



BIOLOGICAL WEAPONS CONVENTION ACT 2018

NO. 342

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Schedule 1

Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction.

An Act to Implement in the law of Niue the Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction.

The Assembly enacts as follows—

- 1 Title**
This Act is the Biological Weapons Convention Act 2018.

2 Commencement

This Act comes into force on the day after the date on which it becomes law in accordance with Article 34 of the Constitution.

Part I
Preliminary matters

3 Interpretation

(1) In this Act, unless the context otherwise requires,

Convention means the 1972 Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction

Minister means the Minister for External Affairs

Person or any term descriptive of a person includes an actual person, a corporation sole, a body corporate, and an unincorporated body.

(2) Terms that are not defined in this Act have the meaning given in the Convention.

4 Act binds the Government

This Act binds the Government.

5 Application

(1) This Act applies to—

(a) acts done in Niue by any person; and

(b) acts done outside Niue—

(i) by a resident of Niue; or

(ii) by any person on board a sea vessel or aircraft registered in Niue or belonging to, or in the possession of, Niue.

(2) In subsection (1)(b)(i), **resident of Niue** means —

(a) a person who normally resides in Niue; or

(b) a person who, having been actually resident in Niue with the intention of residing there indefinitely, is outside of Niue, and ever since being outside Niue, has had the intention to return to Niue to reside indefinitely; but

(c) does not include a person who has resided outside Niue for a continued period of more than 3 years regardless of his or her intention to return to Niue, unless for substantially the entire period the person is outside Niue for the purposes of undergoing a course of education or technical training or instruction or is in the service of the Niue Government.

Part 2
Implementation of the Convention

6 Prohibitions

- (1) No person may develop, produce, manufacture, possess, stockpile, otherwise acquire or retain, transfer to any recipient directly or indirectly, or use—
 - (a) any microbial or other biological agent or any toxin, whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective, or other peaceful purposes; or
 - (b) any weapon, equipment, or means of delivery designed to use such an agent or toxin for hostile purposes or in armed conflict.
- (2) No person may in any way assist, encourage, or induce any State, group of States, or international organizations to manufacture or otherwise acquire any of the things specified in subsection (1).
- (3) Any person who does anything described in subsection (1) or (2) commits an offence, and is liable on conviction to the penalty set out in section 14(1).

Enforcement

7 National Authority

The Office of the Secretary to the Government is the National Authority for the purposes of the Convention.

8 Designation of inspectors

- (1) The Minister may designate a suitable person or class of persons as an inspector for the purpose of the enforcement of this Act, and set conditions applicable to the person's inspection activities.
- (2) The Minister must consult any other Minister who has powers in relation to microbial or other biological agents or toxins before designating any person under subsection (1).
- (3) The Minister must give a certificate of designation to any inspector designated under subsection (1) that states the privileges and immunities that apply to the person and any powers under section 9 or 10.
- (4) An inspector must, on entering any place under this Act, produce the certificate of designation at the request of any individual in charge of that place.

9 Entry and inspection

- (1) For the purpose of ensuring compliance with this Act, an inspector may enter and inspect, at any reasonable time, any place in which the inspector believes on reasonable grounds there is—
 - (a) any microbial or other biological agent or any toxin; or
 - (b) any weapon, equipment, or means of delivery designed to use such an agent or toxin; or
 - (c) any information relevant to the administration of this Act.

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- (2) An inspector carrying out an inspection may do any of the following:
 - (a) require the attendance of, and question, any person who the inspector considers will be able to assist in the inspection;
 - (b) examine, take samples of, detain, or remove any thing referred to in subsection (1);
 - (c) require any person to produce for inspection, or to copy, any document that the inspector believes contains any information relevant to the administration of this Act;
 - (d) require that any individual in charge of the place take any measures that the inspector considers appropriate;
 - (e) use or cause to be used any computer or data processing system to examine any data contained in or available to the computer or system;
 - (f) reproduce or cause to be reproduced any record from the data, in the form of a printout or other intelligible output, and remove the printout or other output for examination or copying;
 - (g) use or cause to be used any equipment at the place to make copies of any data or any record, book of account, or other document.
- (3) An inspector carrying out an inspection must be accompanied by a Police Officer in uniform and any other person appointed by the Minister.

10 Warrant to enter dwelling-house

- (1) An inspector may not enter a dwelling-house except with the consent of the occupant or under the authority of a warrant issued under subsection (2).
- (2) A Commissioner of the High Court may issue a warrant authorising an inspector to enter a dwelling-house on conditions specified in the warrant if the Commissioner is satisfied that —
 - (a) the conditions for entry described in section 9(1) exist in relation to the dwelling-house; and
 - (b) entry into the dwelling-house is necessary for any purpose relating to the administration of this Act; and
 - (c) entry into the dwelling-house has been refused or there are reasonable grounds to believe that entry will be refused.
- (3) An inspector may not use force to execute the warrant unless its use is specifically authorised in the warrant.
- (4) An inspector may enter and inspect a dwelling-house without a warrant if the conditions for obtaining a warrant exist but by reason of urgency it would not be practical to obtain a warrant.

