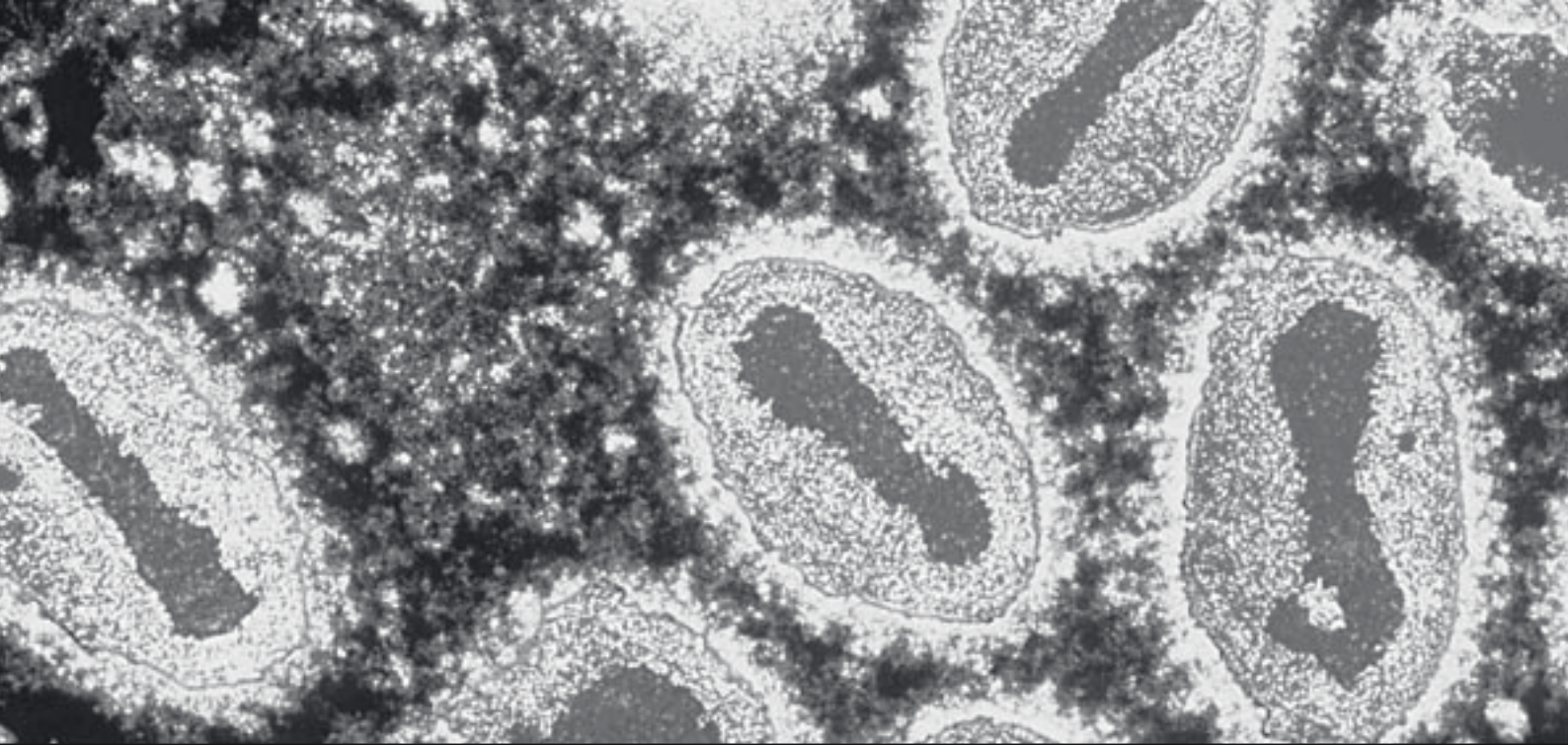


Time to lay down the law

National legislation to enforce the BWC



The 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (BWC) obliges states parties to take any necessary national measures to implement the treaty in their territory. States parties have agreed that this requires the adoption of legislation, including penal sanctions.

Only now, thirty years after the treaty's adoption, are states parties collectively considering what legislative provisions are required to effectively enforce the treaty. This report is intended to assist states parties in this endeavour by assessing the current status of their national legislation to enforce the treaty's core prohibitions. The report provides comparative analysis of existing legislation, makes recommendations for increasing the rate of adoption of legislation and proposes ways to make existing and new legislation more effective. It should be of use to states parties preparing to adopt or amend legislation, states and organisations providing assistance to states parties, and to the international community generally. A companion dataset of legislation collected is available at VERTIC's website.

VERTIC is grateful to those states parties that completed our questionnaire, sent us their legislation or provided supplemental information. VERTIC also thanks the UN Department for Disarmament Affairs and the International Committee of the Red Cross for their support. Notwithstanding this valuable assistance, responsibility for this document rests with VERTIC.

VERTIC is grateful to the Ploughshares Fund for its generous financial assistance for this project.

VERTIC is the Verification Research, Training and Information Centre, an independent, non-profit making, non-governmental organisation. Its mission is to promote effective and efficient verification as a means of ensuring confidence in the implementation of international agreements and intra-national agreements with international involvement. VERTIC aims to achieve its mission through research, training, dissemination of information, and interaction with the relevant political, diplomatic, technical, scientific and non-governmental communities.

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Time to lay down the law

National legislation to enforce the BWC

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Foreword

The 1972 Biological Weapons Convention (BWC) obliges states parties to adopt national measures to implement their fundamental obligations under the treaty. States parties have repeatedly reaffirmed the obligation to adopt such national measures at successive BWC Review Conferences. At the resumed Fifth Review Conference held in November 2002, they agreed, as part of a ‘new process’, to discuss and promote ‘common understandings and effective action’ on the adoption of necessary national measures, including penal legislation. This is the first agenda item for a series of Experts Meetings and Meetings of States Parties being held between 2003 and 2006.

VERTIC is pleased to contribute to the discussions at the first of these Meetings of States Parties, to be held in Geneva from 10–14 November 2003, by producing this report: *Time to lay down the law: national legislation to enforce the BWC*. It is the final report of VERTIC’s project on National Legislation to Implement the Biological Weapons Convention covering the period April 2002 to October 2003. It incorporates information and advice obtained from consultations with states parties and others on the findings and recommendations of an interim report which was prepared for the Experts Meeting in August 2003. In addition to being a contribution to the Meeting of States Parties in November 2003, the report should also be of use to states parties preparing to adopt or amend legislation or those providing assistance to others. It should also be of interest to international organisations, non-governmental organisations and others with an interest in improved implementation of the BWC.

