

# **Legislation for the prohibition and prevention of WMD proliferation**

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Legislative Gap Analysis vis-à-vis UNSCR 1540:  
Status of Regulatory Framework in the Caribbean Community

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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.

# WMD Treaties

- 1972 Biological Weapons Convention (BWC)
  - Currently 164 States Parties and 13 Signatories
  - Implementation obligation set out in Article IV
  - BWC Implementation Support Unit
- 1968 Nuclear Non-Proliferation Treaty (NPT)
  - Currently 189 States Parties and 1 Signatory
  - Implementation obligation set out in Article III, paras. 1 and 2
  - The treaty does not have a secretariat, but the International Atomic Energy Agency (IAEA) is tasked with verifying compliance (Comprehensive Safeguards Agreement, Additional Protocol)
- 1980 Convention on the Physical Protection of Nuclear Material (CPPNM)
  - Currently 145 States Parties and 44 Signatories
  - Implementation obligation set out in Article 8
  - The International Atomic Energy Agency (IAEA)
- 1993 Chemical Weapons Convention
  - Currently 188 States Parties and 2 signatories
  - Implementation obligation in Article VII
  - The Organisation for the Prohibition of Chemical Weapons (OPCW)

***Appropriate and effective implementation of the nuclear, chemical and biological weapons treaties serves to implement the provisions of UNSCR 1540.***

# BWC Implementation

## **Criminalization of the prohibitions**

- development, production, acquisition, stockpiling, retention, direct or indirect transfers, and use of biological weapons (and preparatory activities such as attempts or financing)
- unlicensed activities involving controlled pathogens or toxins (such as anthrax, botulin toxin, Ebola, plague, tularaemia, etc.)

## **Enforcement measures**

- Extraterritoriality and international co-operation on judicial and criminal matters
- National Authority (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 (there's no international inspections regime)
- Disease surveillance; response capability in the event of a natural, accidental or intentional outbreak (and co-operation among law enforcement; human and animal health officials)

### **Biosafety and Biosecurity measures**

- Controlled 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
- Notification of loss or theft
- Comprehensive record-keeping
- Biosafety and biosecurity training for personnel
- Physically secure labs and personnel background checks
- Secure transportation (approved carriers, secure containers and packaging, labelling, shipment tracking)

### **Transfer controls**

- Controlled agent lists (see above)
- Internal and international transfer controls through permits
- Customs/border controls and checks of documentation, end-use certificates, and detection equipment

# CWC Implementation

## **Prohibitions under Article I**

- Development, production, acquisition, stockpiling, retention, direct and indirect transfers, and use of chemical weapons
- engaging in military preparations to use chemical weapons
- assistance, encouragement, or inducing anyone to engage in prohibited activities
- or using riot control agents a method of warfare

## **Other Prohibitions:**

- Penalties for certain scheduled chemicals-related violations

## **Enforcement measures**

- Extraterritorial application of CWC prohibitions to a State's nationals (Art. VII (1)(c))
- International legal cooperation and assistance (Article VII (2))

## **Scheduled chemicals – licensing/permits/reporting**

- *Schedule 1 chemicals*: licensing/permits for research, medical, pharmaceutical or protective purposes; no transfers or re-transfers to States not Party
- *Schedule 2 chemicals*: permits for transfers; no transfers to/from States not Party
- *Schedule 3 chemicals*: no transfers to States not Party without an end-user certificate
- *All scheduled chemicals*: reporting on transfers and certain activities

# Nuclear Treaties Implementation

## *NPT prohibitions and penalties:*

- NWS: Transfer or transfer control over NW/NED to to any recipient or assist, encourage or induce NNWS to manufacture or acquire NW/NED
- NNWS: Receive the transfer or control over NW/NED;
- NNWS: Manufacture or otherwise acquire NW/NED;
- NNWS: Seek or receive assistance to manufacture NW/NED;

## *NPT safeguards*

NNWS shall not provide/receive source or special fissionable materials, or related technology/equipment without safeguards agreements in place (INFCIRC 153 (Safeguard Agreement model), INFCIRC 540 (Additional Protocol))



# Nuclear Treaties Implementation

## *CPPNM prohibitions and penalties*

- Receive, possess, use, transfer, alter, dispose or disperse NM without lawful authority;
- Theft or robbery of NM;
- Obtaining NM through embezzlement or fraud;
- Demand NM by threat or use of force or by any other form of intimidation;
- Threaten to use NM;
- Attempt any of the above

## What are the benefits of national implementation?

- States can investigate, prosecute and punish any offences, including preparatory acts, associated with WMDs committed by non-State actors such as terrorists
- States can monitor and supervise any activities, including transfers, involving biological agents, toxins, scheduled chemicals, nuclear and radiological materials
- 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 CBRN materials
- States' obligations under the BWC, CWC, CPPNM, NPT and UN Security Council Resolution 1540 will be satisfied
- States will be able to comply effectively with international reporting requirements

## VERTIC's National Implementation Measures Programme

- 1) We prepare surveys of national implementing legislation for the BWC
  - 130 surveys completed so far; the surveys cover 96 criteria
- 2) We compile statistics on the status of BWC implementation (available on request)
- 3) We provide free legislative assistance, including in cooperation with other partner organizations for:
  - BWC and CWC implementation and
  - Starting in 2012, legislation to prohibit and prevent the illicit trafficking of nuclear and radiological materials

## VERTIC's Drafting Tools

- VERTIC's 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'
  - VERTIC's '**Sample Act** for National Implementation of the 1972 Biological and Toxin Weapons Convention and Related Requirements of UN Security Council Resolution 1540' (*also in French*)
  - VERTIC's '**Regulatory Guidelines** for National Implementation of the 1972 Biological and Toxin Weapons Convention and Related Requirements of UN Security Council Resolution 1540' (*also in French*)
  - VERTIC's BWC National Implementation **Database** (available at [www.vertic.org](http://www.vertic.org) > **Databases**)
  - We have **fact sheets** for the nuclear, biological and chemical weapons treaties as well as a BWC National Authority fact sheet (*also in French*)
- All are available on our website ([www.vertic.org](http://www.vertic.org))

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