

## Annex XVII

### **Experience shared for the implementation of Security Council resolution 1540 (2004)**

1. In its resolution 1673 (2006) the Security Council invited the 1540 Committee to explore experience-sharing and lessons learned with States and international, regional and subregional organizations. The following list of practices of interest responds to that invitation. As noted in the main part of the present report, the 1540 Committee does not endorse any of the following materials, but provides them as illustrative examples for Member States to consider. As such, the following information also does not comprise an exhaustive list and the Committee welcomes suggestions from Member States or intergovernmental bodies for additions, modifications or deletions to these examples.

#### **Paragraphs 1 and 2: experience shared regarding prohibitions against nuclear, chemical and biological weapons and their means of delivery**

2. Experience shared in this category includes model laws and other measures that have evolved under the auspices of IAEA and OPCW to implement prohibitions and similar measures found in the Nuclear Non-Proliferation Treaty and the Chemical Weapons Convention respectively. Prohibitions in the Nuclear Non-Proliferation Treaty and the Chemical Weapons Convention relate to the general obligation in paragraph 1 for States to refrain from providing any support to non-State actors in their efforts to obtain weapons of mass destruction, as well as to some, but not all, of the prohibitions in paragraph 2.

3. In addition, the United Nations Office on Drugs and Crime (UNODC) *Legislative Guide to the Universal Anti-Terrorism Conventions and Protocols* offers commentary and annotated models of legislation to implement all the anti-terrorism conventions.<sup>a</sup> Several of the anti-terrorism conventions have direct relevance to implementation of resolution 1540 (2004). For example, the 1997 International Convention for the Suppression of Terrorist Bombings defines explosive or other lethal devices to include “the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material” by non-State actors, their accomplices, or any who assist them. Moreover, by defining these activities as terrorist offences, the financing of these acts falls within the ambit of the 1999 International Convention for the Suppression of the Financing of Terrorism.

4. The International Committee of the Red Cross has drafted a model law (“The Biological and Toxin Weapons Crimes Act”) for States with a common law legal framework. Similarly, the International Criminal Police Organization (INTERPOL) has developed, in draft form, model legislation to prohibit bio-crimes and to promote bio-safety and bio-security, with text and annotations. INTERPOL also encourages its members to submit legislative texts on those issues, which it intends to post on its website to share the wide range of national experience.<sup>b</sup>

5. To help States implement the Chemical Weapons Convention, the Organization for the Prohibition of Chemical Weapons (OPCW) has produced a model decree to

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<sup>a</sup> See [www.unodc.org/unodc/en/terrorism/technical-assistance-tools.html](http://www.unodc.org/unodc/en/terrorism/technical-assistance-tools.html).

<sup>b</sup> See [www.interpol.int/Public/BioTerrorism/bioC/default.asp](http://www.interpol.int/Public/BioTerrorism/bioC/default.asp).

establish a national authority, model penal code provisions and a national legislation implementation kit that comes with text and section-by-section commentary.<sup>c</sup> Responding to suggestions from OPCW member States that were working with the United Nations Institute for Training and Research (UNITAR) on chemical and pesticide safety and environmental controls, OPCW and the Organization of Eastern Caribbean States (OECS) developed a model act and model regulations to integrate both the Chemical Weapons Convention and environmental dimensions.<sup>d</sup>

6. Lastly, the IAEA Office of Legal Affairs offers an online compendium of legal instruments on safeguards and non-proliferation, as well as the 2003 IAEA *Handbook on Nuclear Law*. The handbook includes model annotated legal texts relating to nuclear non-proliferation and the penalization of the illicit use or possession of nuclear materials by non-State actors.<sup>e</sup>

**Paragraph 3 (a) and (b): experience shared regarding accounting, securing and physical protection of nuclear, chemical and biological weapons, their means of delivery and related materials**

7. The practices in these areas involve industrial uses of specific weapons of mass destruction-related materials as defined in the footnote to the first preambular paragraph of resolution 1540 (2004). These practices differ considerably from the practices relating to prohibited activities noted above and vary according to the type of industry and the applicable legal instruments. Resolution 1540 (2004) specifically refers to legal instruments and guidelines governing the work of IAEA and OPCW regarding accounting, securing and physical protection of nuclear and chemical items. As paragraph 3 of resolution 1540 (2004), however, covers a much wider range of technical issues than paragraph 1 or 2, many more practices of interest exist for these activities.

