

# Legislative Framework to Implement the BWC and UNSCR 1540: Biosafety and Biosecurity

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Biosecurity and Biosafety: Future Trends and Solutions

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# The Biological and Toxin Weapons Convention (BWC)

- The Convention entered into force on 26 March 1975
- It has 165 States Parties and 12 Signatory States
- A disarmament and non-proliferation Convention calling on States Parties to adopt measures to prohibit and prevent biological weapons
- The BWC Implementation Support Unit (ISU) supports the Convention through facilitation of assistance activities, confidence-building measures, and convening treaty meetings
- Review Conferences every 5 years - 7th Review Conference took place in December 2011
- Inter-sessional meetings: Meeting of Experts and Meeting of States Parties
  - At the most recent meeting (MX 2012), VERTIC was invited to speak as a Guest of the Meeting
  - We presented on national implementation of the BWC using the recent H5N1 studies as a case-study
- BWC website: [www.unog.ch/bwc](http://www.unog.ch/bwc)

## UN Security Council Resolution 1540

- Adopted on 28 April 2004 under Chapter VII of the UN Charter
- Legally binding on all UN Member States
- Extended most recently in 2011 (UNSCR 1977) until 25 April 2021
- Several aims:
  - Requires States *to refrain* from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use NBC weapons and their means of delivery (OP1);
  - Requires States *to prohibit* any non-State actor to manufacture, acquire possess, develop, transport, transfer or use NBC weapons and their means of delivery, as well as attempts, etc. (OP2);
  - Requires States to adopt measures *to prevent* the proliferation of NBC weapons and their means of delivery, including controls over dual-use materials (OP3).

## UN Security Council Resolution 1540

- Regarding dual-use items, States are required to:
  - Develop and maintain appropriate effective measures to account for and secure items in production, use, storage or transport (OP3a);
  - Develop and maintain effective physical protection measures (OP3b);
  - Develop and maintain appropriate effective border controls and law enforcement efforts (OP3c);
  - Establish, develop, review and maintain effective national export and trans-shipment controls (OP3d).
- Established a Security Council Committee and a group of experts to assist them with the promotion and monitoring of UNSCR 1540's implementation, and to facilitate offers and requests for assistance (OP 4)
- Website: [www.un.org/sc/1540](http://www.un.org/sc/1540)
- *Overlap of obligations in the BWC and UNSCR 1540*

## National Implementation Measures

- Under Article IV of the BWC...  
Each State Party shall, in accordance with its constitutional processes, take *any necessary measures to prohibit and prevent* the development, production, stockpiling, acquisition, or retention of the agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention
  
- Which measures do States need to adopt in order to implement the BWC?
  - 1) Definitions
  - 2) Prohibitions and penalties
  - 3) Jurisdiction
  - 4) Enforcement
  - 5) Export Control
  - 6) Biosafety and biosecurity

## National Implementation Measures

- 1) **Definitions** (biological weapon, biological agent, toxin, etc.)
  
- 2) **Prevention and prohibition** of certain activities
  - development, production, acquisition, stockpiling, retention, direct or indirect transfers, and use of biological weapons
  - preparations (attempts, conspiracy, threats, financing, etc.) related to biological weapons
  - unlicensed activities involving controlled pathogens (such as anthrax, botulinum, Ebola, plague, salmonella, etc.)
  
- 3) **Extending the reach** of the prohibitions
  - to natural and legal persons
  - extraterritorially (e.g. on the basis of nationality of perpetrator, nationality of victim, impact on State interests)

## National Implementation Measures

- 4) **Legislative enforcement** to ensure non-proliferation of biological weapons:
- National Authority (and States are strongly encouraged to designate a national point of contact to the BWC's Implementation Support Unit)
  - National inspections of laboratories and other facilities where controlled pathogens may be found (as there is no regime in place for international inspections)
  - Training and special powers for law enforcement officials including customs and other border officials, sea and air port authorities
  - Disease surveillance; response capability in the event of a natural, accidental or intentional outbreak (and co-operation among law enforcement; health officials and doctors; Ministries of Health, Environment and Agriculture, etc.)
  - International co-operation on judicial and criminal matters

# National Implementation Measures

## 5) Transfer Controls:

- Adoption of a control (or select) agents list based on threat to public health and safety and national security (e.g. WHO risk-based approach; Australia Group lists for biological agents, animal and plant pathogens and dual-use technology)
- Establish permit system
- Require end-user certificate
- Establish effective border controls

## National Implementation Measures

- 6) **National biosafety and biosecurity** measures play a key role in preventing biological weapons proliferation.
- Biosafety measures help prevent unintentional exposure or accidental release of pathogens
  - Biosecurity measures help prevent unauthorized access, loss, theft, misuse, diversion or intentional release of pathogens
- The Sixth and Seventh Review Conference called *upon States Parties to adopt, in accordance with their constitutional processes, legislative, administrative, judicial and other measures, including penal legislation, designed to... ensure the safety and security of microbial or other biological agents or toxins in laboratories ...*

