



Guide to National Implementation of UN Security Council Resolution 1540 (2004)

VERTIC is an independent, non-profit making organization located in London, United Kingdom. VERTIC's National Implementation Measures (NIM) Programme was developed to assist States in understanding what measures are required at the national level to comply with obligations in a wide range of nuclear, chemical and biological weapons treaties and UN Security Council resolutions and how to implement them.

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INTRODUCTION

1. United Nations Security Council Resolution 1540 (UNSCR 1540)

UNSCR 1540 was adopted on 28 April 2004 as a response to the threat to international peace and security caused by the proliferation of biological, chemical and nuclear weapons, as well as their means of delivery, to non-state actors. The resolution aims to curtail this threat by requiring States to criminalize certain activities and to put in place effective national laws and enforcement measures to prohibit and prevent the misuse of controlled materials, related equipment and technologies.

UNSCR 1540 addresses several areas of national law including, for example, criminal law, export-import and transfers control, regulatory systems for controlled materials and requisite enforcement measures. Each State will decide the type of implementing measures it requires in accordance with its constitutional processes. The scope of measures that a State adopts and enforces to give effect to the resolution will depend on its specific situation with respect to the activities covered by the resolution. However, harmonization of national legal frameworks will be essential for effective implementation of global measures to restrain proliferation of biological, chemical and nuclear weapons.

Under UNSCR 1540, all States are required to adopt and enforce appropriate and effective national laws to prohibit any non-state actor from manufacturing, acquiring, possessing, developing, transporting, transferring or using biological, chemical and nuclear weapons and their means of delivery. Such legislation must also prohibit attempts to engage in any of the prohibited activities, participating in them, and assisting or financing them. This may be achieved by amending penal measures to criminalize and punish these activities.

UNSCR 1540 also calls for the establishment of a national legal framework to prevent the proliferation of biological, chemical and nuclear weapons and their means of delivery. This framework must also cover related materials, equipment and technology. The resolution specifies that this framework should include the following elements:

- a system to account for and secure such items in production, use, storage or transport;
- effective physical protection measures;
- effective border controls and law enforcement measures; and
- effective national export and trans-shipment controls.

Moreover, UNSCR 1540 identifies certain types of national measures that States Parties to the related treaties must implement to give effect to their obligations under those agreements: the 1968 Nuclear Non-Proliferation Treaty (NPT), the 1972 Biological Weapons Convention (BWC) or the 1993 Chemical Weapons Convention (CWC). The resolution stipulates that its provisions do not conflict with or alter the rights and obligations of States Parties to these treaties.

The Security Council adopted Resolution 1977 on 20 April 2011 in which it, *inter alia*, requested the 1540 Committee (established by UNSCR 1540), with its group of experts, to:

...identify effective practices, templates and guidance, with a view to develop a compilation, as well as to consider preparing a technical reference guide about resolution 1540 (2004), to be used by States on a voluntary basis in implementing resolution 1540 (2004), and in that regard, encourages the 1540 Committee, at its discretion, to draw also on relevant expertise, including, civil society and the private sector... (operative paragraph 12)

Toward this objective, VERTIC has developed this *Guide* as guidance for States when they are engaged in the process of implementing UNSCR 1540. It identifies and organizes in one

document the model laws, implementation kits and handbooks that have already been developed by VERTIC, the Organisation for the Prohibition of Chemical Weapons (OPCW) and the International Atomic Energy Agency (IAEA) to assist States in implementing the legal instruments to prohibit and prevent the proliferation of biological, chemical and nuclear weapons and related materials.

This *Guide* is divided into four parts:

- Part I covers biological weapons and materials;
- Part II covers chemical weapons and materials;
- Part III covers nuclear weapons / nuclear and other radioactive material;
- Part IV covers other obligations relevant to UNSCR 1540 national implementation relating to the suppression of unlawful activities involving civil aviation, maritime navigation and fixed platforms.

A ‘Quick Reference’ at the end of each Part sets forth a list of the materials discussed in that Part and web links where available.

2. Legislative Assistance

Legislative assistance is provided by the OPCW, IAEA, International Committee of the Red Cross (ICRC), UN Office on Drugs and Crime (UNODC) and other providers, within their respective mandates.

VERTIC can also provide assistance to governments, at no cost, in the development of laws and regulations for national implementation of:

- UNSCR 1540 (2004);
- 1972 Biological Weapons Convention (BWC);
- 1993 Chemical Weapons Convention (CWC);
- certain international instruments to secure nuclear and other radioactive material, including:
 - 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); and
 - 2003 Code of Conduct on the Safety and Security of Radioactive Sources (Code of Conduct); and
- certain other relevant international instruments, including:
 - 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); and
 - 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).