The report was written by Angela Woodward, with research assistance from Marie Fagerström, Nicola Horsburgh, John Russell and Patricia Watt.

VERTIC is grateful to all of the states parties that have cooperated with us, especially those which filled out our questionnaire and provided supplemental information. VERTIC also wishes to thank the International Committee of the Red Cross (ICRC) and the United Nations Department for Disarmament Affairs (UNDDA) for sharing information on their legislative holdings, as well as others who have provided information. Notwithstanding this valuable assistance, the views expressed in this document, along with any errors or omissions, are those of VERTIC alone.

Despite VERTIC’s intensive research, we do not have information on all states parties. It would be helpful if states parties which have not already done so complete the questionnaire and provide texts of their national measures, so that we may update our website collection of national implementing laws. While every effort has been taken to ensure the accuracy of material reproduced in this report, VERTIC does not guarantee that it is free from error or omission. We encourage your comments on any errors or omissions and welcome the submission of additional legislative texts.

Finally, VERTIC is grateful to the Ploughshares Fund for its generous financial assistance for this project.

Trevor Findlay

Editor and Executive Director, VERTIC

24 October 2003

Acronyms

ASEAN	Association of Southeast Asian Nations
AU	African Union
BW	Biological Weapons
BWC	Biological Weapons Convention
BWPP	BioWeapons Prevention Project
CARICOM	Caribbean Community
CBM	Confidence-Building Measure
CICTE	Inter-American Committee Against Terrorism (<i>Comite Interamericano Contra el Terrorismo</i>)
CTC	Counter-Terrorism Committee
CWC	Chemical Weapons Convention
EC	European Community
EU	European Union
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
MSP	Meeting of States Parties
NGO	Non-Governmental Organisation
OECS	Organisation of Eastern Caribbean States
OPCW	Organisation for the Prohibition of Chemical Weapons
OSCE	Organization for Security and Co-operation in Europe
UN	United Nations
UNDDA	United Nations Department for Disarmament Affairs
VERTIC	Verification Research, Training and Information Centre
WCO	World Customs Organisation
WHO	World Health Organisation
WMD	Weapons of Mass Destruction

Glossary

Biological Weapons Convention (BWC)

The 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction. The treaty entered into force on 26 March 1975. It prohibits the development, production, stockpiling or acquisition or retention of biological agents except for prophylactic, protective or other peaceful purposes and weapons, equipment or means of delivery designed to use such biological agents.

Biosafety

The application of knowledge, techniques and equipment to prevent personal, laboratory and environmental exposure to potentially infectious agents or biohazards. Biosafety defines the containment conditions under which infectious agents can be safely manipulated.

Biosecurity

The effective implementation of measures to control access to pathogens and toxins and prevent unauthorised access.

Chemical Weapons Convention (CWC)

The 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention). The treaty entered into force on 29 April 1997. Unlike the BWC it has a comprehensive, permanent verification regime. Each state party is required to adopt national implementation measures and establish a National Authority to oversee its implementation and to liaise with the treaty's verification body, the Organisation for the Prohibition of Chemical Weapons (OPCW), based in The Hague, Netherlands. See www.opcw.org.

Confidence-Building Measures (CBMs)

Measures undertaken by BWC states parties to strengthen implementation of their obligations and improve transparency. Most were adopted at the Second Review Conference in 1986. At the Third Review Conference in 1991 states parties adopted CBM Form 'E', which requires them to make an annual 'Declaration of legislation, regulations and other measures'. See BWC/CONF.III/23 at www.opbw.org and the Annex to this report.

Counter-Terrorism Committee (CTC)

UN Security Council resolution 1373 (2001) reaffirmed the council's condemnation of the terrorist attacks on the United States on 11 September 2001 and expressed its determination to prevent all such acts. It established the CTC to monitor states' implementation of the resolution and to increase their capability to fight terrorism. The CTC maintains a directory of information on standards, best practice and sources of assistance in the area of counter-terrorism (Directory of Counter-Terrorism Information and Sources of Assistance) and facilitates the provision and receipt of assistance between states and organisations with counter-terrorism expertise. See www.un.org/Docs/sc/committees/1373/index.html.

Geneva Protocol

The 1925 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare. The Protocol came into force on 8 February 1928. It bans the use of chemical and biological weapons but has no verification system.

International Committee of the Red Cross (ICRC)

An impartial, neutral and independent organisation whose exclusive humanitarian mission is to protect the lives and dignity of victims of war and internal violence and to provide them with assistance. Established in 1863, the ICRC is based in Geneva, Switzerland. See www.icrc.org.

International Humanitarian Law (IHL)

International humanitarian law seeks, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not participating in hostilities and restricts means and methods of warfare.

National Authority or National Focal Point

A body designated by a government to ensure that the state's obligations under a treaty, or other legally-binding commitment, are carried out. A treaty may require that such a national authority be established or a state may voluntarily establish one.

National Implementation Measures

Legal instruments adopted by a state to give effect in its domestic legal jurisdiction to its international legal obligations. Such measures include legislation, regulations, government decrees and administrative orders or executive orders.

National Implementation Legislation

Legislation is one form of national implementation measure. Primary legislation, such as Acts, Codes, Decrees, Laws or Statutes, is adopted by the legislative branch of government, for example Parliament or Congress. Delegated, or secondary legislation, is adopted by government departments or agencies under a power authorised in primary legislation. Delegated legislation includes Bylaws, Notices, Orders, Regulations, Rules or Statutory Instruments. Legislation enables a state to effectively enforce prohibitions on activities within its legal jurisdiction, by creating offences and punishments (together termed 'penal sanctions'), and to deter violations from occurring. Without such measures, a state is vulnerable to prohibited activity being carried out on its territory without recourse to an appropriate punishment. In accordance with international law, these national measures may be extended to apply to a state's nationals and companies registered in its territory in respect of activities conducted outside its territory ('extraterritoriality'). Provision may also be made for offences that are committed by a state's natural or legal persons to be prosecuted in any other state's legal jurisdictions ('universal jurisdiction').

Non-Governmental Organisation (NGO)

A non-profit organisation which is independent of government. NGO activities include advocacy, research, monitoring and/or the provision of advice or assistance.