8. The Economic Commission for Europe (ECE), for example, recently issued the fifteenth edition of its *Recommendations on the Transport of Dangerous Goods: Model Regulations*. Many of these recommendations cover dangerous goods of concern in the implementation of resolution 1540 (2004).<sup>f</sup> Similarly, ECE prompted the development of the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR), recently consolidated in document ECE/TRANS/185, Volumes I and II, and of the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN), which came into force in February 2008.<sup>g</sup> At the time of preparation of the present report, ECE had begun work with the Intergovernmental Organization for International

<sup>c</sup> LAO 11-Oct-2005 “Model Decree on the establishment of a National Authority,” LAO 12-Oct-2005 “Model Penal Code Provisions,” and LAO Mar-2006 at [www.opcw.org/html/db/legal/la\\_models.html](http://www.opcw.org/html/db/legal/la_models.html).

<sup>d</sup> S/190/2000 23-May-2000 “An Integrated Approach to National Implementing Legislation: Model Act Developed by the Secretariat of the Organization of Eastern Caribbean States” (S/127/99), its associated document S/190/2000 “Annexes 1 and 2 23-May-2000 Annex 1: Pesticides and Toxic Chemicals Control Act (draft); Annex 2: Toxic Chemicals Control (Registration, Licensing and Permit) Regulations (draft)” and PC-IV/A/WP.10 28-Sep-1993 “Illustrative Model Legislation for the Incorporation of the Chemical Weapons Convention into Domestic Law.”

<sup>e</sup> Available at [http://ola.iaea.org/ola/what\\_we\\_do/handbook%20link.asp](http://ola.iaea.org/ola/what_we_do/handbook%20link.asp).

<sup>f</sup> See [www.unece.org/trans/danger/publi/unrec/rev15/15files\\_e.html](http://www.unece.org/trans/danger/publi/unrec/rev15/15files_e.html).

<sup>g</sup> See [www.unece.org/trans/danger/publi/adr/adr\\_e.html](http://www.unece.org/trans/danger/publi/adr/adr_e.html).

Carriage by Rail (OTIF) to harmonize ADR and ADN with the OTIF Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID).<sup>h</sup>

9. The International Maritime Organization (IMO) plays a particularly important role in establishing practices of interest to the secure transportation of weapons of mass destruction-related items, especially as the majority of international trade moves by sea. The Maritime Safety Committee of IMO, for example, developed and oversees the International Maritime Dangerous Goods (IMDG) Code. Application of the IMDG Code became mandatory under the Convention on the Safety of Life at Sea in 2004.<sup>i</sup> In 2006, the Maritime Safety Committee also issued its Revised Recommendations on the Safe Transport of Dangerous Cargoes and Related Activities in Port Areas to match its security provisions with amendments to the IMDG Code and the International Ship and Port Facility Security (ISPS) Code. Part A of the ISPC Code became mandatory in 2004 and many States noted their compliance with it in their submissions to the 1540 Committee. A new protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation will make the transportation of persons or cargo by sea to support illicit activities related to weapons of mass destruction an offence, around which IMO likely will need to develop new standards and practices.

10. Annex 18 to the Convention on International Civil Aviation covers the safe transport of dangerous goods by air and includes a requirement that such transport follow the Technical Instructions for the Safe Transport of Dangerous Goods by Air. The Technical Instructions incorporate a classification system for and list of dangerous goods and procedures for packaging, handling, inspection, notifications relating to such goods, as well as enforcement and other measures that reflect the recommendations of the Dangerous Goods Panel of the International Civil Aviation Organization (ICAO).<sup>j</sup> The International Air Transport Association (IATA) participates in the development of the ICAO Technical Instructions and has its own task force for training personnel on transporting dangerous goods.<sup>k</sup>

11. While many States have tabled papers on improving the standards for biological accountancy, security and physical protection in the context of the Biological and Toxin Weapons Convention process, traditionally most guidance and standards from international organizations were aimed at preventing the spread of animal plant and human diseases through international trade or preventing States from using such measures as barriers to legitimate trade, leaving other matters of human, animal, and plant health to national authorities. However, several key international organizations have begun to develop guidance on topics relevant to the implementation of paragraph 3 (a) and (b) of resolution 1540 (2004). Perhaps most importantly, the creation of the Implementation Support Unit for the Biological and Toxin Weapons Convention already has contributed to the identification of possible practices of interest by publishing citations for a vast number of laws, decrees and regulations on biological materials in dozens of countries, among its online tools.<sup>l</sup>

<sup>h</sup> See [www.otif.org/html/e/pres\\_infor\\_generales\\_e.html](http://www.otif.org/html/e/pres_infor_generales_e.html).