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PART I BIOLOGICAL WEAPONS AND RELATED MATERIALS

1. Overview

UNSCR 1540 and the Biological Weapons Convention (BWC) are complementary to one another: a State's effective domestication of the BWC goes a long way toward ensuring effective implementation of UNSCR 1540. This is true whether the implementing State is party to the BWC or not and, indeed, there is nothing preventing a non-State Party from implementing the BWC into its national law and adhering to the Convention.

In particular, Article IV of the BWC obliges States Parties, in accordance with their 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 (1925 Geneva Protocol) – also falls under the scope of the BWC.

In addition, Article III requires all States Parties to the BWC to refrain from transferring biological weapons to anyone and from assisting, encouraging or inducing anyone to manufacture or acquire them. States must also now adopt measures for the safety and security of biological agents and toxins – also known as *biosafety* and *biosecurity* measures – to fulfil their obligations to give effect to the BWC.

Legislative drafters may find the following documents useful for implementing not only the BWC but also the biological weapons and materials-related obligations of UNSCR 1540.

2. VERTIC: Sample Act for National Implementation of the 1972 Biological and Toxin Weapons Convention and Related Requirements of UN Security Council Resolution 1540

The *Sample Act* was developed by VERTIC to assist countries in drafting legislation to implement the BWC and the biological weapons-related provisions of UNSCR 1540. It is a tool which legislative drafters may freely use, while taking into consideration their country's legal framework, level of biotechnological development and other national circumstances.

The *Sample Act* is divided into five parts. Part A contains a brief introduction and defines terms that have a particular meaning in the legislation. Part B ensures that non-state actors who misuse biological agents and toxins to harm or kill are committing an offence punishable by law. Part C establishes a robust and comprehensive system, including biosecurity measures, for the prevention of biological and toxin weapons proliferation. Part D provides for enforcement and oversight through two proposed agencies. Finally, Part E enables a National Authority or appropriate minister to issue any regulations necessary under the legislation.

The *Sample Act* is available in Arabic, Azeri, Bahasa Indonesia, English, French, Georgian, Portuguese, Russian and Spanish on the [VERTIC website](#). Civil law versions are also available in French and Spanish.

3. ICRC and VERTIC: Model Law – The Biological and Toxin Weapons Crimes Act

The ICRC-VERTIC *Model Law* is intended for States with a common law legal tradition, although States with different legal traditions may find some of the provisions relevant. It is also intended for States with little or no biotechnology industry. It does not formulate internal

regulations (see Section 4 below) nor does it cover separate administrative measures that arise from implementation of the BWC and UNSCR 1540.

The main emphasis in the *Model Law* is placed on the prohibition, backed up by penal sanctions, of the weapons and acts defined in the BWC and the 1925 Geneva Protocol. Part II of the *Model Law* spells out criminal offences including acts committed by State agents, and provides definitions for terms of prohibition mentioned in the BWC and 1925 Geneva Protocol. Part II also sets up an optional licensing scheme.

Part III of the *Model Law* provides for measures of domestic enforcement through the powers of inspectors. Part IV provides for an information collection system for reporting internally, to other States Party to the BWC and to the 1540 Committee.

Parts V and VI provide for regulation-making powers and contain the procedural elements normally found in similar common law legislation.

The ICRC-VERTIC *Model Law* is available in Arabic, English and Spanish on the [VERTIC website](#).

4. VERTIC: Regulatory Guidelines for National Implementation of the 1972 Biological and Toxin Weapons Convention and Related Requirements of UN Security Council Resolution 1540

VERTIC developed the *Regulatory Guidelines* as guidance for States when they are engaged in the process of preparing any regulatory and administrative measures that may be necessary to supplement their primary legislation for national implementation of the BWC, as well as the biological weapons-related provisions of UNSCR 1540. They are not a set of model regulations, but rather suggestions, tips and links to examples of proven practice, which States are free to review and utilize, taking into account their own legal framework and traditions, level of biotechnological development and other national circumstances.

Part I of the *Regulatory Guidelines* focuses on biosecurity, corresponding to Part C of VERTIC's *Sample Act* (see Section 2 above). Part II of the *Regulatory Guidelines* focuses on enforcement, corresponding to Part D of VERTIC's *Sample Act*.

The *Regulatory Guidelines* are available in Arabic, English, French, Portuguese, Russian and Spanish on the [VERTIC website](#).