Ottawa Convention

The 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (also known as the Ottawa Convention, Mine-Ban Treaty or Landmine Convention). The treaty entered into force on 1 March 1999. See <http://disarmament.un.org/MineBan.nsf>.

Organisation for the Prohibition of Chemical Weapons (OPCW)

The international organisation established by the 1997 Chemical Weapons Convention (CWC) to verify compliance and assist in its implementation. See www.opcw.org

BWC Review Conferences

States parties have met to review the operation of the BWC in 1980, 1986, 1991, 1996 and 2001 and 2002. The Sixth Review Conference is scheduled for no later than the end of 2006.

State Party

The moment a treaty enters into force for a state, that state is a party to the treaty. A state party then formally acquires all the rights and is bound by all the obligations set out in the treaty.

State Signatory

A state which has signed, but not yet ratified a treaty. The state is not formally bound by all the rights and duties contained in the treaty, but under the 1969 Vienna Convention on the Law of Treaties, it may not act in a way which is contrary to the object and purpose of the treaty.

Transparency

In the verification field transparency refers to openness about a state's military activities and about any peaceful activities, such as research, that may have military applications or relevance to such applications.

United Nations Department for Disarmament Affairs (UNDDA)

A part of the UN Secretariat which provides advice and assistance to the UN Secretary-General in discharging his responsibilities under the UN Charter and the tasks assigned to him by the General Assembly and Security Council in the sphere of disarmament. In 1986 BWC states parties tasked the UNDDA with collecting and disseminating the annual CBM declarations. See <http://disarmament.un.org>.

Verification

Verification is the process of gathering and analysing information to make a judgement about parties' compliance or non-compliance with an agreement. It aims to build confidence between the parties, assuring them that their agreement is being implemented effectively and fairly. A good verification system aims both to confirm compliance and detect non-compliance in order to deter parties that may be inclined to cheat.

Introduction

Each state party to the 1972 Biological Weapons Convention is obliged, under Article 4, ‘in accordance with its constitutional processes [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 1 of the Convention, within the territory of such State, under its jurisdiction or control anywhere’.

States parties have reaffirmed their legally binding commitment to adopt such national implementation measures—and specifically, national legislation—at every treaty Review Conference, beginning with the first in 1980. They have also agreed to consider, voluntarily, extending the application of their national legislation to their citizens acting outside their territory, jurisdiction or control (‘extraterritoriality’). In addition, they have agreed to provide information on their national implementation measures and texts of legislation that they have adopted to the United Nations Department for Disarmament Affairs (UNDDA). States parties have also agreed to provide information on the status of their national measures under the Confidence-Building Measures (CBMs) they agreed at the Third Review Conference in 1991, using CBM Form ‘E’, *Declaration of legislation, regulations and other measures* (see Annex). However, such reporting has, by all accounts, been patchy, although it is difficult to judge, as the reports are treated as confidential, despite the fact that national legislation is, by its nature, public information.

The lack of public access to the CBM declarations and the unwillingness of states to publicise the existence of their BWC-related laws outside the treaty process has hampered efforts to comprehensively assess the status and effectiveness of national implementation measures.

Since April 2002 VERTIC has undertaken a survey of BWC national implementation legislation in all 151 states parties in an effort to produce as comprehensive an assessment as possible of their current extent and status. VERTIC has also collected and analysed available texts of legislation and other national measures, all of which are available at www.vertic.org. The survey focussed on national legislation to enforce the treaty’s core prohibitions, specifically those in Article 1 relating to the requirement never to develop, produce, stockpile or otherwise acquire or retain biological weapons. However, where VERTIC obtained information on any other measure to implement the treaty, this was included in the study. In addition to conducting the survey, the project has also sought to raise awareness among states parties of their obligation to adopt appropriate national legislation in addition to other necessary national implementation and enforcement measures. By making whatever information we have obtained publicly available, the project aims to increase transparency and understanding.

Additional information was obtained from the first BWC Experts Meeting, held in Geneva from 18–22 August 2003, where national implementation measures were the first item on the agenda. Many participating states made statements on their current situation, while thirty tabled working papers outlining their experiences in implementing the treaty and describing the scope of measures and legislation they had adopted. The states which tabled documents were, by and large, those for which information was already widely available. While 16 European states tabled papers, only six from the Americas, six from Asia, one from Africa and one from Oceania did so. Hence, the Experts Meeting did not increase transparency about the large number of states parties for which public information is lacking. The new information, where it has become available to VERTIC, has been incorporated into this report.

This report is divided into two parts. The first part describes the survey method, presents the results with regard to the status of national legislation adopted, and provides comparative analysis of the various ways in which this legislation has dealt with the treaty provisions. This part also provides examples of provisions in national legislation and indicates the level of cooperation received from states parties in collecting information. An indicative, but unattributed, list of reasons given by states parties for their failure to adopt national legislation is included. The second part contains recommendations for strengthening national implementation legislation by establishing avenues for states parties to share their understanding and experiences and to provide each other with assistance.

Survey of national implementation legislation

Survey method

The principal method for surveying the status of BWC national implementation legislation was a VERTIC questionnaire, modelled in part on that developed by the Organisation for the Prohibition of Chemical Weapons to evaluate legal instruments to implement the 1993 Chemical Weapons Convention. It was posted to all states parties in April 2002 and was made available in Arabic, English, French and Spanish. The questionnaire was also posted on VERTIC's website (www.vertic.org) in all of these languages. All states parties were contacted at least three times either through their missions in Geneva or New York or through appropriate contacts identified in capitals. Great efforts were made to establish contact with a national focal point for BWC measures, whether based in a foreign ministry, defence department or other government agency. Contacts were briefed on the project and asked to provide information on their national legislation by completing the questionnaire or by forwarding information in another format. Additionally, VERTIC staff used open sources and liaised with other organisations involved in BWC implementation to supplement the information provided in the questionnaire responses.

Survey results

As of 24 October 2003 the project had collected information on the status of national legislation for 95 of the 151 states parties. This includes the information provided in questionnaires received from 35 states parties. A summary of the status of national implementation legislation adopted by each state party is available on VERTIC's website at www.vertic.org. The summary lists each state party and indicates what legislation has been adopted, what laws are currently being drafted and where no information on the status of legislation is available. This information will be updated as new information becomes available.