<sup>i</sup> See [www.imo.org/Safety/mainframe.asp?topic\\_id=158](http://www.imo.org/Safety/mainframe.asp?topic_id=158).

<sup>j</sup> See [www.icao.int/anb/FLS/DangerousGoods](http://www.icao.int/anb/FLS/DangerousGoods).

<sup>k</sup> See [www.iata.org/workgroups/dgb.htm](http://www.iata.org/workgroups/dgb.htm). IATA also has its own annual *Dangerous Goods Regulations Manual* and a *Dangerous Goods Regulations e-List*.

<sup>l</sup> See [www.unog.ch/80256EE600585943/\(httpPages\)/855B57E1A5D7D60CC12573A6005334F3?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/855B57E1A5D7D60CC12573A6005334F3?OpenDocument).

12. The World Health Organization (WHO) Chemical and Biological Weapons Working Group has begun to implement resolution 16 of the Fifty-fifth World Health Assembly “on global public health response to natural occurrence, accidental release or deliberate use of biological and chemical agents or radionuclear material that affect health”.<sup>m</sup> In 2004, for example, WHO issued guidance relating to the security of related materials against biological and chemical terrorism (particularly in annex 5, Precautions against the sabotage of drinking water, food, and other products in its public health response to biological and chemical weapons: WHO guidance).<sup>n</sup> It also released the third edition of its *Laboratory Bio-safety Manual*. Another WHO reference of note is *Preparedness for the Deliberate Use of Biological Agents*, especially chapter 2 on prevention.<sup>o</sup> Finally, WHO has issued a number of practices of interest for specific diseases associated with the threat of biological weapons, such as its *Guidelines for the Surveillance and Control of Anthrax in Humans and Animals* and its *Plague Manual: Epidemiology, Distribution, Surveillance and Control*, and continues to work on guidance regarding tularaemia, among others diseases of concern.<sup>p</sup>

13. The Food and Agriculture Organization of the United Nations (FAO) also has taken a broad view of the term “bio-security” to encompass many of the issues of accountancy and security related to implementation of resolution 1540 (2004), defining it as “the management of biological risks in a comprehensive manner to achieve food safety, protect animal and plant life and health, protect the environment and contribute to its sustainable use”.<sup>q</sup> In 2005, FAO, in conjunction with WHO, the World Trade Organization, the World Organization for Animal Health and the Secretariat of the Convention on Biological Diversity, started hosting a website, namely, the *International Portal on Food Safety, Animal and Plant Health*,<sup>r</sup> to compile information on all the latest national and international standards, law and other topics related to protecting food supplies and animal and plant health.

14. The OPCW Technical Secretariat has designed a host of documents on implementing the Chemical Weapons Convention, such as its 2002 *Handbook on Declarations*. Virtually all of these documents contain practices of interest to States trying to implement resolution 1540 (2004), particularly those related to materials accountancy. OPCW also combines this material in its *Information Package No. 1 (2001)* to assist national authorities in implementing the Chemical Weapons Convention.<sup>s</sup> OPCW also works closely with the global chemical industry on safety

<sup>m</sup> WHA55.16 of 18 May 2002.

<sup>n</sup> See [www.who.int/csr/delibepidemics/biochemguide/en/index.html](http://www.who.int/csr/delibepidemics/biochemguide/en/index.html).

<sup>o</sup> See [www.who.int/csr/resources/publications/deliberate/WHO\\_CDS\\_CSR\\_EPH\\_2002\\_16\\_EN/en/](http://www.who.int/csr/resources/publications/deliberate/WHO_CDS_CSR_EPH_2002_16_EN/en/) and [www.who.int/foodsafety/publications/fs\\_management/terrorism/en/](http://www.who.int/foodsafety/publications/fs_management/terrorism/en/) respectively.

<sup>p</sup> See [www.who.int/bookorders/anglais/detart1.jsp?sesslan=1&codlan=1&codcol=93&codcch=161](http://www.who.int/bookorders/anglais/detart1.jsp?sesslan=1&codlan=1&codcol=93&codcch=161).