Quick Reference 1: Implementation of the biological weapons and materials-related obligations of UNSCR 1540 (and of the BWC) (all materials are available on the [VERTIC website](#))

- VERTIC: Sample Act for National Implementation of the 1972 Biological and Toxin Weapons Convention and Related Requirements of UN Security Council Resolution 1540 (available in Arabic, Azeri, Bahasa Indonesia, English, French, Georgian, Portuguese, Russian and Spanish)
- ICRC and VERTIC: Model Law – The Biological and Toxin Weapons Crimes Act (available in Arabic, English and Spanish)
- VERTIC: Regulatory Guidelines for National Implementation of the 1972 Biological and Toxin Weapons Convention and Related Requirements of UN Security Council Resolution 1540 (available in Arabic, English, French, Portuguese, Russian and Spanish)

PART II CHEMICAL WEAPONS AND RELATED MATERIALS

1. Overview

UNSCR 1540 and the Chemical Weapons Convention (CWC) are complementary to one another: a State's effective domestication of the CWC goes a long way toward ensuring effective implementation of UNSCR 1540. This is true whether the implementing State is party to the CWC or not and, indeed, there is nothing preventing a non-State Party from implementing the CWC into its national law and adhering to the Convention.

In particular, Article VI requires States Parties to the CWC to adopt the necessary measures to ensure that toxic chemicals and their precursors are only developed, produced, otherwise acquired, retained, transferred, or used for peaceful purposes within their territory or anywhere under their jurisdiction or control. States Parties must accordingly regulate and oversee activities involving the chemicals listed in Schedules 1, 2 and 3 of the Convention's Annex on Chemicals.

Article VII of the CWC requires all States Parties to adopt the necessary measures to fulfil their obligations under the Convention, especially appropriate penal legislation. They must then inform the OPCW of the measures they have taken.

Legislative drafters may find the following document useful for implementing not only the CWC but also the chemical weapons and materials-related obligations of UNSCR 1540.

2. OPCW: National Legislation Implementation Kit for the Chemical Weapons Convention

The OPCW has published a *National Legislation Implementation Kit for the Chemical Weapons Convention*. It includes illustrative provisions for:

- definitions;
- National Authority;
- control regime for scheduled chemicals and discrete organic chemicals;
- international inspections;
- forfeiture, confidentiality and legal assistance;
- penal provisions; and
- final provisions.

The *Implementation Kit* can be found on the [OPCW website](#) – in Arabic, English, French, Russian and Spanish.

Quick Reference 2: Implementation of the chemical weapons and materials-related obligations of UNSCR 1540 (and of the CWC)

- OPCW: National Legislation Implementation Kit for the Chemical Weapons Convention (available on the [OPCW website](#) in Arabic, English, French, Russian and Spanish)

PART III NUCLEAR WEAPONS / NUCLEAR AND OTHER RADIOACTIVE MATERIAL

1. Overview

Prohibiting and preventing the proliferation of nuclear weapons and material under UNSCR 1540 is arguably a more complex undertaking than dealing with their biological and chemical counterparts, discussed in Parts I and II of this *Guide*.¹

First, a number of international instruments specifically addressing nuclear weapons and related materials, equipment and technology need to be considered. They include:

- the Nuclear Non-proliferation Treaty (NPT);
- the Statute of the International Atomic Energy Agency (IAEA);
- the Convention on the Physical Protection of Nuclear Material (CPPNM) (and 2005 amendment);
- the International Convention for the Suppression of Acts of Nuclear Terrorism (ICSANT);
- Comprehensive Safeguards Agreement (INFCIRC/153 (Corrected)); and
- Additional Protocol (INFCIRC/540 (Corrected)).

Second, UNSCR 1540 does not explicitly cover so-called radiation dispersal devices (RDDs or ‘dirty bombs’), which utilize radioactive material beyond nuclear material as defined in the main non-proliferation instruments. However, the following documents provide guidance that can contribute to the security objectives set forth in the resolution:

- Code of Conduct on the Safety and Security of Radioactive Sources;
- Guidance on the Import and Export of Radioactive Sources; and
- Regulations on the Safe Transport of Radioactive Material, IAEA document TS-R-1.

Legislative drafters may find the following IAEA documents (Sections 2 and 3) useful, not only for implementation of the instruments indicated above, but also for the nuclear weapons and materials-related obligations of UNSCR 1540.

2. IAEA: Nuclear Security Series

2.1. Introduction

The IAEA continues to expand its Nuclear Security Series (available on the [IAEA website](#)) to address “Nuclear security issues relating to the prevention and detection of, and response to, theft, sabotage, unauthorized access and illegal transfer or other malicious acts involving nuclear material and other radioactive substances and their associated facilities”.² Many of these documents (18 have been published so far) have relevance to the implementation of UNSCR 1540, including *Combating Illicit Trafficking in Nuclear and other Radioactive Material* (Nuclear Security Series No. 6 (2007)) and *Nuclear Security Recommendations on Physical Protection of Nuclear Material and Nuclear Facilities* (Nuclear Security Series No. 13 (2011)).

¹ A table analyzing the scope and application of the instruments discussed in this Part is included as Annex I of the report *Illicit Trafficking of Nuclear and other Radioactive Material – The Legislative Response*, published by VERTIC in April 2012 (available on the [VERTIC website](#)).