11 Search and seizure

An inspector who searches, seizes and detains any thing must, as soon as practicable, advise its owner or the person having the possession, care, or control of it at the time of its seizure of the reason for the seizure.

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12 Obstruction and false statements

- (1) A person must not obstruct, hinder, or knowingly make any false or misleading statement either orally or in writing to an inspector carrying out duties under this Act.
- (2) The owner or person in charge of a place entered under section 9 or 10, and every person present in that place, must give an inspector all reasonable assistance to enable the inspector to perform his or her duties, and must supply the inspector with any information related to the administration of this Act that the inspector reasonably requests.
- (3) Except with the authority of an inspector, a person must not remove, alter, or interfere in any way with anything seized under this Act.
- (4) Any person who breaches or fails to comply with subsection (1), (2), or (3) commits an offence and is liable on conviction to the penalty set out in section 14(2).

13 Directions requiring disposal of dangerous substances

- (1) If the Minister has reasonable grounds for believing that adequate measures to ensure the security of any dangerous substance kept or used at any premises are not being taken and are unlikely to be taken, the Minister may give a direction to an inspector requiring the inspector to dispose of the substance.
- (2) The direction must specify the manner in which, and time by which, the dangerous substance must be disposed of.
- (3) Any person who fails to comply with a direction commits an offence and is liable on conviction to the penalty set out in section 14(2).

14 Penalties

- (1) The penalty for an offence under section 6(3) is:
 - (a) in the case of an individual, imprisonment for a term not exceeding 10 years, or to a fine not exceeding 10 000 penalty units, or both;
 - (b) in any other case, a fine not exceeding 10 000 penalty units.
- (2) The penalty for an offence under section 12(4) and section 13(3) is:
 - (a) in the case of an individual, imprisonment for a term, not exceeding 12 months, or to a fine not exceeding 1000 penalty units or both;
 - (b) in any other case, a fine not exceeding 1000 penalty units.

15 Liability of directors and others

- (1) This section applies to any director, manager, secretary or other similar officer of a body corporate or any person who was purporting to act in such capacity.
- (2) If a body corporate is convicted of an offence under this Act, then if it is proved that the offence was committed with the consent and connivance of, or is attributable to any negligence on the part of, a person to whom this section applies, that person, as well as the body corporate, is guilty of that offence and is liable to the appropriate penalty under section 14.

Part 3
Miscellaneous

16 Regulations

Cabinet may make regulations—

- (a) identifying substances or things that are, or are not, microbial or biological agents, toxins, equipment or means of delivery for the purposes of this Act; and
- (b) publishing the criteria for the designation of inspectors.
- (c) prescribing the privileges and immunities of inspectors; and
- (d) providing for any other matters contemplated by this Act, necessary for its full administration, or necessary for giving full effect.

17 Consequential amendment

- (1) This section amends section 10A of the Diplomatic Privileges and Immunities Act 1968 (as inserted by section 27 of the Nuclear Test Ban Treaty Act 2014).
- (2) Section 10A(1) is amended by repealing paragraph (a) and substituting:
 - “(a) conferring on any people who are appointed as inspectors pursuant to any international agreement on disarmament, arms, or weapons control to which Niue is a party all or any of the privileges and immunities specified in Schedule 3:”.

Schedule 1

Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction.

The States Parties to this Convention,

Determined to act with a view to achieving effective progress towards general and complete disarmament, including the prohibition and elimination of all types of weapons of mass destruction, and convinced that the prohibition of the development, production and stockpiling of chemical and bacteriological (biological) weapons and their elimination, through effective measures, will facilitate the achievement of general and complete disarmament under strict and effective international control,

Recognising the important significance of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, and conscious also of the contribution which the said Protocol has already made and continues to make, to mitigating the horrors of war,

Reaffirming their adherence to the principles and objectives of that Protocol and calling upon all States to comply strictly with them,

Recalling that the General Assembly of the United Nations has repeatedly condemned all actions contrary to the principles and objectives of the Geneva Protocol of 17 June 1925,

Desiring to contribute to the strengthening of confidence between peoples and the general improvement of the international atmosphere,

Desiring also to contribute to the realisation of the purposes and principles of the Charter of the United Nations,

Convinced of the importance and urgency of eliminating from the arsenals of States, through effective measures, such dangerous weapons of mass destruction as those using chemical or bacteriological (biological) agents,

Recognising that an agreement on the prohibition of bacteriological (biological) and toxin weapons represents a first possible step towards the achievement of agreement on effective measures also for the prohibition of the development, production and stockpiling of chemical weapons, and determined to continue negotiations to that end,

Determined, for the sake of all mankind, to exclude completely the possibility of bacteriological (biological) agents and toxins being used as weapons,

Convinced that such use would be repugnant to the conscience of mankind and that no effort should be spared to minimise this risk,

Have agreed as follows:

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Article I

Each State Party to this Convention undertakes never in any circumstances to develop, produce, stockpile or otherwise acquire or retain:

- (1) 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;
- (2) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

Article II

Each State Party to this Convention undertakes to destroy, or to divert to peaceful purposes, as soon as possible but not later than nine months after the entry into force of the Convention, all agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention, which are in its possession or under its jurisdiction or control. In implementing the provisions of this Article all necessary safety precautions shall be observed to protect populations and the environment.