VERTIC also obtained copies of the actual texts of national legislation and other measures adopted by 70 states parties, as of 24 October 2003. Legislative text, specific provisions within legislation or descriptive summaries of implementation measures have been collated at VERTIC's website as *1972 Biological Weapons Convention: Collection of National Implementation Legislation* (www.vertic.org/datasets/bwlegislation.html). Legislation is available in official languages as well as, where available, in English translation. Legislation received that relates to aspects of BWC implementation beyond the Article 1 prohibitions which are the focus of this report is also included in the interests of transparency.

States which provided information

As of 24 October 2003 the following 35 states parties had responded to VERTIC's request for information on the status of their national implementation legislation: Argentina, Australia, Austria, Belgium, Belize, Brazil, Bulgaria, Canada, China, Colombia, Denmark, Finland, Georgia, Germany, Hungary, Ireland, Italy, Japan, Korea (Republic of), Latvia, Lithuania, the Netherlands, New Zealand, Paraguay, Peru, the Russian Federation, Saint Kitts and Nevis, Seychelles, Slovakia, Switzerland, Thailand, Turkey, Ukraine, the United Kingdom and the United States.

In addition to responding to our questionnaire, many of the above supplied additional information, answered requests for clarification or further information and provided copies of legislative texts.

Other states for which information was obtained

The following 30 states parties made information available on their national measures, including legislation, in their Working Papers to the BWC Experts Meeting held from 18–22 August 2003 in Geneva: Argentina, Austria, Australia, Belgium, Bulgaria, Brazil, Canada, China, Cuba, Finland, France, Germany, Ireland, Iran, Italy, Japan, Malaysia, Mexico, the Netherlands, Poland, Portugal, Korea (Republic of), the Russian Federation, South Africa, Spain, Sweden, Thailand, Ukraine, the United Kingdom and the United States.

While it is clearly preferable to learn of national legislation directly from states parties to ensure that the information is correct, complete and up-to-date, where this was not possible attempts were made to obtain information from open sources.

Information on legislation was obtained from such sources for the following 59 states parties: Afghanistan, Albania, Algeria, Armenia, Bahrain, Belarus, Bolivia, Bosnia and Herzegovina, Brunei-Darussalam, Cambodia, Chile, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Dominica, Ecuador, Equatorial Guinea, Estonia, Ethiopia, Fiji, France, Greece, Guatemala, Iceland, India, Iraq, Jordan, Kuwait, Lebanon, Libya, Liechtenstein, Macedonia (the former Yugoslav Republic of), Malaysia, Mauritius, Mexico, Monaco, Nicaragua, Nigeria, Norway, Panama, Poland, Portugal, Romania, Senegal, Serbia and Montenegro, Slovenia, Solomon Islands, South Africa, Spain, Sweden, Tonga, Turkmenistan, Uruguay, Uzbekistan, Vanuatu, Venezuela and Vietnam.

For some of these states, we are aware of some legislation in force which may be relevant to BWC implementation, but without a copy of the text and in the absence of communication with a state official, we have been unable to clarify the situation. For other states parties we have acquired information on some legislation that may serve to implement the BWC, but are unsure if other relevant legislation might also exist.

The number of states for which information on legislation is available stands at 95, or 63% of states parties.

States for which no information has been identified

VERTIC was unable to identify any relevant national legislation to enforce the BWC for the following 56 states parties: Antigua and Barbuda, Bahamas, Bangladesh, Barbados, Benin, Bhutan, Botswana, Burkina Faso, Cape Verde, Congo, Democratic Republic of Congo, Dominican Republic, El Salvador, Gambia, Ghana, Grenada, Guinea-Bissau, Holy See, Honduras, Indonesia, Jamaica, Kenya, Korea (Democratic People's Republic of), Laos, Lesotho, Luxembourg, Maldives, Mali, Malta, Mongolia, Morocco, Niger, Oman, Pakistan, Palau, Papua New Guinea, Philippines, Qatar, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Singapore, Sri Lanka, Sudan, Suriname, Swaziland, Timor Leste, Togo, Tunisia, Uganda, Yemen and Zimbabwe.

Very little information is available on the status of national legislation to enforce the BWC in the 16 states signatory to the treaty. While not yet formally bound by the treaty, these states are obliged not to act

in a way that would frustrate its object and purpose. Adopting national measures and legislation to prevent treaty-prohibited activity from occurring on their territory would demonstrate their commitment to this obligation. VERTIC understands that one signatory state is currently drafting implementation legislation.

The reasons why information could not be obtained by VERTIC might thus have included:

- the absence of national implementing laws in the state
- the absence of information in open sources
- the lack of an official response to the VERTIC questionnaire or to direct enquiries
- the lack of national procedures for coordinating BWC implementation, and
- the fact that some states have only recently acceded to the treaty and have not yet had time to adopt any measures.

Regional differences

The charts in Figure 1 show the status of national measures adopted by states parties in aggregate, as well as by region, based on the UN regional classification system. They illustrate:

- the percentage of states parties which have adopted national legislation to implement their BWC obligations ('in force')
- the percentage with national legislation in force which may possibly serve to implement the treaty ('uncertain')
- the percentage of states which are currently drafting relevant legislation or other measures ('drafting') and
- the percentage of states for which no information has yet been identified ('no information').

Any combination of the first three categories may apply to any one state party.

Collectively, 47% of states parties have some legislation in force which implements the BWC, while a further 15% have legislation which may serve to implement the treaty. Seven per cent of states parties are currently drafting new measures to enforce the BWC prohibitions. For some states, these are new measures to enforce the treaty, while for others these are additional measures. No information could be identified on the status of measures in 37% of states parties.

