

SPEAKING NOTES

Scott Spence, Programme Director for National Implementation
Biological Weapons Convention Report on National Implementing Legislation

7th Annual International Symposium – Biosecurity and Biosafety: Future Trends and Solutions
Milan, Italy
22-24 March 2017

Good afternoon Ladies and Gentlemen,

Today I will present on a report on national implementing legislation for the Biological Weapons Convention, copies of which are available at this symposium and on the VERTIC website. We originally presented this report at the Eighth Review Conference for the BWC. We are grateful to the Netherlands Ministry of Foreign Affairs for funding our production of this report; however, the views expressed in it do not necessarily reflect those of our funder.

This report draws on VERTIC's experience, gained over 15 years, of analysing biological weapons legislation and providing legislative assistance to over 145 States to review and adopt legislation to implement the Convention and the biological weapons-related requirements of UN Security Council resolution 1540.

The report provides a snapshot of the current status of BWC States Parties implementing legislation, identifies some implementation trends, and highlights issues requiring further attention by States Parties. We hope that it will serve as a useful baseline analysis against which progress until the next BWC Review Conference in 2021 may be measured.

The report is divided into three sections. The first section explains the role that VERTIC has played in providing legislative assistance for the Convention since 2002 and describes the methodology and purpose of our legislation surveys. These surveys address 95 distinct criteria relating to implementation of the Convention and the biological weapons-related requirements of UNSCR 1540, which we analyse under the broad headings of: definitions; offences and penalties; jurisdiction; measures to prevent

prohibited activities; and law enforcement. To date, we have completed biological weapons legislation surveys for 146 States, including 131 of the 178 States Parties to the Convention – or, 73 per cent of its membership.

The second section of the report contains an assessment of the status of national measures – primarily legislative measures – in the 131 States Parties that we have surveyed. This assessment is based on the quantitative data that we collate on the presence or absence of each of the 95 implementation criteria in the legislative framework of each State that we survey. This should not be construed as a compliance assessment, as the precise combination of legislative provisions needed to give effect to the Convention differs between States depending on their national situation and because it does not address the qualitative effectiveness of such measures. This section provides a useful insight into the approaches that States have taken to implement the Convention to date and reveals discernible gaps in States' regulatory frameworks. This data is analysed collectively, across States Parties, and does not identify the status of legislation for any particular State or region.

The third section of the report offers some observations on the qualitative effectiveness of States Parties' implementing measures, based on VERTIC's research, survey findings and ongoing engagement with States since 2002. This section also provides comment on implementation trends and issues which may impact on efforts to strengthen the collective corpus of States Parties' implementing measures.

I will now discuss some of the report's findings.

First, with regard to definitions of relevant terms in legislation, we found that the majority of States had either not provided a definition of 'biological weapon' in relevant legislation, or had developed a unique definition which differs from the General Purpose Criterion definition found in Article I of the Convention. Those States lacking a definition for 'biological weapon' will find it difficult to effectively enforce the BWC prohibitions, while States which use a different definition than the General Purpose Criterion are creating a discrepancy between their obligations and their State practice. Those States which transpose the General Purpose Criterion definition in their legislation, or which otherwise explicitly refer to the definition in the Convention, are better able to keep pace with developments in science and technology which impact on the Convention.

Second, with regard to offences and penalties, we found that many States have not yet criminalized certain activities relating to biological weapons, including development, production and use, as well as preparations to conduct such activities, or acting as an accomplice, or financing such activities, as are required under UNSCR 1540. Many States also lack offences and penalties for breaches of preventative measures, such as licensing requirements or transfer controls relating to dangerous biological agents and toxins. Some States have also mistakenly conflated the concepts of prohibiting biological weapons, and prohibiting breaches of licensing conditions, by adopting legislation which prohibits the development, production and use ‘of biological weapons without a license’. We also found that many States are relying on legislation adopted to give effect to international terrorism conventions to give effect to their BWC obligations. However, many of these measures do not effectively prohibit all banned biological weapons activities.

Third, with regard to preventative measures, such as licensing systems and transfer controls, we found that the adoption of controls lists is patchy, and requirements for these to be regularly reviewed and updated, even more so. Many States also have significant gaps in their strategic trade control systems, to regulate the import, export, transit, trans-shipment, re-export and brokering of controlled dangerous biological agents, toxins, and dual-use equipment and technology, and also lack effective catch-all provisions. Given the rather limited implementation of suitable strategic trade controls in many States, these States can choose to start from scratch and develop an effective system across related issues, which could address all the requirements under UNSCR 1540, and potentially even certain conventional weapons, if this is feasible and desired. Certain States have indicated to us that this is their preferred approach. In addition, many States also need to strengthen their legislative framework to ensure effective oversight of activities involving dangerous biological agents and toxins, such as by creating an independent oversight body, and developing procedures and policies for authorizing certain research and related publications.

Fourth, with regard to enforcement, more States could usefully designate or establish a national authority to more effectively coordinate national implementation and enforcement of the Convention and the related provisions of UNSCR 1540. There are various approaches to achieving this, which can be tailored to the State’s specific situation and any resource constraints. In fact, a national authority body that is tasked with determining resource requirements is well placed to make specific requests of assistance providers in this field. We have also found a paucity of legislation to facilitate effective cooperation between law enforcement and public health authorities in the event of a biological incident,

despite these agencies usually requiring a legal mandate for any such co-operation. Such measures will become increasingly vital, as the risks of biological incidents and attacks continue to grow.

The report provides more detail on our quantitative and qualitative assessments of States Parties implementing measures than can be discussed here today. I will just conclude by noting that we recognize that the process of developing national legislation for the BWC and resolution 1540 is a technical and time-consuming task; but it is not insurmountable. All States have some existing measures to build upon in ensuring that they have an effective legislative framework for the Convention. Legislative assistance programmes exist to help with reviewing and drafting legislation, not least VERTIC's National Implementation Measures Programme. These programmes should aim to develop truly tailored approaches for each partner State, especially in the area of transfer controls and other preventative measures, where harmonization across CBRN is a feasible and effective solution to the very concerning gaps in States' national measures.

Thank you for your attention.