The adoption of additional measures to implement UNSCR 1540

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National Roundtable on strengthening the implementation of United Nations Security Council Resolution 1540 (2004) (UNSCR 1540)

St John's, Antigua and Barbuda

24 July 2017

Outline

- Introduction
- Methods to strengthen implementation
- Approaches to national implementation
- Challenges and benefits
- VERTIC's assistance and tools

Introduction (1/2)

- National Implementation: The process by which a State Party adopts appropriate and effective national *legislative or regulatory* measures to carry out and enforce the obligations to which it has committed when ratifying or acceding to a Treaty, or which stem from an international instrument

Does not mean "enforcement"

- *UNSCR 1540*:

OP2: States shall adopt and enforce appropriate *effective laws* which *prohibit* any non-State actor to carry out a number of activities involving nuclear, biological and chemical weapons as well as their means of delivery

OP3: States shall adopt *effective measures* to establish *domestic controls* over NBC weapons related materials; and adopt appropriate *laws and regulations* to control *export, transit, trans-shipment and re-export*

Introduction (2/2)

- Implementing measures for UNSCR 1540:
  - Definitions: non-state actors, related materials, means of delivery
  - Offences and penalties
  - Jurisdiction
  - Domestic control over biological, chemical and nuclear materials: account for, physically protect, secure, license. Etc.
  - Transfer control: export, transit, trans-shipment and re-export
  - Enforcement: criminal investigations, training of law enforcement personnel, international cooperation, etc.

- Relevant areas of law:
  - Criminal law
  - Nuclear law, chemical law, biological law (including physical protection, biosecurity and biosafety, etc.)
  - Strategic trade law, export control law, customs law
  - Mutual assistance in criminal matters law

Methods to strengthen implementation (1/2)

Prerequisite:

- Identifying international obligations:
  - UNSCR 1540 but also review of membership to relevant treaties
  - Consider joining additional treaties and supporting non-legally binding instruments

  BWC, CWC, CPPNM, etc.

- Identifying legislative and regulatory needs:
  - Comprehensive review of the existing national legal framework
  - Gaps and need for additional legislative and regulatory measures

Methods to strengthen implementation (2/2)

Drafting and adoption of additional legislative and regulatory measures:

- Forming a drafting committee with representatives of relevant ministries/institutions
  - Link roles and responsibilities of national institutions with specific international obligations
  - Focal point in charge of coordinating legislative and regulatory actions
- Organising drafting workshops/ sessions
- Identifying possible need for assistance and assistance providers
- Establishing a timeline for legislative drafting, review and adoption:
  - Review and approval by ministries
  - Review and adoption by legislature
  - Outreach/awareness-raising to relevant national stakeholders

Approaches to national implementation (1/3)

- No "one size fits all": each State will decide the type of implementing measures it requires in accordance with its constitutional processes
- Possible to combine approaches

Credit: Carlton Stoiber

- Stand-alone C, B, RN laws:
  - 2 trends:
    - Law that only contains the necessary penal provisions; *example: Antigua and Barbuda, BW Act 1975, Nuclear Material (Offences) Act 1993*
    - Comprehensive law containing penal provisions, safety/security measures, export control provisions and enforcement measures; *example: Singapore Biological Agents and Toxins Act 2005*

Approaches to national implementation (2/3)

- A 'Weapons of Mass Destruction' law:
  - Some countries have adopted legislation to implement the CWC and BWC in one law as there are similarities in the two regimes
  - Such laws may include a 'CBRN National Authority'
  - 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 3 regimes

Examples: India, The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act 2005; South Africa, Non-Proliferation of Weapons of Mass Destruction Act 1993

Approaches to national implementation (3/3)

- Implementation through several laws and regulations:
  - How the implementation works:
    - 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

Challenges to strengthen implementation

UNSCR 2325 (2016), preamble: "the full implementation of resolution 1540 (2004) by all States, including the adoption of national laws and measures to ensure implementation of these laws, is a long-term task that will require continuous efforts at national, regional and international levels"

- 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

Benefits of strengthening implementation

- Investigate, prosecute and punish any offences, including preparatory acts, associated with nuclear, chemical and biological materials committed by non-State actors
- Monitor and supervise any activities, including transfers, involving nuclear, chemical and biological materials
- Enhance national security and public health and safety
- Signal to potential investors of a safe and responsible location for peaceful activities involving nuclear, chemical and biological materials
- Compliance with international reporting requirements

VERTIC's assistance and tools

- 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

- The NIM Programme advises States on national implementation of the obligations under the international CBRN instruments – including UNSCR 1540 (2004)

- Multilingual team of common and civil law lawyers

- No institutional mandate restrictions: one-stop shopping for States

- VERTIC's partners: UNLIREC, UNODA, BWC ISU, OSCE, OIE, OPCW the Stimson Center, etc.