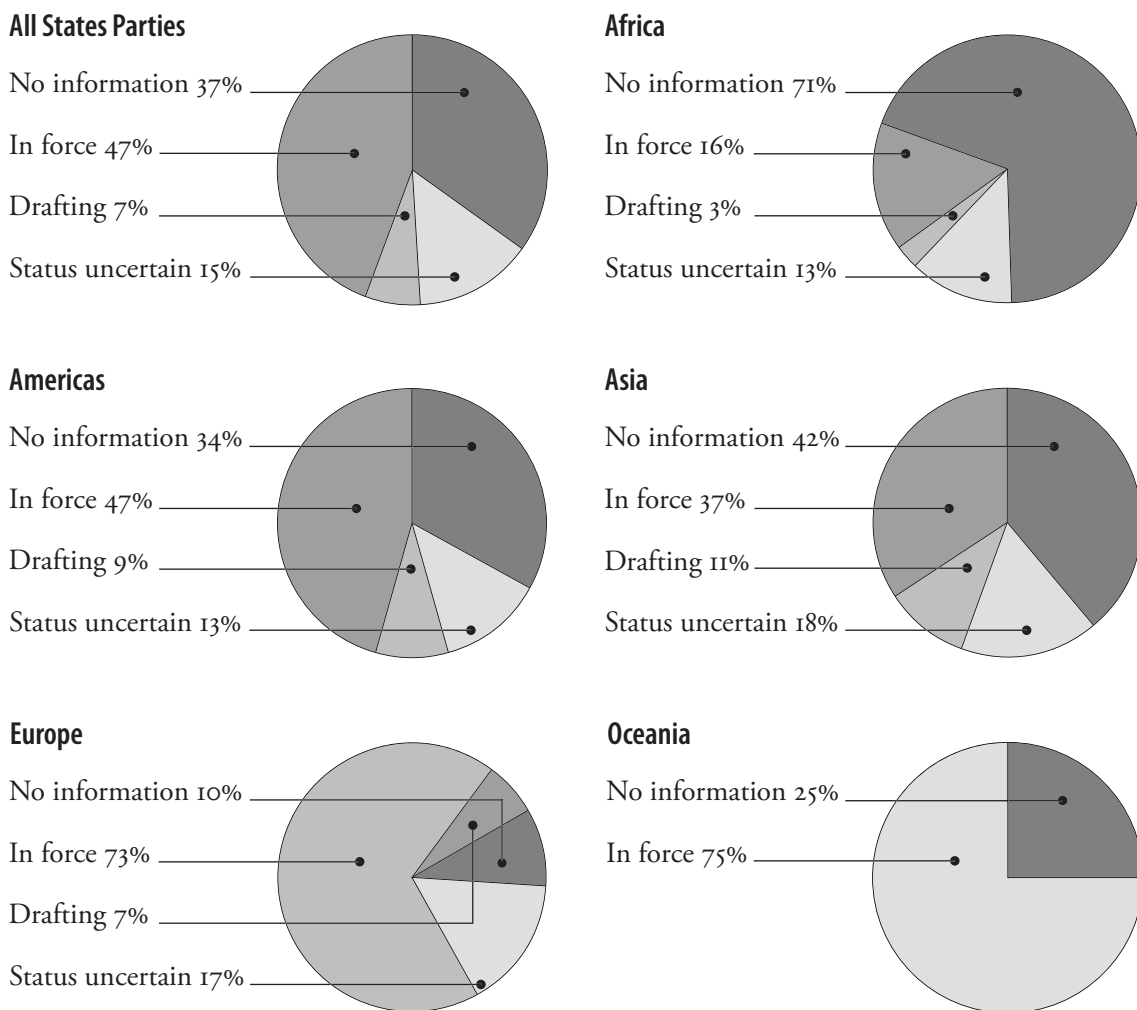
The charts illustrate the worrying fact that that no information, whether from states parties themselves or from other sources, was found on the existence of national legislation for 71% of African states parties. The same applies to 42% of states parties in Asia, 34% in the Americas and 25% in Oceania.

Relevant implementing legislation was identified for only 16% of states parties in Africa, 37% in Asia and 47% in the Americas. As a result of the higher response rate to the project questionnaire from states in Europe and the existence in the European Union (EU) of a regulatory framework for prohibiting biological weapons, it was possible to identify relevant legislation being in place for 73% of states parties in Europe. Some 75% of states parties in Oceania also have legislation in force.

Legislation which may possibly, but not definitively, serve to implement the BWC prohibitions were identified for 18% of states parties in Asia, 17% in Europe and 13% in both Africa and the Americas. As we do not have copies of these legislative texts, it is impossible to assess how effectively they actually enforce the treaty.

Some states parties are currently drafting new or additional legislation, along with other measures, which aims to specifically implement the treaty, or which will have this effect. Legislation is also being adopted in states which currently do not have any laws to implement or enforce the BWC. States which already have some relevant legislation and other implementing measures in force are also reviewing the effectiveness of these measures and considering new legislation to ensure effective implementation of all treaty obligations. Eleven per cent of states parties in Asia are drafting legislation and a further 9% in the Americas, 7% in Europe and 3% in Africa are considering new legislation or other measures.

Figure 1 **Status of national implementation legislation by region**



Attitudes to the adoption of national implementation legislation

In conducting this survey, VERTIC identified a range of opinions held by states parties about the requirement to adopt national implementation legislation. While not all states parties will require comprehensive legislation dealing with all aspects of the control of biological agents, the requirement to enforce the basic prohibitions is binding on all states parties and may be undertaken with relatively simple legislation.

Despite this, states parties offered a variety of spurious reasons as to why they did not have national implementation legislation. The following quotes or paraphrased quotes taken from questionnaires or telephone responses are illustrative:

- *Biological weapons are a non-issue.*
- *We do not have any biological weapons.*
- *We do not produce, develop, or stockpile any kind of bacteriological (biological) or toxin weapon.*
- *We have never had biological or toxin weapons in our possession.*
- *Our armed forces do not develop, produce or stockpile any bacteriological (biological) or toxin weapons.*
- *There is no production of biological weapons in our state. Our territory does not stockpile any biological weapons nor any installation which could be used for their development.*

Some states parties provided the following responses on the status of their national implementation measures:

- *No national measures are in place.*
- *We have no dedicated law with respect to biological weapons.*
- *Our legislation is under review.*
- *We are currently reviewing the effectiveness and scope of our legislation to deal with all aspects of BWC implementation, with a view to adopting new, more comprehensive legislation.*
- *We are currently drafting new legislation to enforce the Article I prohibitions.*
- *Our penal law is not focused specifically on biological weapons, but on all weapons.*
- *Our state has a civil law system, so we do not require specific BWC implementation legislation.*

The number and variety of such responses indicates that there is a need for states parties to inform themselves of their legal, and increasingly political, obligation to enact effective national implementation legislation in addition to any other necessary national measures for BWC implementation and enforcement.

Comparative analysis

The survey revealed many different approaches taken by states to implementing their BWC obligations at the national level. While some states have simply replicated the bare provisions of the treaty in simple legislation, others have felt it necessary to adopt wide-ranging measures. The following analysis identifies the different approaches taken to definitions; the scope of offences; domestic enforcement powers; export and import controls; application to external territories; extra-territoriality; divulgence of BW-related information; the establishment of national focal points and penal sanctions.

