

**Meeting of the States Parties to the Convention  
on the Prohibition of the Development,  
Production and Stockpiling of Bacteriological  
(Biological) and Toxin Weapons and on Their  
Destruction**

6 December 2013

English only

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**2013 Meeting**

Geneva, 9–13 December 2013

Item 9 of the provisional agenda

**Standing agenda item: strengthening  
national implementation**

**Strengthening national implementation**

**Submitted by the United States of America**

**I. Introduction**

1. The 2012 U.S. paper on national implementation<sup>1</sup> of the Biological Weapons Convention (BWC) set forth three areas where greater agreement and concerted efforts among States Parties could substantially advance international security and the object and purpose of the Convention: (1) further developing common understandings on the elements required for full implementation of Articles III and IV; (2) improving understanding of the status of implementation in States Parties to identify gaps and needs; and (3) developing means to redress these gaps and needs, and encourage Parties to provide such assistance.

**II. What constitutes effective national implementation of the BWC?**

2. The Convention establishes both prohibitions and obligations – States Parties must not do certain things, and they are obliged to do certain other things. Discussions of strengthening national implementation primarily emphasis is Articles III and IV of the Convention, but national measures are also required to give practical effect to other provisions of the Convention, including the core prohibitions set out in Article I.

**A. Implementation of the core prohibitions**

3. Under Article I, a State Party (SP) may not possess, develop, stockpile, retain, or otherwise acquire biological weapons as defined in that article. This article has been further clarified by Review Conferences, which have reached understandings that the term encompasses anti-plant and anti-animal agents, synthetic analogues of toxins, and

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<sup>1</sup> BWC/MSP/2012/MX/WP.5

genetically manipulated or synthesized organisms. Under Article III, Parties undertake not to transfer to any recipient whatsoever, directly or indirectly, and not in any way to assist, encourage, or induce any State(s) or international organizations to manufacture or otherwise acquire any of the items prohibited by Article I. In addition, an SP may not, under any circumstances, use biological weapons. While use is not explicitly prohibited by the Convention, SPs agreed in the Fourth, Sixth<sup>2</sup>, and Seventh Review Conference (RevCon) Final Documents<sup>3</sup> that the use by a Party not consistent with peaceful use as defined in Article I is effectively a violation of that Article<sup>4</sup>.

4. In order to give these prohibitions effect, SPs must take a number of specific, affirmative actions, including enacting laws and issuing appropriate instructions and guidance to governmental entities. Even in legal systems where treaties are deemed to be self-executing – that is, where ratification effectively incorporates them into the state’s legal code – a variety of measures are likely to be necessary to establish penalties, instruct agencies, and, in general, translate law into action. Under Article II, if an SP possesses or controls agents, toxins, weapons, equipment, or means of delivery specified in Article I, it must destroy them or divert them to peaceful uses. Again, even for SPs in which treaties are self-executing, an additional series of measures is likely to be required to carry out these obligations.

5. Measures are also required to guard against direct or indirect assistance to anyone seeking to acquire biological weapons. SPs have repeatedly reaffirmed the value of effective national export licensing systems to implement the requirements of Article III by ensuring that relevant transfers are only authorized when the intended use is for purposes not prohibited under the Convention. Such systems should address not only dangerous pathogens, but also key items of equipment and technology. Other elements crucial to modern export licensing systems include “catch-all” controls, end-use checks on items approved for transfer, measures to prevent the brokering of transfers that should be prohibited, and outreach to the regulated community.

## **B. Measures to apply the Convention to individuals**

6. Under Article IV, SPs must take “any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition, or retention” of biological weapons by anyone on its territory or under its jurisdiction or control anywhere. The BWC, as an international treaty, is legally binding on SPs; the practical effect of Article IV is to require implementation of the Convention through national measures, including its application to individuals. As advances in science and technology increase the range of actors potentially capable of developing and using biological weapons, SPs are presented with a more diverse array of risks and threats, and adoption and effective implementation of necessary measures becomes an increasingly important element of full compliance with the Convention. The significance assigned to such measures by the international community is amply illustrated by the provisions of UN Security Council Resolution 1540. Drawing on the language of Article IV itself, “necessary measures” can be thought of as comprising two distinct elements: implementing the BWC *prohibitions*, and *preventing* violations of the prohibitions.

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<sup>2</sup> BWC/CONF.VI/6, Part II, para 3

<sup>3</sup> BWC/CONF.VII/7, Part II, para 3

<sup>4</sup> Use is explicitly prohibited by the 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare.

