

# Approaches to enactment of UN Security Council Resolution 1540 related legislation

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## Outline

- What should UNSCR 1540-related legislation cover?
- What areas of national law are affected?
- Approaches to 1540-related legislation
- Which approach is the best for your country?
- Useful tools



## What should UNSCR 1540-related legislation cover?

- 2. Decides also that all States, in accordance with their national procedures, **shall adopt and enforce appropriate effective laws** which **prohibit** any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them;
- 3. Decides also that all States shall take and enforce effective measures to establish **domestic controls to prevent** the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall: [...] (d) Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, **including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services** related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing **appropriate criminal or civil penalties** for violations of such export control laws and regulations;
- 5. Decides that none of the obligations set forth in this resolution shall be interpreted so as to conflict with or alter the **rights and obligations of State Parties to the NPT, the CWC and the BTWC** or alter the responsibilities of the IAEA or the OPCW;

## What should UNSCR 1540-related legislation cover?

- Definitions
- Prohibitions, penalties and alternative criminal liability
- Jurisdiction
- Domestic controls: accounting for, securing and physically protect
- Transfer controls
- Domestic controls: enforcement

### OP 2 - Nuclear Weapons (NW), Chemical Weapons (CW) and Biological Weapons (BW)

State: {State's name}  
Date (date)

Does national legislation exist which prohibits persons or entities to engage in one of the following activities ? Can violators be penalized ?		National legal framework					Enforcement: civil/criminal penalties and others					Remarks
		YES			if YES, source document of national implementation law	YES			if YES, source document			
		N W	C W	B W		N W	C W	B W				
1	manufacture/produce				NW: CW: BW: (This order to be followed for fields below)				NW: CW: BW: (This order to be followed for fields below)			
2	acquire											
3	possess											
4	stockpile/store											
5	develop											
6	transport											
7	transfer											
8	use											

## What areas of national law are affected?

- Criminal law;
- Export-import, strategic and dangerous goods, customs laws;
- Regulatory systems for dual-use materials, including measures to account for and physical protect relevant materials;
- Banking laws, financing of terrorism;
- Related enforcement measures: criminal procedure laws, etc.

## Approaches to 1540-related legislation

### 1) Standalone C, B, RN laws

- Mainly common law countries have adopted this approach (with a few exceptions)
- Two trends identified:
  - Law that only contains the necessary penal provisions
  - Comprehensive law containing penal provisions, safety/security measures, export control provisions and enforcement measures
- Pros and cons of this approach?

# Example: standalone BWC law with only penal provisions

LAWS OF ANTIGUA AND BARBUDA

*Biological Weapons* (CAP. 52)

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## CHAPTER 52

### THE BIOLOGICAL WEAPONS ACT

#### Arrangement of Sections

#### Section

1. Short title.
2. Interpretation.
3. Restriction on development, etc., of certain biological agents, toxins and weapons.
4. No prosecution without consent of the Director of Public Prosecutions.
5. Offences by bodies corporate.
6. Arrest without warrant.
7. Power to search and obtain evidence.

Example:  
standalone  
BWC  
comprehensive  
law

An Act to implement the Convention on  
the Prohibition of the Development,  
Production and Stockpiling of  
Bacteriological (Biological) and Toxin  
Weapons and on their Destruction

#### SHORT TITLE

Short title

#### IMPLEMENTATION OF CONVENTION

Definition of Minister

Purpose of Act

Publication of amendments

Act binding on Her Majesty

Prohibition

Authorization under regulations

#### ENFORCEMENT

Responsible authority

Designation of inspectors

Certificates of designation

Entry and inspection

Search and seizure

Obstruction and false statements

Punishment

Continuing offence

Jurisdiction

#### INFORMATION AND DOCUMENTS

Information and documents

Notice for disclosure of information

Confidential information

#### REGULATIONS

Powers of Governor in Council



## 2) A ‘Weapons of Mass Destruction’ law

- Such laws may include the establishment of a ‘CBRN National Authority’
- Some countries have adopted legislation to implement the CWC and BWC in one law and/or have one common authority
- Pros and cons of this approach?

## Example: India WMD law

### THE WEAPONS OF MASS DESTRUCTION AND THEIR DELIVERY SYSTEMS (PROHIBITION OF UNLAWFUL ACTIVITIES) ACT, 2005

NO. 21 OF 2005

[6th June, 2005.]

An Act to prohibit unlawful activities, in relation to weapons of mass destruction and their delivery systems and for matters connected therewith or incidental thereto.