² IAEA Nuclear Security Series, available on the [IAEA website](#).

2.2. Combating Illicit Trafficking in Nuclear and other Radioactive Material (Nuclear Security Series No. 6)

The IAEA published *Combating Illicit Trafficking in Nuclear and other Radioactive Material* in 2007. The Agency introduces the publication by noting that "...illicit trafficking and theft of nuclear material can lead to nuclear proliferation and the possible construction of improvised nuclear devices or radiological dispersal and exposure devices..." and that, therefore, "...measures to detect and respond to such acts are essential components of a comprehensive nuclear security programme".³

Drafters of national legislation may find the third chapter particularly useful as it describes in detail the various international legal instruments which are relevant to dealing with criminal or unauthorized acts involving nuclear and other radioactive material. The publication also makes two important points about the role of national legislation: first, "...the provisions of these instruments should be reflected in the national laws and regulations of all States" and, second, "...harmonization of national laws and regulations could contribute to the detection of criminal or unauthorized acts by reducing delay and confusion in the handling of incidents of a cross-boundary character, and by enhancing the coordination of needed response actions".⁴

Combating Illicit Trafficking is available on the [IAEA website](#).

2.3. Nuclear Security Recommendations on Physical Protection of Nuclear Material and Nuclear Facilities (INFCIRC/225/Rev. 5) (Nuclear Security Series No. 13)

The publication *Nuclear Security Recommendations on Physical Protection of Nuclear Material and Nuclear Facilities (Recommendations)* dates its origins to 1975. The fifth and latest revision was released in 2011 as Nuclear Security Series No. 13. Though the *Recommendations* are not legally-binding, they "receive a legal status in some situations by virtue of their adoption in state regulatory frameworks and by reference within other regimes, such as in the Nuclear Suppliers Guidelines".⁵ They do not apply to other radioactive material or to activities beyond those defined as 'nuclear material and facilities'.

The *Recommendations* set out a series of measures that should be enacted in national law relating to the physical protection of nuclear material and facilities. The basis for these measures is the suggested fundamental principle that: "the State is responsible for establishing and maintaining a legislative and regulatory framework to govern physical protection".⁶

As recommended by the IAEA, the framework should establish "applicable physical protection requirements and include a system of evaluation and licensing or other procedures to grant authorization".⁷ A national law should also, in the view of the IAEA, provide for a "system of inspection of nuclear facilities and transport to verify compliance with applicable requirements and conditions of the license or other authorizing document, and to establish a means to enforce applicable requirements and conditions, including effective sanctions". On this latter point, the recommendations suggest that "sanctions against the unauthorized removal and against sabotage should be part of the State's legislative or regulatory system".⁸

³ *Combating Illicit Trafficking in Nuclear and other Radioactive Material*, IAEA Nuclear Security Series No. 6 (IAEA, Vienna, 2007), p 1.

⁴ *Ibid.* at pp 9-10.

⁵ *Prevention of the inadvertent movement and illicit trafficking of radioactive materials* (IAEA TECDOC-1311) (IAEA, Vienna, 2002), p 4.

⁶ *Nuclear Security Recommendations on Physical Protection of Nuclear Material and Nuclear Facilities*, IAEA Nuclear Security Series No. 13, INFCIRC/225/Rev. 5 (IAEA, Vienna, 2011), p 7.

⁷ *Ibid.* at pp 7-8.

⁸ *Ibid.* at p 9.

The *Recommendations* are available on the [IAEA website](#).

3. IAEA Legal Documents

3.1. IAEA: The International Legal Framework for Nuclear Security (IAEA International Law Series No. 4)

The IAEA published *The International Legal Framework for Nuclear Security*, part of the Agency's International Law Series, in 2011. The objective of the publication is to "...bring together the legally binding primary international instruments and the internationally accepted non-binding instruments that constitute the international legal framework for nuclear security".⁹

Section 2 of the publication provides the legislative history of a number of legally and non-legally binding nuclear security instruments, operating under the auspices of the IAEA, the United Nations (including the Security Council) and the International Maritime Organization. Section 3 gives an overview of the most salient features of the instruments, including their objectives and scope, as well as obligations of States Parties to the legally binding instruments or recommendations to States for the non-legally binding instruments. Section 4 describes the IAEA's mandate and functions pursuant to these instruments.

The International Legal Framework for Nuclear Security is available on the [IAEA website](#).

3.2. IAEA: Handbook on Nuclear Law (2003)

In addition to giving an overview of the elements of nuclear law (Part I), the IAEA's *Handbook on Nuclear Law* (2003) provides detailed information on how to implement legislative and regulatory measures for: radiation protection (Part II), nuclear and radiation safety (Part III), nuclear liability and coverage (Part IV) and non-proliferation and physical protection (Part V). Legislative drafters may find Part V on 'Non-proliferation and physical protection' particularly useful in their efforts to implement UNSCR 1540. Part V includes chapters on safeguards, export and import controls and physical protection (Chapters 12 to 14).