- VERTIC (NIM) 's funders: Canada, UK, EU CBRN CoE, US State Department

Our legal services: Legislation surveys

Comprehensive analysis of a State's existing legislation for the implementation of CBRN instruments:

- Legislation survey:
  - an analysis based on criteria covering definitions; prohibitions and penalties; jurisdiction; measures to account for, secure and physically protect CBRN material; measures to control transfers of material; measures for legislative enforcement
  - Relevant national legislation and regulations are thoroughly reviewed
  - Confidential

Our legal services: Legislative drafting

Organize and participate in awareness-raising workshops and technical assistance visits to:

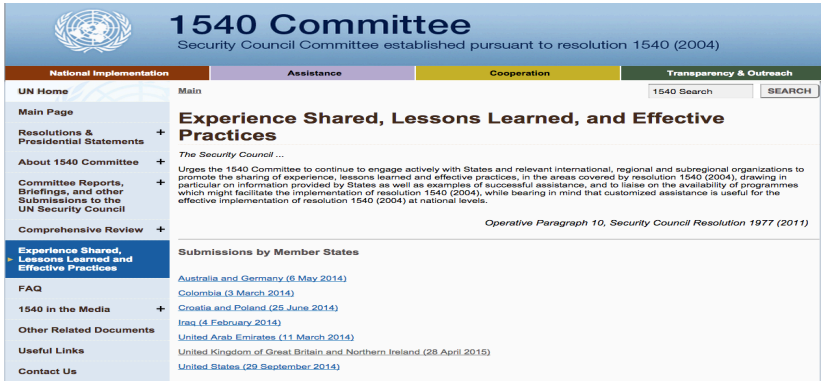
- Draft/revise legislation
- Elaborate national legislative action plans
- Support national processes considering legislative development and treaty adherence (either in capital or at relevant workshops)

Our legal services: Drafting tools

Legislative drafting tools:

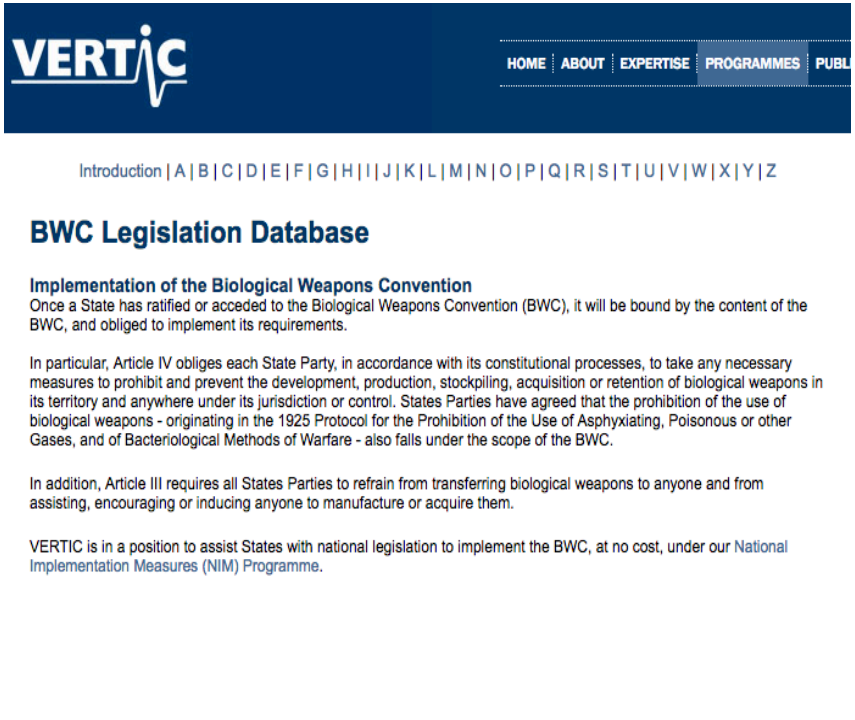
- Sample Act for legislative implementation of the BWC and UNSCR 1540 and its Regulatory Guidelines
- National Legislation Implementation Kit on Nuclear Security
- Legislative Guide to National Implementation of UNSCR 1540