Article III

Each State Party to this Convention undertakes not to transfer to any recipient whatsoever, directly or indirectly, and not in any way to assist, encourage, or induce any State, group of States or international organisations to manufacture or otherwise acquire any of the agents, toxins, weapons, equipment or means of delivery specified in Article I of the Convention.

Article IV

Each State Party to this Convention 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, within the territory of such State, under its jurisdiction or under its control anywhere.

Article V

The States Parties to this Convention undertake to consult one another and to co-operate in solving any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention. Consultation and co-operation pursuant to this Article may also be undertaken through appropriate international procedures within the framework of the United Nations and in accordance with its Charter.

Article VI

(1) Any State Party to this Convention which finds that any other State Party is acting in breach of obligations deriving from the provisions of the Convention may lodge a complaint with the Security Council of the United Nations. Such a complaint should include all possible evidence confirming its validity, as well as a request for its consideration by the Security Council.

(2) Each State Party to this Convention undertakes to co-operate in carrying out any investigation which the Security Council may initiate, in accordance with the provisions of the Charter of the United Nations, on the basis of the complaint received

by the Council. The Security Council shall inform the States Parties to the Convention of the results of the investigation.

Article VII

Each State Party to this Convention undertakes to provide or support assistance, in accordance with the United Nations Charter, to any Party to the Convention which so requests, if the Security Council decides that such Party has been exposed to danger as a result of violation of the Convention.

Article VIII

Nothing in this Convention shall be interpreted as in any way limiting or detracting from the obligations assumed by any State under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925.

Article IX

Each State Party to this Convention affirms the recognised objective of effective prohibition of chemical weapons and, to this end, undertakes to continue negotiations in good faith with a view to reaching early agreement on effective measures for the prohibition of their development, production and stockpiling and for their destruction, and on appropriate measures concerning equipment and means of delivery specifically designed for the production or use of chemical agents for weapons purposes.

Article X

(1) The States Parties to this Convention undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes. Parties to the Convention in a position to do so shall also co-operate in contributing individually or together with other States or international organisations to the further development and application of scientific discoveries in the field of bacteriology (biology) for the prevention of disease, or for other peaceful purposes.

(2) This Convention shall be implemented in a manner designed to avoid hampering the economic or technological development of States Parties to the Convention or international co-operation in the field of peaceful bacteriological (biological) activities, including the international exchange of bacteriological (biological) agents and toxins and equipment for the processing, use or production of bacteriological (biological) agents and toxins for peaceful purposes in accordance with the provisions of the Convention.

Article XI

Any State Party may propose amendments to this Convention. Amendments shall enter into force for each State Party accepting the amendments upon their acceptance by a majority of the States Parties to the Convention and thereafter for each remaining State Party on the date of acceptance by it.

Article XII

Five years after the entry into force of this Convention, or earlier if it is requested by a majority of Parties to the Convention by submitting a proposal to this effect to the Depositary Governments, a conference of States Parties to the Convention shall be held at Geneva, Switzerland, to review the operation of the Convention, with a view

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to assuring that the purposes of the preamble and the provisions of the Convention, including the provisions concerning negotiations on chemical weapons, are being realised. Such review shall take into account any new scientific and technological developments relevant to the Convention.

Article XIII

(1) This Convention shall be of unlimited duration.

(2) Each State Party to this Convention shall in exercising its national sovereignty have the right to withdraw from the Convention if it decides that extraordinary events, related to the subject matter of the Convention, have jeopardised the supreme interests of its country. It shall give notice of such withdrawal to all other States Parties to the Convention and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardised its supreme interests.

Article XIV

(1) This Convention shall be open to all States for signature. Any State which does not sign the Convention before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.

(2) This Convention shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and the United States of America, which are hereby designated the Depositary Governments.

(3) This Convention shall enter into force after the deposit of instruments of ratification by twenty-two Governments, including the Governments designated as Depositories of the Convention.

(4) For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Convention, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

(5) The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or of accession and the date of the entry into force of this Convention, and of the receipt of other notices.

(6) This Convention shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

Article XV

This Convention, the English, Russian, French, Spanish and Chinese texts of which are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of the Convention shall be transmitted by the Depositary Governments to the Governments of the signatory and acceding States.