

# Discussion on Definitions, Criminal Provisions and Enforcement

Angela Woodward and Rocío Escauriaza Leal

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## DEFINITIONS

- Biological Weapon
- Biosafety and Biosecurity
- Additional definitions

## **Biological Weapons (Sec.4.a)**

*From Article I of the Biological Weapons Convention*

“Biological or toxin weapon” means –

- 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;
- weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict;”

## **Biosafety and Biosecurity**

### *Biosafety*

Measures to help prevent unintentional exposure or accidental release of pathogens

### *Biosecurity*

Measures to help prevent unauthorized access, loss, theft, misuse, diversion or intentional release of pathogens

## **Other Definitions**

Other terms might need to be defined in order to clarify their meaning in the law. Terms such as:

- Transfer
- License or Permit
- National Authority
- Biological Agent

## **CRIMINAL PROVISIONS**

- Criminalize activities relating to biological weapons
- Criminalize activities relating to the use of controlled biological agents and toxins without a license
- Jurisdiction
- Criminal Responsibility

## **Criminalize activities with Biological Weapons (Sec.5)**

- (1) Every person commits an offence who knowingly –
  - (a) develops, produces, otherwise acquires, stockpiles or retains any biological or toxin weapon, or transfers, directly or indirectly, to anyone, any biological or toxin weapon;
  - (b) uses any biological or toxin weapon;
  - (c) engages in preparations to use any biological or toxin weapon;
  - (d) constructs, acquires or retains any facility intended for the production of biological or toxin weapons; or
  - (e) weaponises any biological agent or toxin.
  
- (2) Every person commits an offence who intentionally releases biological agents or toxins for the purpose of harming and killing human beings, animals or plants in order to intimidate or coerce a government or civilian population to further political or social objectives.

## **Criminalize activities with controlled biological agents and toxins without a license (Sec.5.3.a)**

Every person commits an offence who –

(a) develops, acquires, manufactures, possesses, stores, transports, transfers or uses controlled agents or toxins –

- without a license granted by the National Authority
- in violation of the conditions of a license granted by the National Authority in violation of any other provision

(b) constructs, acquires or retains any facility designed or intended for the manufacture of or research on any controlled agent or toxin, except in accordance with the law.

## **Criminalize transport and transfer of controlled biological agents and toxins without the relevant permits (Sec.5.3.b/c/d)**

Every person commits an offence who –

- (a) transfers controlled agents or toxins within the territory to individuals or entities that have not been granted a license by the National Authority or fails to notify the National Authority of the transfer;
- (b) imports, exports, re-exports, or transships any controlled agent or toxin or controlled equipment or technology through the national territory –
  - without a transfer permit granted by the National Authority
  - without an end-user certificate;
- (c) fails to transfer controlled agents or toxins, internally or internationally, through an approved carrier or complying with the packaging and labelling requirements.



## **Jurisdiction (Sec.27)**

### *Extraterritoriality*

The national courts shall have jurisdiction over –

- (a) acts or omissions prohibited, which are committed by any natural or legal person;
- (b) acts or omissions prohibited, which are committed by a national outside the national territory;
- (c) acts or omissions prohibited, which are committed on board sea vessels and aircraft;
- (d) acts or omissions prohibited, which are committed by a stateless person or resident whose habitual residence is the national territory;
- (e) acts or omissions prohibited, which are committed with the intent to harm the country or its nationals or to compel the country to do or abstain from doing any act; or
- (f) acts or omissions prohibited, in which the victim of the offence is a national.

## **Criminal Responsibility (Sec.6)**

### *Alternative criminal liability*

Every person commits an offence who –

- (a) assists, encourages or induces, in any way, anyone to engage in any of the activities prohibited;
- (b) orders or directs anyone to engage in any of the activities prohibited;
- (c) attempts to commit any of the offences prohibited;
- (d) threatens to commit any of the offences prohibited; or
- (e) acts as an accomplice to or finances any of the activities prohibited.

## **ENFORCEMENT**

- BWC National Authority
- Emergency response and investigations
- Inspections
- Investigations
- Legal co-operation and assistance

## **BWC National Authority (Sec.15.2)**

### *Composition*

The National Authority shall consist of –

- (a) a representative from the Prime Minister's office;
- (b) a representative from the Ministries of Foreign Affairs, Justice, Industry, Environment, Health, Agriculture, Interior and Transportation;
- (c) a representative from the Office of the Attorney-General;
- (d) a representative from the forensic science laboratory;
- (e) representatives from the Border Control Authorities;
- (f) a representative from the Chamber of Commerce; and
- (g) a representative from a biological industry association.

## **BWC National Authority (Sec.15.3)**

### *Functions and duties*

The National Authority shall perform the following functions in a transparent and reviewable manner:

- (a) To issue licenses and permits
- (b) To provide international organisations and other States with relevant data and information in fulfilment of the international obligations;
- (c) To facilitate inspections;
- (d) To prepare guidelines for the conduct of biological research for lawful purposes;
- (e) To establish, liaise with and review the activities of the Biological Emergency Response and Investigation Support System (BERISS);
- (f) To liaise with the equivalent of the National Authority in other States;
- (g) To perform any other tasks assigned to it by appropriate authorities;
- (h) To report annually to the National Assembly on the activities of the Responsible Authority and the Biological Emergency Response and Investigation Support System (BERISS); and
- (i) To advise the Prime Minister and to provide any information which the Prime Minister or other appropriate authorities may require.