<sup>q</sup> See [www.fao.org/DOCREP/MEETING/006/Y8453E.HTM#P69\\_18797](http://www.fao.org/DOCREP/MEETING/006/Y8453E.HTM#P69_18797).

<sup>r</sup> See [www.ipfsaph.org/En/default.jsp](http://www.ipfsaph.org/En/default.jsp).

<sup>s</sup> Infopack 1 can be found at [http://www.opcw.org/na\\_infopack/](http://www.opcw.org/na_infopack/). Information package No. 2 is forthcoming.

and security issues, which extends to the Responsible Care® Initiative of the International Council of Chemical Associations.<sup>t</sup>

15. Some materials produced under the auspices of the Awareness and Preparedness for Emergencies on a Local Level (APELL) programme of the United Nations Environment Programme (UNEP) apply to the security of chemical facilities, which relates to the implementation of resolution 1540 (2004). Some of its publications have a direct relationship with the obligations of the resolution, such as *Storage of Hazardous Materials: A Technical Guide for Safe Warehousing of Hazardous Materials* (Technical Report Series No. 3). FAO also addresses some issues concerning chemicals, primarily pesticides, such as in its *International Code of Conduct on the Distribution and Use of Pesticides* (Revised version).

16. Resolution 1540 (2004) specifically mentions the Code of Conduct on the Safety and Security of Radioactive Sources. In addition, the principles and practices described in IAEA safeguards agreements, for which IAEA has model text, and the model additional protocol (INFCIRC/540), clearly contain practices relating to the implementation of resolution 1540 (2004), as do the IAEA *Regulations for the Safe Transport of Radioactive Material* (IAEA Safety Standards Series TS-R-1, 2005). Resolution 1540 (2004) also references the physical protection measures required under the Convention on the Physical Protection of Nuclear Material for use, storage and transport of nuclear items.<sup>u</sup> The United Nations Office on Drugs and Crime *International Law Series No. 2* conveniently bundles together all of the official documents on the Convention on the Physical Protection of Nuclear Material, including background materials for the many practices in that convention.<sup>v</sup>

17. In addition, States have promulgated a number of regional and bilateral cooperation agreements or guidelines for nuclear related materials. For example, Commission regulation (Euratom) No. 3227/76 (as amended most recently by Commission regulation (Euratom) No. 302/2005) implements the safeguards system established in the Euratom Treaty, which includes many practices of interest in nuclear accountancy and transfers between States.<sup>w</sup> Similarly, the Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials (ABACC) implements and enforces the Common System for Accounting and Control of Nuclear Materials, the set of safeguard procedures for all the nuclear materials in Argentina and Brazil. The Quadripartite Agreement among ABACC, IAEA and the two national nuclear authorities, along with ABACC bilateral agreements with IAEA, the European Atomic Energy Community (EURATOM), the Republic of Korea Institute of Nuclear Non-proliferation and Control, and the Organismo para la Proscripción de las Armas Nucleares en la América Latina y el Caribe (OPANAL)

<sup>t</sup> Implemented independently by chemistry councils in each of the 52 participating countries, each national chemical council must, among other requirements, produce codes, guidance notes and checklists to assist its member companies in adhering to the safety and security requirements of the programme, engage in information sharing on their programmes, and have procedures to verify member company compliance, all of which States may find of use in their efforts to implement resolution 1540 (2004). See [www.responsiblecare.org/page.asp?p=6407&l=1](http://www.responsiblecare.org/page.asp?p=6407&l=1).

<sup>u</sup> See *INFCIRC/225/Rev.4 (Corrected)*. The IAEA also conducts regional training programmes on physical protection.

<sup>v</sup> Although less relevant to the obligations under the resolution, the Committee on the Safety of Nuclear Installations of the Nuclear Energy Agency has developed a host of practices of interest on nuclear safety issues (see [www.nea.fr/html/general/policypapers.html#safety](http://www.nea.fr/html/general/policypapers.html#safety)).

<sup>w</sup> See <http://europa.eu/scadplus/leg/en/s14005.htm>.

and their associated documents provide useful examples of information-sharing and cooperation, and for accounting and control of nuclear materials.<sup>x</sup>

18. States have reported implementing resolution 1540 (2004) through other multilateral arrangements to heighten the scrutiny of activities that might support a ballistic missile programme for delivery of weapons of mass destruction, such as the Hague Code of Conduct against Ballistic Missile Proliferation, for which the United Nations General Assembly in 2004 registered the support of 161 States.