The primary objective of 'safeguards' (Comprehensive Agreement (INFCIRC/153 (Corrected) and Additional Protocol (INFCIRC/540 (Corrected)) is to "...help ensure that nuclear material is not diverted for use in the production of nuclear weapons or other nuclear explosive devices, safeguards being the primary means of verifying compliance by States with undertakings not to use safeguarded items for unauthorized purposes".¹⁰ 'Export and import controls' have two objectives: "...to ensure that transfers of nuclear material, equipment and technology (whether into or out of the State) take place in a secure, safe and environmentally responsible manner" and "...to ensure that such transfers do not directly or indirectly assist any non-nuclear-weapon State or any unauthorized person in developing or acquiring nuclear explosive devices or using nuclear material for unauthorized purposes".¹¹ And, finally, the primary objective of 'physical protection' is to "...prevent the illegal or unauthorized acquisition of nuclear material and interference with the authorized uses of nuclear material and facilities through acts such as theft, diversion, threats and sabotage".¹²

National legislation which is developed toward the objectives in the three areas above would also go a long way towards implementation of the nuclear weapons and materials-related

⁹ *The International Legal Framework for Nuclear Security*, IAEA International Law Series No. 4 (IAEA, Vienna, 2011), p 2.

¹⁰ *Handbook on Nuclear Law*, Carlton Stoiber, Alec Baer, Norbert Pelzer, Wolfram Tonhauser (IAEA, Vienna, 2003), p 125.

¹¹ *Ibid.* at pp 138-9.

¹² *Ibid.* at p 148.

obligations of UNSCR 1540, which requires measures to account for, secure, physically protect and control transfers of nuclear material in order to prevent non-state actors from developing nuclear weapons.

The *Handbook on Nuclear Law* (2003) is available on the [IAEA website](#).

3.3. IAEA: Handbook on Nuclear Law - Implementing Legislation (2010)

The IAEA published the *Handbook on Nuclear Law—Implementing Legislation* in 2010. Though mostly structured along the lines of the *Handbook on Nuclear Law* (2003) – discussed in Section 3.2 above – the 2010 version has a revised Chapter 1 which proposes initial provisions to be included in a comprehensive nuclear law, and expands the scope of Chapter 14 beyond physical protection to include nuclear security and illicit trafficking. The 2010 version also provides illustrative ‘model provisions’. These are “...an example of language developed by persons experienced in nuclear law and technology that reflects relevant international legal instruments and IAEA guidance documents in a clear, consistent and succinct manner. It is expected that this text, even if used as a basis for further drafting by a State, will be adjusted to reflect domestic legislative practice and the needs of the particular State”.¹³

Chapters 12 and 13 in the *Handbook on Nuclear Law* (2010) – like the 2003 version – cover safeguards and export and import controls. Chapter 14 has been expanded to cover nuclear security, physical protection and illicit trafficking.

The IAEA suggests that legislation to address the areas in Chapter 14 should include:

- (a) A physical protection regime for nuclear and other radioactive material and related facilities;
- (b) Provisions regarding authorization (licensing), inspection and enforcement measures relevant to nuclear material and nuclear facilities (and other radioactive material);
- (c) Measures for the prevention and detection of, and response to, incidents of theft or other unauthorized acquisition of or illicit trafficking in nuclear and other radioactive material or sabotage of related facilities;
- (d) Criminal offences for violations of applicable laws and regulations, with stringent penalties, particularly for malicious acts;
- (e) National arrangements necessary to implement international cooperation in protecting radioactive material, recovering stolen or lost material and dealing with offenders.¹⁴

The *Handbook on Nuclear Law* (2010) proposes a series of model provisions to cover the basic elements in (a) to (e) above in national legislation.

In addition, the handbook proposes a series of model provisions to implement the criminal offences in the CPPNM (and the amendment thereto), the International Convention for the Suppression of Terrorist Bombings and ICSANT. These provisions were jointly developed by the IAEA and the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime.

Effective implementation of the objectives in Chapters 12 to 14 of the *Handbook on Nuclear Law* (2010) – through robust legislative measures – would go a long way toward implementation of UNSCR 1540. The resolution requires States to implement measures to

¹³ *Handbook on Nuclear Law – Implementing Legislation*, Carlton Stoiber, Abdelmadjid Cherf, Wolfram Tonhauser, Maria De Lourdes Vez Carmona (IAEA, Vienna, 2010), p 3.

