once a State has ratified or acceded to the Biological Weapons Convention (BWC), it will be bound by the content of the BWC, and obliged to implement its requirements.

In particular, Article IV obliges each State Party, in accordance with its constitutional processes, to take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition or retention of biological weapons in its territory and anywhere under its jurisdiction or control. States Parties have agreed that the prohibition of the use of biological weapons - originating in the 1925 Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare - also falls under the scope of the BWC.

In addition, Article III requires all States Parties to refrain from transferring biological weapons to anyone and from assisting, encouraging or inducing anyone to manufacture or acquire them.

VERTIC is in a position to assist States with national legislation to implement the BWC, at no cost, under our [National Implementation Measures \(NIM\) Programme](#).



Introduction | [A](#) | [B](#) | [C](#) | [D](#) | [E](#) | [F](#) | [G](#) | [H](#) | [I](#) | [J](#) | [K](#) | [L](#) | [M](#) | [N](#) | [O](#) | [P](#) | [Q](#) | [R](#) | [S](#) | [T](#) | [U](#) | [V](#) | [W](#) | [X](#) | [Y](#) | [Z](#)

Nuclear Security Legislation Database

Implementation of certain international instruments to secure nuclear and other radioactive material

The international legal framework for nuclear security consists of a number of conventions and agreements. Effective implementation of these instruments enables States to secure nuclear and other radioactive material within their borders and during import and export, and gives them the tools to combat crimes and terrorist acts involving these materials.


The legal framework consists of:

- international agreements on nuclear weapons and material:
 - 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT)
 - 1980 Convention on the Physical Protection of Nuclear Material (CPPNM) (and 2005 Amendment)
 - 2005 International Convention for the Suppression of Acts of Nuclear Terrorism (ICSANT)
- Code of Conduct on the Safety and Security of Radioactive Sources and Guidance on the Import and Export of Radioactive Sources
- other related international instruments:
 - 2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (Beijing Convention)
 - 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (as amended by the 2005 Protocol)
 - 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (as amended by the 2005 Protocol)

The number of international instruments relating to the security of nuclear and other radioactive material, and the considerable overlap among them, poses a challenge to legislators. VERTIC has the necessary expertise to work with States on the development of national legislation to implement these instruments, at no cost, under our [National Implementation Measures \(NIM\) Programme](#).






VERTIC's BWC Legislation Drafting Assistant





Search

HOME | ABOUT | EXPERTISE | PROGRAMMES | PUBLICATIONS | OPPORTUNITIES | FOLLOW US



Step 4 - PART C BIOSECURITY

Click Text Show/Hide to view the model provisions for each criterion and edit the text as necessary. Edit the text by deleting, replacing or adding any character directly in the text box.

Select a box to add the item to your draft bill. Any selected item will automatically be saved and added to the final document in Portable Document Format (PDF).

Click Explanation Show/Hide to view the explanation for relevant model provisions.

☒ Purpose | [Text show/hide](#) | [Explanation show/hide](#)

Part C controls the development, acquisition, manufacture, possession, transport, storage, transfer or use of certain biological agents and toxins, and controls the transfer of certain dual-use biological equipment and technology. The purpose of Part C is to ensure that such agents, toxins, equipment and technology are safely and securely controlled in [COUNTRY NAME]. In particular, this Part and its implementing regulations are intended to prevent theft, loss, diversion, illicit trafficking or other improper release of controlled agents and toxins.

States Parties are entitled under the BWC to conduct peaceful activities involving biological agents and toxins on their territories. In some cases, however, these activities may pose a risk to public, animal and plant health, the environment and security if they involve particularly lethal agents and toxins that are not effectively and consistently regulated. Article IV of the BWC thus requires each State Party to adopt measures to prevent prohibited activities involving biological weapons and dangerous biological agents and toxins. Under operative paragraph 3 of UNSCR 1540, States are also required to take and enforce effective measures to establish domestic controls to prevent the proliferation of biological weapons and their means of delivery, including by establishing domestic controls over related materials and to this end develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport; and develop and maintain appropriate effective physical protection measures.

Biosecurity measures are institutional and personal security measures designed to prevent the loss, theft, misuse, diversion or intentional release of pathogens and toxins. (WHO Laboratory Biosafety Manual, Third Edition, Geneva, 2004, p. 47.) They will help ensure that intentional releases of such agents or toxins are prevented, and that the life scientists working with them will do so in a safe and secure manner and environment.

☒ Controlled agents and toxins | [Text show/hide](#) | [Explanation show/hide](#)

Trust & Verify subscription

INTERNATIONAL AGREEMENTS

LEGISLATIVE ASSISTANCE PROVIDER

LEGISLATION DRAFTING TOOLS

LEGISLATION DRAFTING ASSISTANT

BWC LEGISLATION DATABASE

UNIVERSALITY

EXPORT CONTROL

FACT SHEETS

RELATED DOCUMENTS

Thank you

Cédric Apercé, Legal Officer

cedric.aperce@vertic.org

See also: www.vertic.org > Programmes > National Implementation Measures