## 1. Measures to implement the BWC prohibitions

7. BWC Parties have agreed that the Convention requires legislation or other measures to prohibit actions described above, and have recognized the value of ensuring that such measures also prohibit assisting, encouraging, or inducing others to breach any of the prohibitions of the Convention. The Seventh RevCon called upon SPs to “adopt, in accordance with their constitutional processes, legislative, administrative, judicial and other measures, including penal legislation,” to implement their obligations for prevention<sup>5</sup>. Crimes should carry appropriate penalties to discourage and deter violation. Furthermore, the adoption of such laws is not, in itself, sufficient; the laws must be effectively implemented and enforced by authorities and the court system.

## 2. Measures to prevent violations

8. SPs are also required to adopt measures to prevent the acquisition of biological weapons. Precisely what measures are required is dependent on an SP’s national situation; for example, a small country with no significant pathogen collections and limited scientific capacity may not require as extensive a suite of measures as a country with a robust biotechnology industry. However, SPs have increasingly established common perspectives, approaches, and tools. The Seventh RevCon called on Parties to adopt “judicial and other measures, including penal legislation, designed...to ensure the safety and security of microbial or other biological agents or toxins in laboratories, facilities, and during transportation, to prevent unauthorized access to and removal of such agents or toxins.”<sup>6</sup> Such measures may need to include pathogen control lists, personnel suitability evaluations, and screening frameworks for gene synthesis orders. The provisions of UN Security Council Resolution 1540 provide specific guidance on measures that should be undertaken to prevent access to material, equipment, or technology that could be used in weapons-of-mass-destruction for nefarious purposes, and thus stand as an important complement to implementing the Convention. Consistent with the undertakings of Article X, implementing measures should be designed in such a way as to avoid hampering international cooperation for peaceful purposes.

9. States Parties have emphasized the importance of complementing regulatory and oversight measures with outreach, education, and awareness-raising, and the Seventh RevCon “encourage(d) the consideration of development of appropriate arrangements to promote awareness among relevant professionals in the private and public sectors...” of the BWC’s obligations and of relevant laws and guidelines<sup>7</sup>. Some SPs, including the United States, have moved toward formal oversight processes to identify and address risks posed by dual-use research of concern at the earliest possible stage in the research cycle. The RevCon also called on SP to “promote the development of training and education programs for those granted access to biological agents and toxins relevant to the Convention and for those with the knowledge or capacity to modify such agents and toxins” and “encourage(d) the promotion of a culture of responsibility amongst relevant national professionals and the voluntary development, adoption and promulgation of codes of conduct.”<sup>8</sup>

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<sup>5</sup> BWC/CONF.VII/7, Part II, para 11

<sup>6</sup> BWC/CONF.VII/7, Part II, para 11

<sup>7</sup> BWC/CONF.VII/7, Part II, para 13 b and c

<sup>8</sup> BWC/CONF.VII/7, Part II, para 13 d and e

### **C. Contingent obligations**

10. In addition to measures required under all circumstances to meet the obligations of the Convention, the BWC establishes a number of obligations that must be fulfilled only under certain contingencies. These are set out in Articles V, VI, and VII. In Article V, States Parties undertake to consult and cooperate in the event that problems arise in relation to the Convention. Article VI allows a Party that finds another Party to have acted in breach of the BWC's obligations to lodge a complaint with the UN Security Council and requires Parties to cooperate with any Security Council investigation on the basis of that complaint. Article VII obligates Parties to provide assistance upon request from another Party that the Security Council decides has been "exposed to danger as a result of a violation of the Convention." These obligations may or may not require action in advance, but must be considered as an SP develops its national measures.

### **III. Strengthening implementation: better information is key**

11. Strengthening implementation of the Convention calls for better information on the current status of implementation and, as the United States and others have highlighted previously, existing tools and resources have not proved equal to this task. The BWC CBMs are principally designed to provide transparency and reduce concerns about compliance with the obligations of the Convention that prohibit biological weapons (Article I) and require elimination of any existing weapons (Article II). In their current form they provide little transparency with respect to national implementation measures. The National Implementation Database (NID) maintained by the ISU contains very little information, and neither it nor the more comprehensive database maintained by VERTIC is organized in a way that lends itself to analysis the database contents. The matrices maintained by the UNSCR 1540 Committee are somewhat more useful in this respect, but contain little information on the specifics of the measures adopted.

12. There is a clear need to increase the amount of information available to all SPs concerning the key implementation measures that each of them has put into place, whether this is done through CBMs, an expanded and strengthened NID, or some other approach. Such information may serve to strengthen confidence that the Convention is being effectively implemented. It would also help SPs to assess the state of their own implementation and identify specific needs, which could then be brought to the attention of SPs in a position to provide technical assistance, including through the use of the BWC Assistance and Cooperation Database.

13. The Meeting of States Parties should recognize this need by agreeing on the value of developing a framework and mechanism to compile information on key national implementation measures in a structured, organized way, and of States Parties submitting the required information and updating it as needed.

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