**Paragraph 3 (c) and (d): experience shared regarding border and export controls for nuclear, chemical and biological weapons, their means of delivery and related materials**

19. In 2005, the World Customs Organization (WCO) adopted its Framework of Standards to Secure and Facilitate Global Trade (the WCO SAFE Framework of Standards) and the associated Columbus Program to assist States in building the capacity to implement the SAFE Framework effectively.<sup>y</sup> The SAFE Framework encompasses more than 30 standards, plus detailed elements for implementation. The SAFE Framework depends on the effective functioning of networks among national, regional and international customs organizations, and partnerships between customs organizations and business. It builds on the Integrated Supply Chain Management Guidelines and other sources to enhance security of the supply chain while simultaneously facilitating legitimate trade. WCO officials have indicated that they, in cooperation with IAEA, will produce a handbook on border control standards on anti-terrorism in the near future. Regional customs organizations, such as the Caribbean Customs Law Enforcement Council and the Oceania Customs Organization, focus more on day-to-day considerations of cooperation and information-sharing within their region, which also form the basis for practices of interest. Most customs and border control services also work regularly with national authorities to implement the International Standards for Phytosanitary Measures, under the International Plant Protection Convention, and similar measures for animal and human health, including the practice of quarantine.<sup>z</sup>

20. States have reported the use of national control lists for items relating to weapons of mass destruction and their means of delivery, as well as control lists established under multilateral arrangements or for the implementation of relevant Security Council resolutions, such as the lists contained in documents S/2006/814 and S/2006/815.

21. Several regional bodies have also promoted experience sharing related to export controls. The European Union, for example, has a community-wide regulatory regime for dual-use export controls embodied in Council regulation 1334/2000, as amended.<sup>aa</sup> In 2004, the Asia Pacific Economic Cooperation (APEC) forum developed its “APEC key elements for effective export control systems”, and

<sup>x</sup> See [www.abacc.org/home.htm](http://www.abacc.org/home.htm).

<sup>y</sup> See [www.wcoomd.org/learning\\_homeaboutus\\_capacitybuilding.htm](http://www.wcoomd.org/learning_homeaboutus_capacitybuilding.htm), [www.wcoomd.org/home\\_wco\\_topics\\_epoverviewboxes\\_tools\\_and\\_instruments\\_epsafeframework.htm](http://www.wcoomd.org/home_wco_topics_epoverviewboxes_tools_and_instruments_epsafeframework.htm), and briefings of the 1540 Committee experts by representatives of WCO.

<sup>z</sup> See [www.who.int/csr/ihr/en/](http://www.who.int/csr/ihr/en/).

<sup>aa</sup> See [http://ec.europa.eu/trade/issues/sectoral/industry/dualuse/index\\_en.htm](http://ec.europa.eu/trade/issues/sectoral/industry/dualuse/index_en.htm). At the time of writing, discussions continued on a major revision of the regulation to incorporate the results of the 2004 peer review exercise and other recommendations.

followed up this document with the “Report of the survey on current practices related to ‘APEC key elements for effective export control systems’” in a 2006 meeting of its Counter-Terrorism Task Force.<sup>bb</sup> In 2007, members of the Eurasian Economic Community agreed on a mechanism to harmonize their export control systems and implement the Agreement on a Common Order of Export Control. In addition, member States of the Organization for Security and Cooperation in Europe (OSCE) have started to prepare a best practices guide for implementing resolution 1540 (2004).

22. States have reported implementing aspects of resolution 1540 (2004) through measures adopted in the framework of the Non-Proliferation Treaty Exporters Committee/Zangger Committee (such as its multilateral nuclear supply principles and the trigger list of nuclear items of proliferation concern) and the Nuclear Suppliers Group (such as the guidelines for nuclear transfers and the guidelines for transfers of nuclear-related dual-use equipment, materials, software and related technology).

23. The Chemical Weapons Convention obliges parties to control trade in chemicals listed in its schedules 1, 2 and 3 and compilation of discrete organic chemicals.<sup>cc</sup>

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<sup>bb</sup> See [www.apec.org/apec/about\\_apec/history.html](http://www.apec.org/apec/about_apec/history.html).

<sup>cc</sup> See [www.opcw.org](http://www.opcw.org).