## **Biological Emergency Response and Investigation Support System (Sec.16.2)**

### *Composition of the BERISS co-ordination team*

BERISS shall be managed and co-ordinated by a team consisting of –

- (a) a representative from the National Authority who shall act as a liaison between the National Authority and BERISS;
- (b) a representative from the Ministry of Health, Ministry of Agriculture and Ministry of Environment;
- (c) an emergency medicine practitioner;
- (d) a law enforcement officer trained to respond to biological emergencies;
- (e) representatives from the border control authorities;
- (f) an epidemiologist;
- (g) a veterinary scientist;
- (h) a media relations specialist;
- (i) specialists in bacterial, toxicological, viral, Rickettsial, and prion diseases; and
- (j) any other relevant expert(s) as BERISS sees fit.

## **Biological Emergency Response and Investigation Support System (Sec.16.4)**

### *Functions and duties*

The BERISS co-ordination team shall carry out the following duties in a transparent and reviewable manner –

- (a) manage and guide the national and local response to emergencies associated with biological agents and toxins in co-ordination with the National Authority;
- (b) in co-ordination with other governmental agencies, as appropriate, establish public health and agricultural surveillance and reporting systems with respect to the development, acquisition, manufacture, possession, storage, transport, transfer or use of controlled agents and toxins;
- (c) ensure the effectiveness of a public emergency announcement system;
- (d) ensure the proper training and equipping of law enforcement officers, emergency/first responders and hospitals in responding to emergencies involving biological agents and toxins;
- (e) create threat-based medical and public health detection strategies to detect and determine outbreaks associated with biological agents and toxins;
- (f) receive and review classified biological threat intelligence;
- (g) receive and review public health information;
- (h) collect, maintain, and present evidence needed for review of forensic epidemiological investigations and for prosecutions;
- (i) transmit data and information regarding biological emergencies and incidents to the National Authority;
- (j) undertake other activities regarding preparation for and response to emergencies involving biological agents and toxins, including co-operation with law enforcement officers

## **Inspections (Sec.18&19)**

### *Designation of inspectors*

The National Authority may designate persons or classes of persons as inspectors for the purpose of the enforcement of the law, and may set conditions for the conduct of inspection activities.

### *Carrying out of inspections*

An inspector may, with the consent of the person in control of any premises or under a warrant, enter the premises and exercise any power outlined in the law to ensure –

- (a) that the provisions of the law and regulations have been or are being complied with; or
- (b) that the conditions applicable to a license or permit have been or are being complied with by the license or permit holder.

### *Inspector report and referral for investigation*

Every inspector shall provide a report of their inspection to the National Authority and describe any suspected non-compliance with the law and regulations. The National Authority may refer cases of suspected non-compliance to the law enforcement agency for investigation.



## **Investigations (Sec.22)**

- (1) In the event of a suspected violation of the law, the law enforcement agency shall be authorised to lead an investigation of the suspected violation in co-ordination with the National Authority and BERISS.
- (2) Any records kept by the National Authority, BERISS, an individual, entity, or carrier shall be made available to law enforcement officers investigating suspected violations of the law.
- (3) Any samples collected during inspections or investigations shall be analysed and the results of the analysis may be used as evidence in judicial proceedings.

## **Legal Co-operation and Assistance (Sec.28)**

### *Legal and judicial cooperation*

The competent authorities may request other State authorities and international organizations to provide relevant data or information. The competent authorities are authorised to receive data or information concerning, inter alia -

- (a) the development, acquisition, manufacture, possession, storage, transport, transfer or use of biological agents and toxins, whether controlled or non-controlled;
- (b) dual-use biological equipment and technology, whether controlled or non-controlled; or
- (c) persons involved with items under subsections (a) and (b).

### *Extradition*

- (1) The offences set shall be deemed to be included as extraditable offences in any extradition treaty existing with other States.
- (2) None of the offences shall be regarded, for the purposes of extradition or legal co-operation and assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives.

## Contact VERTIC

- Angela Woodward, Programme Director, [angela.woodward@vertic.org](mailto:angela.woodward@vertic.org) (speaks English)
- Scott Spence, Senior Legal Officer, [scott.spence@vertic.org](mailto:scott.spence@vertic.org) / + 41 794 139 903 (speaks English, French, Spanish)
- Rocío Escauriaza Leal, Legal Officer, [rocio.escauriaza@vertic.org](mailto:rocio.escauriaza@vertic.org) / +34 639 609 101 (speaks English, French, Spanish)
- Yasemin Balci, Programme Assistant, [yasemin.balci@vertic.org](mailto:yasemin.balci@vertic.org) / + 44 20 7065 0880 (speaks Dutch, English, Turkish)
- Samir Mechken, Legal Consultant, [samir.mechken@vertic.org](mailto:samir.mechken@vertic.org) / + 31 629 410 205 (speaks Arabic, English, French)

### VERTIC

Development House, 56-64 Leonard Street

London EC2A 4LT, United Kingdom

Tel +44 20 7065 0880

Fax +44 20 7065 0890

Web [www.vertic.org](http://www.vertic.org)

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