

**2015 MEETING OF EXPERTS TO THE 1972 BIOLOGICAL AND TOXIN WEAPONS
CONVENTION: Statement for Working Session 7 on Strengthening National Implementation**

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Mr Chair, Excellencies, Ladies and Gentlemen,

Article IV of the Biological Weapons Convention requires each State Party to 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. The Fourth and Sixth Review Conferences confirmed that ‘use’ is also covered by Article I. Article IV also requires these necessary measures to apply within the territory of States Parties and anywhere under their jurisdiction or control. In 2011, the Seventh Review Conference called upon States Parties to adopt legislative, administrative, judicial and other measures, including penal legislation:

- to enhance their domestic implementation of the Convention and ensure the prohibition and prevention of biological weapons activities;
- to extend their jurisdiction if constitutionally possible, and in compliance with international law, to actions taken anywhere by natural or legal persons possessing their nationality; and
- to ensure the safety and security of agents or toxins in laboratories, facilities, and during transportation in order to prevent unauthorized access and removal.

Four years later, accounts of activities prohibited under the Convention highlight the importance of enhancing its domestic implementation globally. Two recent and interrelated criminal cases involving a dangerous toxin illustrate this point.¹

In December 2013, Ms Kuntal Patel from London, United Kingdom purchased abrin, a potent toxic plant protein, after making contact with Mr Jesse Korff, a dealer from the United States operating

¹ See Russell Moul and Yasemin Balci, “First conviction under UK’s BWC Act”, *Trust and Verify*, Issue Number 147, October-December 2014; and Russell Moul and Yasemin Balci, “Sentencing of toxin salesman from the dark web”, *Trust and Verify*, Issue Number 148, January-March 2015.

through an illicit website on the ‘dark web’ – an area of the internet that is not indexed by standard search engines. The website offered goods that included biological agents, toxins, chemicals, firearms, ammunition, explosives, narcotics and counterfeit products. From August 2013 to January 2014, the dealer had not only advertised the sale of toxins, but also offered potential customers information on the dose needed to kill individuals of given weights as well as instructions on administering the toxins. In order to make the online purchase, Ms Patel created encrypted accounts that would, she hoped, conceal her activities. The toxin in question was hidden in a fragrance candle enclosed in a glass jar and mailed from the US to the UK to the address of the woman’s friend. When she eventually collected the package containing the abrin, she noticed that the jar was broken and threw it away in panic. The discarded abrin has never been recovered. She attempted to acquire the toxin a second time in late December 2013 and in early January 2014. However, her contact in the United States had since been arrested by the US authorities. After Mr Korff’s arrest, the FBI searched his property and recovered a vial of abrin that he was preparing to ship to London. They posed as Mr Korff for a few days to engage in communication with Ms Patel, before contacting the UK authorities to investigate her case. The FBI also recovered computers as well as the plant seeds from which abrin can be extracted. Information and evidence was shared with UK authorities and with other States where additional purchasers of abrin as well as ricin, another potentially dangerous toxin, were located.

It was established that Ms Patel had purchased the toxin with the intent of primarily using it to poison her mother, or alternatively, to commit suicide after a period of prolonged conflict between the two of them. She was convicted by a British court of acquiring a toxin in contravention of Section 1² of the UK Biological Weapons Act and sentenced to three years of imprisonment. The dealer in the United States was sentenced by a federal district court to imprisonment for nine years and two months and a \$1,000 fine after he pleaded guilty to, among other charges, five counts relating to biological weapons in violation of Section 175(a) of Title 18 of the US Code on “prohibitions with respect to biological weapons”.

These two cases highlight several legislative measures that are necessary to ensure the prohibition, detection of and response to criminal activities involving biological agents and toxins. Firstly, definitions for key terms such as ‘biological weapon’, ‘toxin’ or ‘use as a weapon’ were necessary for interpretation of the criminal provisions applicable to the cases. Secondly, prohibitions and penalties enabled effective prosecution of the individuals. Thirdly, a number of criminal procedures were

² Specifically, Section 1(1)(a) and 1(3).

triggered including intelligence and surveillance measures to obtain more information on the illicit website and the prohibited activities; to carry out searches, collect evidence and conduct investigations; and to facilitate international co-operation between the States in which the prohibited activities took place.

Other measures can also apply in cases such as these. For example, alternative criminal responsibility ensures that all actors involved in the commission of prohibited activities, including accomplices or conspirators, can be prosecuted. Additionally, States should extend their jurisdiction extraterritorially to ensure that illegal activities committed by their nationals can be prosecuted no matter where they may have committed the offence. Furthermore, toxins such as abrin should be included in a list of controlled toxins subject to a strict and comprehensive licensing and inspections regime, which includes biosafety and biosecurity measures. Controls to prevent prohibited transfers of the toxins should also be put in place.

Admittedly, adopting a comprehensive and effective legal framework to implement the BWC may appear to be a daunting process, especially for governments with limited resources or expertise. Even though there is no “one size fits all” model for how States should go about implementing the Convention, we have identified steps that States may wish to consider. Firstly, States should designate a national point of contact or a “national champion” who is responsible for the implementation process. Secondly, a comprehensive analysis of a State’s existing legal framework to implement the BWC is useful for identifying the obligations that are already covered and the gaps that remain to be filled. The analysis should also take into account obligations in UN Security Council Resolution 1540, which requires States to adopt measures related to the non-proliferation of biological weapons and control over biological agents and toxins. Thirdly, a national policy for the legislative implementation process is key: States may choose to implement the Convention through a stand-alone BWC law or an omnibus CBRN or weapons of mass destruction law, or through several relevant laws and regulations. At one point there will be a drafting workshop with relevant stakeholders leading to several rounds of interministerial review and revision. Some States may also decide that there should be an awareness-raising workshop or several for stakeholders outside government with the aim of explaining why implementation of the Convention is necessary and to solicit their buy-in. Finally, awareness-raising with parliamentarians is often important to ensure that submission of the bill is received with appropriate attention and understanding and so that its adoption will be more certain.

VERTIC assists States with the legislative implementation process, in co-operation with international partners as appropriate. At a Government's request, our National Implementation Measures Programme provides cost-free legal services including comprehensive analysis of a State's existing legislation for the implementation of the BWC, which we share with relevant governmental points of contact. We also work directly with States to draft or revise legislation. We do so on the basis of our publicly available *Sample Act for National Implementation of the Convention and Related Requirements of UN Security Council Resolution 1540*. During our legislative drafting workshops, each provision of this model law is discussed and tailored taking into account the country's circumstances and existing legislation. Ultimately, parliamentary approval for a bill is within the hands of governments, but VERTIC is prepared to support efforts to secure such approval.

We would be happy to speak with any government that is interested in our services. Thank you Mr Chair.