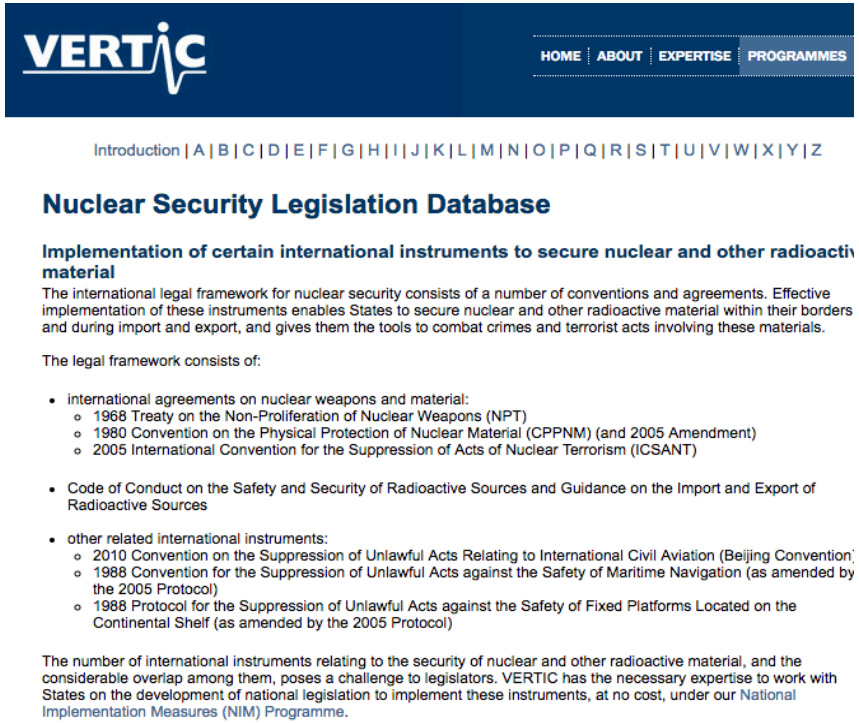
These documents have been submitted by the UK to the 1540 Committee as examples of effective practices for implementation



- BWC online Legislation Drafting Assistant
- Comparison of existing model laws

VERTIC's Legislation Databases





Examples of legislative assistance activities

- 5-8 April 2016: Organised two workshops with Government of Jamaica on FATF Recommendation 7, BWC, CWC and strategic trade; invited experts from CITS and Kingston University, CARICOM 1540 Co-ordinator, 1540 Committee
  - ✓ Under our UNSCR 1540 project in LAC (Phase I, 2016-17) funded by Global Affairs Canada – Global Partnership Program

- EU CBRN Centres of Excellence Project 53: Strengthening the National Legal Framework and Provision of Specialized Training on Biosafety and Biosecurity in Central Asian Countries

- BWC Action (2017-18): VERTIC experts participating in workshops to review and draft BWC legislation, in cooperation with the BWC ISU

- Seminars, work sessions and roundtables on UNSCR 1540 implementation and UNSCR 1540 Voluntary National Action Plans with UNODA and OSCE

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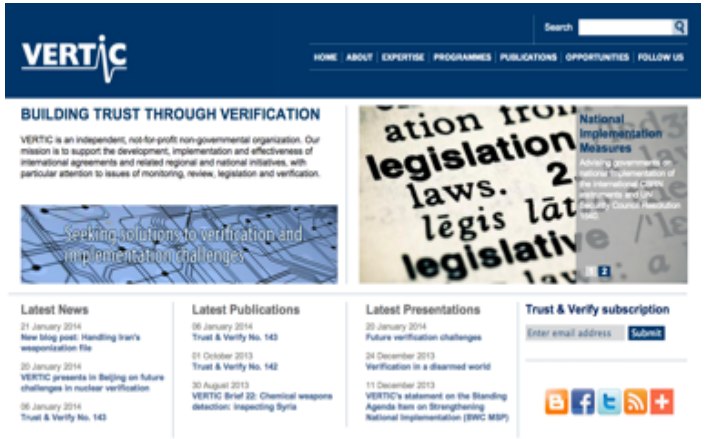

Thank you!