## National Implementation Measures

- 6) **National biosafety and biosecurity** measures play a key role in preventing biological weapons proliferation.
- Some specific measures could include:
    - Adoption of a control (or select) agents list based on threat to public health and safety and national security (e.g. WHO risk-based approach; Australia Group lists for biological agents, animal and plant pathogens and dual-use technology)
    - Establishing a notification of accidents, loss or theft mechanism
    - Comprehensive record-keeping
    - Biosafety and biosecurity training for personnel
    - Physically secure labs (externally and internally)
    - Personnel background checks
    - Secure transportation (approved carriers, secure containers and packaging, labelling, shipment tracking, etc.)

## US v. Bachner

- A man from Illinois, United States was sentenced on Monday 24 September 2012 to 7 years and 8 months for possession of a toxin (Tetrodotoxin) with intent to use it as a weapon.
- United States Biological Weapons Anti-Terrorism Act of 1989 (18 US Code Section 175):

*“Prohibitions with respect to biological weapons*

*(a) In General.—Whoever knowingly develops, produces, stockpiles, transfers, acquires, retains, or possesses any biological agent, **toxin**, or delivery system **for use as a weapon**, or knowingly assists a foreign state or any organization to do so, or attempts, threatens, or conspires to do the same, shall be **fin**ed under this title or **imprisoned** for life or any term of years, or both.*

...

*(c) Definition.—For purposes of this section, **the term “for use as a weapon”** includes the development, production, transfer, acquisition, retention, or possession of any biological agent, toxin, or delivery system for other than prophylactic, protective, bona fide research, or other peaceful purposes.”*

## US v. Bachner

- 42 US Code Section 73 – Select Agents and Toxins

*“(a) Except for exclusions under paragraphs (d) and (e) of this section, the HHS Secretary has determined that the biological agents and toxins listed in this section have the potential to pose a severe threat to public health and safety.*

*(b) HHS select agents and toxins: ... Tetrodotoxin*

...

*(d) HHS select agents or toxins that meet any of the following criteria are excluded from the requirements of this part:*

...

*(3) HHS toxins under the control of a principal investigator, treating physician or veterinarian, or commercial manufacturer or distributor, if the aggregate amount does not, at any time, exceed the following amounts: ... 100 mg of Tetrodotoxin.”*

- FBI Joint Terrorism Task Force, specialized in investigating offences relating to WMD

## Benefits of Implementation

- As US v. Bachner shows, states can investigate, prosecute and punish any offences, including preparatory acts, associated with biological agents or toxins committed by non-State actors
- States can monitor and supervise any activities, including transfers, involving biological agents and toxins
- States will enhance their national security and public health and safety
- States with effective and adequate legislation will strongly signal to potential investors that they are a safe and responsible location for activities involving certain biological materials
- States' obligations under the BWC and UN Security Council Resolution 1540 will be satisfied
- States will be able to comply effectively with international reporting requirements



## VERTIC's Assistance

At a Government's request, our multilingual team of common and civil law lawyers can:

- Undertake comprehensive analysis of the State's existing legislation for implementation of the Biological Weapons Convention and UNSC Resolution 1540
  - Legislative survey: an analysis based on 96 criteria (covering definitions, offences, preparations, jurisdiction, biosafety/biosecurity, transfers control, and enforcement)
  - Relevant national legislation and regulations are thoroughly reviewed
- We provide cost-free legislative assistance
- We are also in position to work with States on implementation of the Chemical Weapons Convention and certain international agreements relating to the security of nuclear and other radioactive material (please contact Scott Spence, Senior Legal Officer, [scott.spence@vertic.org](mailto:scott.spence@vertic.org)).

## VERTIC's Drafting Tools

- ICRC-VERTIC sample legislation: 'A **Model Law**: The Biological and Toxin Weapons Crimes Act'
- VERTIC's '**Sample Act** for National Implementation of the 1972 Biological and Toxin Weapons Convention and Related Requirements of UN Security Council Resolution 1540'
- VERTIC's '**Regulatory Guidelines** for National Implementation of the 1972 Biological and Toxin Weapons Convention and Related Requirements of UN Security Council Resolution 1540'
- VERTIC's '**Guide** to National Implementation of UN Security Council Resolution 1540 (2004)'
- VERTIC's BWC National Implementation **Database** (at [www.vertic.org](http://www.vertic.org) > Databases > BWC Legislation Database)
- We have **fact sheets** on the nuclear, biological and chemical weapons treaties as well as a BWC National Authority fact sheet
- All are available in various languages at [www.vertic.org](http://www.vertic.org) and on CDs distributed at this conference



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