Definitions

Some states parties have adopted legislation which is specifically intended to implement the Article I prohibitions of the treaty. Other states parties have adopted legislation or other measures which serve to enforce these prohibitions, but which were not specifically adopted for this purpose. Both types of legislation or measures may define types of agents or activity that are prohibited or restricted, but do not necessarily duplicate or approximate the language of the BWC. States parties should consider reaching a common understanding on the desirability of replicating treaty language in national legislation to ensure consistency of coverage and to reduce the opportunities for loopholes.

The list in Table 1 below is indicative of provisions in states parties' legislation. Their inclusion here is not intended to highlight the weaknesses of the national measures of any particular state party, but rather to indicate the different approaches taken. While there is no model legislation applicable to all states, states parties should consider reaching common understandings on the core prohibitions and facilitation provisions and on means to ensure their common application in all states parties.

Table 1 Range of definitions used in national implementation legislation	
State party and law	Definition of biological agents
<p>Belgium Loi portant approbation de la Convention sur l'interdiction de la mise au point, de la fabrication et du stockage des armes bacteriologiques, (biologiques) ou a toxines et sur leur destruction, faite a Londres, Moscou et Washington le 10 avril 1972 1978</p>	<p>'... des agents microbiologiques ou autres agents biologiques ainsi que des toxines, quelle qu'en soit l'origine ou le mode de production, de types ou de quantites que ne sont pas destines a des fins prophylactiques, de protection ou a d'autres fins pacifiques'</p> <p>Microbial agents or other biological agents as well as toxins, whatever is the origin or the mode of production, in types or quantities which are not intended for prophylactic ends, protection or other peaceful ends [unofficial translation]</p>
<p>Czech Republic Act 281/2002 of 30 May 2002 on Some Measures Related to Prohibition of Bacteriological (Biological) and Toxin Weapons and on Amendments to Trades Licensing Act</p>	<p>'... any naturally occurring or modified organism, the deliberate use of which can cause death, disease, harm and incapacitate human beings, animals or plants'</p>
<p>Saint Kitts and Nevis Biological Weapons Act 1991</p>	<p>'... any microbial or other biological agent'</p>
<p>United Kingdom Biological Weapons Act</p>	<p>'... any microbial or other biological agent'</p>
<p>United States Code</p>	<p>'... any micro-organism, virus or infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, capable of causing; death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism; deterioration of food, water, equipment, supplies, or material of any kind; or deleterious alteration of the environment'</p>

State party and law	Definition of biological warfare agent
<p>South Africa Non-Proliferation of Weapons of Mass Destruction Act 1993</p>	<p>‘... living organisms, including viruses or infectious materials derived therefrom, which can be used to cause diseases or death in humans, animals or plants and which usually depend for their primary effects on their ability to multiply in the organism attacked’</p>
State party and law	Definition of biological weapons
<p>Belgium Loi portant approbation de la Convention sur l’interdiction de la mise au point, de la fabrication et du stockage des armes bacteriologiques, (biologiques) ou a toxines et sur leur destruction, faite a Londres, Moscou et Washington le 10 avril 1972 1978</p>	<p>‘... des armes, de l’équipement ou des vecteurs spécifiquement conçus pour l’emploi de tels agents ou toxines à des fins hostiles ou dans des conflits armés’ Weapons, equipment or vectors specifically designed for the use of such biological agents or toxins at hostile ends or in wars [unofficial translation]</p>
<p>Czech Republic Act 281/2002 of 30 May 2002 on Some Measures Related to Prohibition of Bacteriological (Biological) and Toxin Weapons and on Amendments to Trades Licensing Act</p>	<p>‘... weapons, the damaging effects of which are based on the properties of biological agents and toxins; specifically designed to cause disease, death, to harm and incapacitate human beings, animals or plants or which can cause economic damage; materials containing biological agents or toxins whatever their origin or method or production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; any devices, equipment or means of delivery designed to use or to be loaded with such biological agents or toxins; or weapons specifically constructed to use or to be loaded with such biological agents or toxins for hostile purposes or in armed conflict; or vectors of biological agents deliberately infected for hostile purposes or in armed conflict’ [definition of ‘bacteriological (biological) and toxin weapon]</p>
<p>Japan Implementation Law 1982</p>	<p>‘Items which are used as means of use of force and are filled with biological agents or vectors who carry or mediate biological agents’ [unofficial translation]</p>

<p>New Zealand New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987</p>	<p>‘...any agent, toxin, weapon, equipment, or means of delivery referred to in Article 1’ of the BWC</p>
<p>State party and law</p>	<p>Definition of delivery system</p>
<p>United States Biological Weapons Anti-Terrorism Act 1989</p>	<p>‘...any apparatus, equipment, device or means of delivery specifically designed to deliver or disseminate a biological agent, toxin or vector; or any vector’</p>
<p>State party and law</p>	<p>Definition of pathogen</p>
<p>China Dual-Use Biological Agents and Related Equipment and Technologies Export Control List 2002</p>	<p>‘...the natural or genetically-modified pathogenic microorganism which can cause death, disease or other harms to human beings, animals or plants’</p>
<p>State party and law</p>	<p>Definition of toxin</p>
<p>Czech Republic Act 281/2002 of 30 May 2002 on Some Measures Related to Prohibition of Bacteriological (Biological) and Toxin Weapons and on Amendments to Trades Licensing Act</p>	<p>‘...toxin means toxic material including micro organisms, animals or plants, whatever its origin or method of production, naturally occurring, modified or chemically synthesized which can cause death, disease, harm and incapacitate human beings, animals or plants’</p>
<p>China Dual-Use Biological Agents and Related Equipment and Technologies Export Control List 2002</p>	<p>‘...Biological active material, originated from any microorganism, animal or plant, whatever their method of production, whether natural or modified, which can cause death, disease or other harms to human beings, animals, and plants’</p>
<p>United Kingdom Biological Weapons Act</p>	<p>‘...any toxin, whatever its origin or method of production’</p>
<p>United States Code</p>	<p>‘...the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of production, including—any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or any poisonous isomer, or biological product, homolog, or derivative of such a substance’</p>

State party and law	Definition of vector
United States Code	'... a living organism, or molecule, including a recombinant molecule, or biological product that may be engineered as a result of biotechnology, capable of carrying a biological agent or toxin to a host'
State party and law	Definition of weapon of mass destruction
South Africa Non-Proliferation of Weapons of Mass Destruction Act 1993	'... any weapon designed to kill, harm or infect people, animals or plants through the effects of a nuclear explosion or the toxic properties of a chemical warfare agent or the infectious or toxic properties of a biological warfare agent, and includes a delivery system exclusively designed, adapted or intended to deliver such weapons'
State party and law	Definition of weapon of mass destruction programme
Australia Weapons of Mass Destruction (Prevention of Proliferation) Act 1995	'... a plan or program for the development, production, acquisition or stockpiling of nuclear, biological or chemical weapons or missiles capable of delivering such weapons'

Although legislation may not refer specifically to biological weapons, biological weapons may nonetheless be controlled under legislation that deals with other categories of weapons or banned substances. Table 1A shows examples.