# Example: South Africa WMD law

**Act No. 87, 1993**

GOVERNMENT GAZETTE, 2 JULY 1993  
NON-PROLIFERATION OF WEAPONS OF MASS DESTRUCTION ACT, 1993

## **ACT**

**To provide for control over weapons of mass destruction; and the establishment of a Council to control and manage matters relating to the proliferation of such weapons in the Republic; to determine its objects and functions; to prescribe the manner in which it is to be managed and controlled; and to provide for matters connected therewith.**

### 3) Implementation through several laws and regulations

Most European countries (and civil law countries) have adopted this approach

#### - How does the implementation work ?

- 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

#### - Pros and cons of this approach?

**Is there any other approach  
you can think of ?**



## Which approach is the best for your country?

- No one size fits all: each State will decide the type of implementing measures it requires and which approach to follow
- Possible to combine various approaches
- What factors should be taken into account when deciding on which approach to follow?
  - Constitutional processes
  - Assessment of international obligations related to UNSCR 1540
  - Assessment of the national and regulatory framework : measures already in place
  - Assessment of the scope of current and future NBC national activities
  - Assessment of the level of detail required in the legislation
  - Actors involved in the drafting process and implementation of the law

To compare various approaches to national implementation...

1540 legislative database

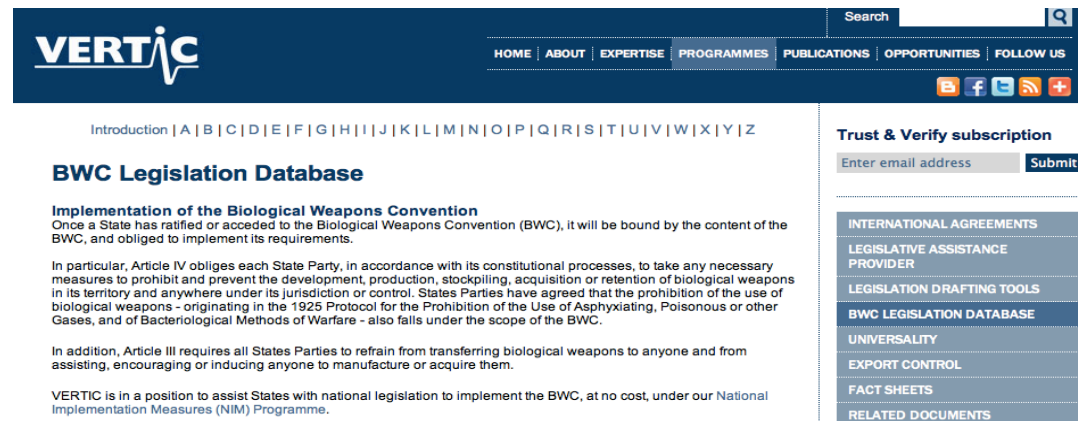
[Main](#) > [National-Implementation](#) > Legislative Database

## List of Legislative Documents

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[Other Submissions](#)

VERTIC BWC and nuclear security legislation databases



The screenshot shows the VERTIC website interface. At the top is a dark blue header with the VERTIC logo on the left and a search bar on the right. Below the logo is a navigation menu with links: HOME, ABOUT, EXPERTISE, PROGRAMMES, PUBLICATIONS, OPPORTUNITIES, and FOLLOW US. To the right of the menu are social media icons for YouTube, Facebook, Twitter, RSS, and a plus sign. Below the header, there is a breadcrumb trail: 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. The main content area is titled "BWC Legislation Database" and contains text about the implementation of the Biological Weapons Convention (BWC). On the right side of the main content area is a sidebar with a "Trust & Verify subscription" form and a list of links: INTERNATIONAL AGREEMENTS, LEGISLATIVE ASSISTANCE PROVIDER, LEGISLATION DRAFTING TOOLS, BWC LEGISLATION DATABASE (highlighted), UNIVERSALITY, EXPORT CONTROL, FACT SHEETS, and RELATED DOCUMENTS.

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### 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.

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- BWC LEGISLATION DATABASE**
- UNIVERSALITY
- EXPORT CONTROL
- FACT SHEETS
- RELATED DOCUMENTS

# Legislative drafting tools

VERTIC Legislative Guide to National Implementation of UNSCR 1540 (2004)

VERTIC Sample Act for National Implementation of the 1972 BTWC and Related Requirements of UNSCR 1540 (2004)

VERTIC Regulatory Guidelines for National Implementation of the 1972 BTWC and Related Requirements of UNSCR 1540 (2004)

OPCW National Legislation Implementation Kit for the CWC

IAEA 2010 Nuclear Law Handbook: Implementing Legislation

Indonesia- VERTIC National Legislation Implementation Kit on Nuclear Security



Thank you

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