¹⁴ *Ibid.* at p 135.

account for, secure, physically protect and control transfers of nuclear material in order to prevent non-state actors from developing nuclear weapons.

The *Handbook on Nuclear Law* (2010) is available on the [IAEA website](#).

Legislative drafters may also find the following article highly useful when considering how to organize the process of preparing national legislation for nuclear security: ‘Developing National Legislation for Nuclear Security: Priority Issues and Basic Approaches’.¹⁵

Quick Reference 3: Implementation of the nuclear weapons and materials-related obligations of UNSCR 1540 (and of certain international instruments to secure nuclear and other radioactive material)

- IAEA: Combating Illicit Trafficking in Nuclear and other Radioactive Material (Nuclear Security Series No. 6)(available on the [IAEA website](#))
- IAEA: Nuclear Security Recommendations on Physical Protection of Nuclear Material and Nuclear Facilities (Nuclear Security Series No. 13)(available on the [IAEA website](#))
- IAEA: The International Legal Framework for Nuclear Security (International Law Series No. 4)(available on the [IAEA website](#))
- IAEA: Handbook on Nuclear Law (2003)(available on the [IAEA website](#))
- IAEA: Handbook on Nuclear Law - Implementing Legislation (2010)(available on the [IAEA website](#))

¹⁵ Carlton Stoiber, “Developing National Legislation for Nuclear Security: Priority Issues and Basic Approaches”, in *1540 Compass*, Volume 1, Issue 2 (CITS, University of Georgia, Athens, 2012).

PART IV OTHER RELEVANT INTERNATIONAL INSTRUMENTS

1. Overview

There are several international instruments for the suppression of unlawful acts involving civil aviation, maritime navigation and fixed platforms, which should be considered when implementing UNSCR 1540. They contain obligations relevant to the non-proliferation of biological, chemical and nuclear weapons and material. They are the:

- Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (Beijing Convention);
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (as amended by the 2005 Protocol); and
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (as amended by the 2005 Protocol).

Drafters of national legislation may wish to consider VERTIC's proposed measures below (Sections 2 to 4), which can reinforce a State's national implementation of UNSCR 1540.

2. Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (Beijing Convention)

2.1. Definitions

Article [1]. For the purposes of this [Act] [Law] [Statute]:

(1) 'radioactive material' means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionizing radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to their radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or to the environment;

(2) 'nuclear material' means plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore residue; or any material containing one or more of the foregoing;

(3) 'BCN weapon'¹⁶ means:

(a) "biological weapons", which are:

- (i) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or
- (ii) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

(b) "chemical weapons", which are, together or separately:

- (i) toxic chemicals and their precursors, except where intended for:

¹⁶ The same term and definition are in the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (as amended by the 2005 Protocol) and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (as amended by the 2005 Protocol).

- (A) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; or
- (B) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; or
- (C) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or
- (D) law enforcement including domestic riot control purposes,

as long as the types and quantities are consistent with such purposes;

(ii) munitions and devices specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (b)(i), which would be released as a result of the employment of such munitions and devices;

(iii) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (b)(ii).

(c) nuclear weapons and other nuclear explosive devices.

2.2. Offences

Article [2]. It shall be an offence to intentionally:

(1) release or discharge from a [State] aircraft in service any BCN weapon or explosive, radioactive, or similar substances in a manner that causes or is likely to cause death, serious bodily injury or serious damage to property or the environment;

(2) use against or on board a [State] aircraft in service any BCN weapon or explosive, radioactive, or similar substances in a manner that causes or is likely to cause death, serious bodily injury or serious damage to property or the environment;

(3) transport, cause to be transported, or facilitate the transport of, on board a [State] aircraft:

(a) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act;

(b) any BCN weapon, knowing it to be a BCN weapon as defined in Article [1];

(c) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to a safeguards agreement with the International Atomic Energy Agency; or

(d) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon without lawful authorization and with the intention that it will be used for such purpose.

[Transport of items and materials under subparagraphs (3)(c) and (d) shall not be an offence if authorized by the [responsible State agency] and if the transport of such items or materials is consistent with or is for a use or activity that is consistent with [State's] rights, responsibilities and obligations under the [Treaty on the Non-Proliferation of Nuclear Weapons], [Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological

(Biological) and Toxin Weapons and on Their Destruction] and [Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction]].

