The Biological Weapons Convention: National Implementation

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BWC and UNSCR 1540: from international to national law

The BWC is a multilateral treaty. It is a legally binding, international agreement between states.

UNSCR 1540 is a resolution on BCN weapons, which contains decisions that bind states.

In order to apply to individuals and companies, the BWC and UNSCR 1540 need to be implemented through national legislation.
International obligations to adopt national legislation

**BWC**, Article IV:
- “Each State Party shall, in accordance with its constitutional processes, take any necessary measures to prohibit and prevent” biological weapons.
- **Final Document of the 8th BWC Review Conference**, Article IV: “11. The Conference calls upon States Parties to adopt, in accordance with their constitutional processes, legislative, administrative, judicial and other measures, including penal legislation […]”

**UNSCR 1540**, operative paragraph 2:
- “The Security Council […] decides also that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery […]”
National implementation

National implementation = process by which a state adopts appropriate and effective national legislative and other measures to carry out its international obligations in a treaty or in an international instrument such as a resolution containing binding decisions

Status of national implementation
- VERTIC completed 146 legislation surveys (135 States Parties or 74% of BWC membership)
- Irregular levels of implementation among States Parties
National implementation measures

1. **Definitions**: of key terms such as “biological weapon”.

2. **Prohibitions and penalties**:
   - Establish as criminal offences any activity with biological weapons, such as possession or use
   - Prohibit any participation in offences, such as assisting

3. **Jurisdiction**: extend the reach of legislation:
   - to places within their territory or under their control;
   - to places outside their territory (e.g. jurisdiction on the basis of the nationality of the alleged perpetrator);
   - to natural and, if possible, legal persons.
Case study: United States v B

• A man from Illinois, United States was sentenced in 2012 to 7 years and 8 months of imprisonment for possession of a toxin (Tetrodotoxin) with intent to use it as a weapon.

• United States Biological Weapons Anti-Terrorism Act 1989 (18 US Code Section 175):

"Prohibitions with respect to biological weapons

(a) [...] 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 fined 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."
4. **Biosafety** and **Biosecurity measures**: a legal framework for the safe and secure handling of certain biological agents and toxins:

- Adoption of a controlled biological agents and toxins list;
- Safety measures: occupational health and safety in laboratories;
- Security measures: e.g. physical protection, personnel background checks, and secure transportation.
Case study continued: United States v B

- US list of controlled biological agents and toxins =
  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”
National implementation measures

5. **Transfer controls:**
   a legal framework to control transfers of certain biological agents and toxins to prevent biological weapons proliferation while facilitating their fullest possible exchange for peaceful purposes, e.g.:

   - Adoption of a *controlled* biological agents and toxins *list* as well as related *equipment and technology*;
   - Establish transfer *licensing* system.
International transfers of Tetrodotoxin

- Export licensing of items on the Commerce Control List
  - US Code of Federal Regulations
    - Title 15: Commerce and Foreign Trade 774
      - 1C351 Human and Animal Pathogens and “Toxins”,
        - d. “Toxins”

\begin{itemize}
  \item d.15. T-2 toxin;
  \item d.16. \textbf{Tetrodotoxin};
  \item d.17. Viscumin (Viscum album lectin 1); or
  \item d.18. Volkensin.
\end{itemize}
National implementation measures

6. Legislative enforcement:

- Designation of a national point of contact
  - Coordinating national implementation internally
  - Communicating externally

- Investigations, co-operation on international judicial matters

- Preparedness and response to biological incidents
  - Covid-19 has underscored the need for effective legislation to respond to biological incidents
Benefits of adopting national legislation

- States can investigate, prosecute and punish **offences**;
- States can monitor and **supervise** any activities with certain biological agents and toxins;
- States will enhance their **national security** and **public, animal and plant health and safety**;
- Adequate legislation is a strong signal to **potential investors** that the state is a safe and responsible location for activities involving certain biological agents and toxins;
- States will be able to more effectively conduct their **international reporting**, e.g. compiling and submitting CBMs and UNSCR 1540 reports;
- States’ **obligations** under the BWC and UNSCR 1540 will be satisfied.
VERTIC’s legislative assistance

- **Legislative analyses**
  - Comprehensive country-specific BWC legislation surveys (available on request)

- **Legislative tools**
  - Model legislation: Sample Act & Online Legislation Drafting Assistant
  - Regulatory Guidelines
  - Legislation Database

- **Legislative assistance**
  - Legislative drafting workshops;
  - Review of existing legislative bills;
  - Assistance with drafting explanatory notes to bills, etc.
Thank you!

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See also: www.vertic.org > Programmes > National Implementation Measures > Biological Weapons and Materials