Different categories applicable to BW	State party and law
'asphyxiating or toxic substances'	Argentina: Penal Code Peru: Penal Code
'dangerous contagious disease'	Norway: Penal Code
'dangerous substances'	Albania: Criminal Code
'deadly or destructive means'	Belize: Criminal Code
'explosive, asphyxiating or toxic materials'	Costa Rica: Penal Code

‘gases’	Belize: Criminal Code
‘noxious matter’	Belize: Criminal Code Solomon Islands: Penal Code Vanuatu: Firearms Act 1988
‘paralysing gases’	Belarus: Criminal Code
‘pathogenic organisms’	China: Criminal Code
‘poison, infectious substances’	Argentina: Law of Dangerous Residues 1991 (Ley 24.061)
‘poisonous or contagious disease pathogens’	China: Criminal Code
‘poisonous or noxious thing’	Fiji: Penal Code India: Prevention of Terrorism Act 2002 Seychelles: Penal Code
‘poisonous substances’	Albania: Criminal Code Belarus: Criminal Code China: Criminal Code Nicaragua: Penal Code Poland: Penal Code Seychelles: Penal Code
‘potent or toxic substances’	Russian Federation: Criminal Code
‘special arms’	Chile: Ley de Quórum Calificado Sobre el Control de Armas (Ley 17.798) Specifically includes ‘Biological Weapons’ within definition of ‘special arms’

Scope of prohibitions incorporated in national legislation

The scope of legislation adopted to date has been patchy. Few states have adopted comprehensive, stand-alone legislation. Some states have banned the full range of activities prohibited in the treaty (production, development, stockpiling, acquisition, retention, and transfer) while some have also banned use (which is covered in the 1925 Geneva Protocol). Some legislation prohibits acquisition or retention of ‘biological weapons’ or illicit ‘war materials’ without defining them and/or without addressing the development or production of biological weapons. States have also not been consistent in using treaty terms for prohibited activity. For some states this is due to a desire to prohibit more activities than are covered by the treaty, while others have simply used other language which may or may not adequately cover the full range of prohibited activities. Whether or not the treaty terms are used, it is important that the full scope of prohibited activity is effectively prohibited through national legislation.

A list of national legislation containing the full range of prohibited activity envisaged under Article 1 is provided in Table 2. A list of other measures intended to enforce the treaty, but which use different terms, or a different combination of terms, is supplied in Tables 2A and 2B.

Table 2 Legislation which attempt to enforce the full range of Article 1 prohibitions

State party and law	Prohibition contained in legislation
<p>Australia Crimes (Biological Weapons) Act 1976</p>	<p>‘It is unlawful to develop, produce, stockpile or otherwise acquire or retain:</p> <ul style="list-style-type: none"> (a) 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; or (b) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict’.
<p>Canada Public Safety Bill (C-55/Part 20)</p>	<p>‘No person shall develop, produce, retain, stockpile, otherwise acquire or possess, use or transfer</p> <ul style="list-style-type: none"> (a) any microbial or other biological agent, or any toxin, for any purpose other than 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.’
<p>France Law No. 72-467 1972</p>	<p>‘The development, production, retention, stockpiling, acquisition or transfer of 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 shall be prohibited.’ [official translation]</p>

<p>Norway General Civil Penal Code</p>	<p>‘Any person shall be liable to imprisonment for a term not exceeding ten years who develops, produces, stores or otherwise obtains or possesses:</p> <ol style="list-style-type: none"> 1. bacteriological or other biological substances or toxins regardless of their origin or method of production, of such a kind and in such quantities that they are not justified for preventive, protective, or other peaceful purposes, or 2. weapons, equipment or means of dissemination made for using such substances or toxins as are mentioned in item 1 for hostile purposes or in armed conflict <p>Accomplices shall be liable to the same penalty.’ [official translation]</p>
<p>Saint Kitts and Nevis Biological Weapons Act 1991</p>	<p>‘Any person who develops, produces, stockpiles, acquires or retains;-</p> <ol style="list-style-type: none"> (a) any biological agent of a type and in quantity that has no justification for prophylactic, protective or other peaceful purpose, or (b) any weapon, equipment or means of delivery designed to use biological agents or toxins for hostile purposes or in armed conflict, <p>shall be guilty of an offence and shall be liable on conviction of indictment to a fine of fifty thousand dollars and to imprisonment for life.’</p>
<p>South Africa Declaration 428 of Certain Goods and Technologies to be Controlled and Control Measures Applicable to Goods 2002 (being a notice under section 13 of the Non-Proliferation of Weapons of Mass Destruction Act 1993)</p>	<p>‘In terms of South Africa’s obligations as a State Party to the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapon and on their Destruction, prohibit-</p> <ol style="list-style-type: none"> (i) the development, production, stockpiling, acquisition or retention of 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; (ii) the development, production, stockpiling, acquisition or retention of weapons, equipment or means of dispersion or delivery specifically designed to use such agents or toxins for hostile purposes or in armed conflict.’

<p>United Kingdom Biological Weapons Act 1974</p>	<p>‘No person shall develop, produce, stockpile, acquire or retain-</p> <p>(a) any biological agent or toxin of a type and in a quantity that has no justification for prophylactic, protective or other peaceful purposes; or</p> <p>(b) any weapon, equipment or means of delivery designed to use biological agents or toxins for hostile purposes or in armed conflict.’</p>
<p>United States Biological Weapons Anti-Terrorism Act 1989</p>	<p>(a) ‘IN GENERAL – 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, shall be fined under this title or imprisoned for life or any terms of years, or both. There is extraterritorial Federal jurisdiction over an offense under this section committed by or against a national of the United States.</p> <p>(b) DEFINITION – For purposes of this section, the term ‘for use as a weapon’ does not include the development, production, transfer, acquisition, retention, or possession of any biological agent, toxin, or delivery system for prophylactic, protective, or other peaceful purposes.’</p>

Some countries’ legislation, while not using BWC treaty language, creates offences which cover all or at least some of the treaty’s main prohibitions. Table 2A shows some examples.