Article [3]. It shall also be an offence to:

- (1) threaten to commit any of the offences in Article [2(1) or (2)] or intentionally cause any person to receive such a threat, under circumstances which indicate the threat is credible;
- (2) attempt to commit any of the offences set forth in Article [2];
- (3) organize or direct others to commit an offence set forth in Articles [2] or [3(1)-(2)];
- (4) participate as an accomplice in an offence set forth in Articles [2] or [3(1)-(2)];
- (5) intentionally assist another person to evade investigation, prosecution or punishment, knowing that the person has committed an act that constitutes an offence set forth in Articles [2] or [3(1)-(4)];
- (6) intentionally agree with one or more other persons to commit an offence set forth in Articles [2] or [3(1)]; or
- (7) intentionally contribute in any other way to the commission of one or more offences set forth in Articles [2] or [3(1)] by a group of persons acting with a common purpose and such contribution shall either:
 - (a) be made with the aim of furthering the general criminal activity or purpose of the group, where such activity or purpose involves the commission of an offence set forth in Articles [2] or [3(1)]; or
 - (b) be made in the knowledge of the intention of the group to commit an offence set forth in Articles [2] or [3(1)].

Article [4]. The offences set forth in Articles [2] and [3] shall be punishable with a maximum of [years] imprisonment and/or a fine of [amount].

2.3. Jurisdiction

Article [5]. [State] shall have jurisdiction over the offences set forth in Articles [2] and [3]:

- (1) when the offence is committed in the territory of [State];
- (2) when the offence is committed against or on board an aircraft registered in [State];
- (3) when the aircraft on board which the offence is committed lands in the territory of [State] with the alleged offender still on board;
- (4) when the offence is committed against or on board an aircraft leased without crew to a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence is in [State];
- (5) when the offence is committed by a national of [State];
- (6) when the offence is committed against a national of [State];
- (7) when the offence is committed by a stateless person whose habitual residence is in the territory of [State]; or

(8) where the alleged offender is present in the territory of [State] and he is not extradited to any other State that has established jurisdiction over the offences in the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation.

2.4. National enforcement and international co-operation

Article [6]. [State] shall have the authority to:

- (1) take any person who is alleged to have committed an offence under this [Act] [Law] [Statute] into custody or take other measures to ensure his presence for criminal or extradition proceedings in accordance with national law;
- (2) undertake a preliminary enquiry into the facts of an offence or alleged offence under this [Act] [Law] [Statute];
- (3) assist any person in custody pursuant to subparagraph (1) in communicating immediately with the nearest appropriate representative of the State of which that person is a national;
- (4) prosecute any person who has committed an offence under this [Act] [Law] [Statute];
- (5) extradite any person who has committed an offence under this [Act] [Law] [Statute] pursuant to Article [8]; and
- (6) prevent the offences set forth in Articles [2] and [3].

Article [7]. Fair treatment

[State] shall undertake to guarantee fair treatment of any person taken into custody, or regarding whom any other measures are taken or proceedings are being carried out pursuant to this [Act] [Law] [Statute].

Article [8]. Extradition

- (1) The offences set forth in Articles [2] and [3] shall be considered as extraditable offences pursuant to any extradition treaty between [State] and any other State or between [State] and any State Party to the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation.
- (2) The offences set forth in Articles [2] and [3] shall be considered as extraditable offences, subject to the laws and procedures of [State].
- (3) A request for extradition based on any of the offences in Articles [2] and [3] shall not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article [9]. Co-operation and assistance

- (1) [State] may:
 - (a) provide assistance to other States Parties to the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation in connection with criminal proceedings brought in respect of the offences set forth in Articles [2] and [3];
 - (b) furnish any relevant information in [State's] possession, if it has reason to believe that one of the offences set forth in Articles [2] and [3] will be committed, to those States Parties to the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation which it believes have also established jurisdiction over these offences.

(2) A request for mutual legal assistance based on any of the offences in Articles [2] and [3] may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article [10]. Reporting to the Council of the International Civil Aviation Organization

[State] may report to the Council of the International Civil Aviation Organization of any relevant information in [State's] possession concerning:

- (1) the circumstances of the offence committed under this [Act] [Law] [Statute];
- (2) the action taken pursuant to Article 16(2) of the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation; and
- (3) measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.

3. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (as amended by the 2005 Protocol)

3.1. Definitions

Article [1]. For the purposes of this [Act] [Law] [Statute]:

- (1) 'BCN weapon' means [*insert Section 2.1 definition above*].

3.2. Offences

Article [2]. It shall be an offence to:

- (1) intentionally, when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act, use against or on a [State] ship or discharge from a [State] ship any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage;
- (2) intentionally, when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act, threaten to commit an offence set forth in subparagraph (1);
- (3) intentionally transport on board a [State] ship any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act;
- (4) intentionally transport on board a [State] ship any BCN weapon, knowing it to be a BCN weapon as defined in Article [1];
- (5) intentionally transport on board a [State] ship any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to an IAEA comprehensive safeguards agreement;
- (6) intentionally transport on board a [State] ship any equipment, materials, software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purpose;

(7) intentionally transport another person on board a [State] ship knowing that the person has committed an act that constitutes an offence set forth in subparagraphs (1) to (6) or (8) to (12) or an offence set forth in the Convention for the Physical Protection of Nuclear Material;

(8) intentionally injure or kill any person in connection with the commission of any of the offences set forth in subparagraphs (1) to (7);

(9) attempt to commit an offence set forth in subparagraph (1) or (8);

(10) participate as an accomplice in an offence set forth in subparagraphs (1) to (9);

(11) organize or direct others to commit an offence set forth in subparagraphs (1) to (9); or

(12) contribute to the commission of one or more offences set forth in subparagraphs (1) to (9), by a group of persons acting with a common purpose, intentionally and either:

(a) with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence set forth in subparagraphs (1) to (7); or

(b) in the knowledge of the intention of the group to commit an offence set forth in subparagraphs (1) to (7).

Article [3]. It shall not be an offence to transport an item or material covered by Article [2(5)] or, insofar as it relates to a nuclear weapon or other nuclear explosive device, Article [2(6)], if such item or material is transported to or from the territory of, or is otherwise transported under the control and authorization of [the responsible State agency] where:

(1) the resulting transfer or receipt, including internal to [State], of the item or material is not contrary to [State's] obligations under the Treaty on the Non-Proliferation of Nuclear Weapons, and

(2) if the item or material is intended for the delivery system of a nuclear weapon or other nuclear explosive device of a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons, the holding of such weapon or device is not contrary to that State Party's obligations under that Treaty.

Article [4]. The offences set forth in Article [2] shall be punishable with a maximum of [years] imprisonment and/or a fine of [amount].

3.3. Jurisdiction

Article [5]. [State] shall have jurisdiction over the offences set forth in Article [2]:

(1) when the offence is committed against or on board a ship flying the flag of [State] at the time the offence is committed;

(2) when the offence is committed in the territory of [State], including its territorial sea;

(3) when the offence is committed by a national of [State];

(4) when the offence is committed by a stateless person whose habitual residence is in [State];

(5) when during its commission a national of [State] is seized, threatened, injured or killed;

(6) when the offence is committed in an attempt to compel [State] to do or abstain from doing any act; or

(7) in cases where the alleged offender is present in the territory of [State] and he is not extradited to any other State which has established jurisdiction over the offences in the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (as amended by the 2005 Protocol).

3.4. National enforcement and international co-operation

[Measures can be tailored here based on the proposed measures in Section 2.4 above.]

4. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (as amended by the 2005 Protocol)

4.1. Definitions

Article [1]. For the purposes of this [Act] [Law] [Statute]:

(1) ‘BCN weapon’ means *[insert Section 2.1 definition above]*.

4.2. Offences

Article [2]. It shall be an offence to:

(1) intentionally, when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act, use against or on a fixed platform or discharge from a fixed platform any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage;

(2) intentionally, when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act, threaten to commit an offence set forth in subparagraph (1);

(3) intentionally injure or kill any person in connection with the commission of any of the offences set forth in subparagraphs (1) and (2);

(4) attempt to commit an offence set forth in subparagraphs (1) or (3);

(5) participate as an accomplice in an offence set forth in subparagraphs (1) and (2) or (3) and (4);

(6) organize or direct others to commit an offence set forth in subparagraphs (1) and (2) or (3) and (4);

(7) contribute to the commission of one or more offences set forth in subparagraphs (1) and (2) or (3) and (4) by a group of persons acting with a common purpose, intentionally and either:

(a) with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence set forth in subparagraphs (1) or (2); or

(b) in the knowledge of the intention of the group to commit an offence set forth in subparagraphs (1) or (2).

Article [3]. The offences set forth in Article [2] shall be punishable with a maximum of [years] imprisonment and/or a fine of [amount].

4.3. Jurisdiction

Article [4]. [State] shall have jurisdiction over the offences set forth in Article [2]:

- (1) when the offence is committed against or on board a fixed platform while it is located on the continental shelf of [State];
- (2) when the offence is committed by a national of [State];
- (3) when the offence is committed by a stateless person whose habitual residence is in [State];
- (4) when during its commission a national of [State] is seized, threatened, injured or killed;
- (5) when it is committed in an attempt to compel [State] to do or abstain from doing any act;
or
- (6) in cases where the alleged offender is present in the territory of [State] and he is not extradited to any other State which has established jurisdiction over the offences in the Convention for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (as amended by the 2005 Protocol).

4.4. National enforcement and international co-operation

[Measures can be tailored here based on the proposed measures in Section 2.4 above.]

Quick Reference 4: Implementation of other international instruments with obligations relevant to UNSCR 1540

- VERTIC: Proposed measures for national implementation of the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (Beijing Convention)
- VERTIC: Proposed measures for national implementation of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (as amended by the 2005 Protocol)
- VERTIC: Proposed measures for national implementation of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (as amended by the 2005 Protocol)