Table 2A Other offences directly related to biological weapons or biological agents but not cast in BWC treaty language

State party and law	Offences
<p>Austria Penal Code</p>	<p>‘Manufacture, produces, acquires, possess BW’</p>
<p>Costa Rica Ley de Armas Y Explosivos (Ley 7530, 10/7/1995)</p>	<p>Possess or hold ‘special arms’ (definition includes BW), use, development, introduction into country of ‘gases, viruses, toxic bacteria’ which can be used as weapons</p>

Croatia Penal Code	'Constructs, develops, produces, attains, stores, sells, purchases, transports BW'
Czech Republic Act 281/2002 of 30 May 2002 on Some Measures Related to Prohibition of Bacteriological (Biological) and Toxin Weapons and on Amendments to Trades Licensing Act	'Develop, produce, stockpile, possess, process, use, consume, import, export, transport, transfer, trade in, or handle BW'
Estonia Penal Code	'Designs, manufactures, stores, acquires, hands over, sells or provides for offer BW'
Finland Weapons Act	Prohibits importation, production and ownership of very dangerous weapons
Georgia Penal Code	Transportation of BW, export of WMD, infringement of safety rules for handling microbiological or other biological agents and toxins, preparation, purchase, or sale of BW, application of WMD
Germany War Weapons Control Act 1961 as amended	'It is forbidden to- 1. develop, produce or trade in biological or chemical weapons, to acquire them from or transfer them to another person, to import or export them, to transport them through or otherwise bring them into or out of federal territory, or otherwise to exercise actual control over them; 1a. to induce another person to commit an act specified in item 1 above; or 2. to encourage an act specified in item 1 above.' [unofficial translation]
Guatemala Ley de Arms y Municiones (Decreto 39-89 del Congreso)	Possession, storage carrying, importing, manufacturing, transportation/transfer of BW without authorisation
India Prevention of Terrorism Act 2002	Possession of biological substances of warfare

<p>Iraq Presidential Decree on Prohibition of the Importation and Production of Biological Weapons, Chemical Weapons and Nuclear Weapons 2003</p>	<p>Importation and production of BW</p>
<p>Italy Law 185, 1990</p>	<p>‘Manufacture, import, export, and transit of biological, chemical and nuclear weapons are prohibited, as is research for their production, or provision of relevant technology.’ [Note, current legislation does not prohibit stockpiling or acquisition but a revision is being drafted to cover this]</p>
<p>Latvia Penal Code</p>	<p>‘Manufacture, amassment, deployment or distribution of... biological, bacteriological, toxic or other weapons of mass destruction’</p>
<p>Liechtenstein Federal Law on War Material 1996 [Switzerland]</p>	<p>‘Develop, manufacture, procure as an intermediary, acquire, hand over to anyone, import, export, transit, store... BW or to dispose of them in any other fashion’</p>
<p>Lithuania Criminal Code</p>	<p>‘... dissemination of biological, radioactive or chemical noxious substances, preparations or micro-organisms’</p>
<p>Mauritius Prevention Terrorism Act 2002</p>	<p>‘Manufacture, possession, acquisition, transport, supply, use of... BW as well as research into and development of BW’ [note, defined as an act of terrorism]</p>
<p>Netherlands The Domestic Biological and Toxin Weapons Act 1981</p>	<p>Development, production, stockpiling, acquisition and retention of materials prohibited by Article 1</p>
<p>New Zealand New Zealand Nuclear Free Zone, Disarmament and Arms Control Act 1987</p>	<p>‘Manufacture, station, acquire, possess, have control over BW’</p>
<p>Poland Penal Code</p>	<p>Uses WMD, manufactures, collects, acquires, sells, stores, transports, transmits, develops WMD</p>

Russian Federation Criminal Code	‘Stealing or extortion of . . . biological or other types of mass destruction weapons’
Switzerland Federal Law on War Material 1996	‘Develop, manufacture, procure as an intermediary, acquire, hand over to anyone, import, export, transit, or to store . . . BW or to dispose of them in any other fashion’
Tonga Criminal Offences (Amendment) Act 2002	Manufacture, possession, acquisition, transport, supply or use of BW as well as research into and development of BW defined as act of terrorism
Turkmenistan Penal Code	Illegal manufacture of gas weapons. ‘The transfer across the customs border of Turkmenistan of narcotic drugs, psychotropic, virulent, toxic, poisonous or radioactive substances, explosives, arms, explosive devices, firearms or ammunition, nuclear, chemical, biological and other types of weapons of mass destruction and for which special rules have been established regarding their transfer across the customs borders of Turkmenistan, strategically imported raw materials, and cultural artefacts for which special rules have been established regarding their transfer across the customs border of Turkmenistan, if such act is committed without the knowledge of customs inspectors or is concealed from them through the fraudulent use of documents or means of customs identification, or involves the failure to make a declaration or the making of a false declaration, shall be punishable by imprisonment for three to eight years, with or without confiscation of property.’
Ukraine Criminal Code	Use, development, production, purchasing, stockpiling, sale or transportation WMD

Some states have adopted legislation that establishes offences which do not use treaty language or specifically refer to biological weapons or treaty-prohibited material, but which may nonetheless give effect to the treaty’s prohibitions or at least some of them. See Table 2B for examples.

Table 2B Non-BW specific offences that may serve to prohibit biological weapons or misuse of biological agents

State party and law	Offences
Argentina Penal Code	Supplies, acquires, steals asphyxiating or toxic substances
Belarus Criminal Code	Making, sale of paralyzing gases, making, sale, acquisition, Keeping, transportation, dispatch poisonous substances
Belize Criminal Code	Administers noxious matter, uses gas
China Criminal Code	Spreads 'poisonous, radioactive substances or pathogenic organisms', illegally manufacture, trade, transport, storing 'poisonous or contagious disease pathogens'
Costa Rica Penal Code	For purpose of committing an offence manufactures, supplies, acquires, steals, or possesses 'explosive... asphyxiating or toxic materials'
Ecuador Penal Code	Manufactures, provides, acquires, steals, throws, use or introduces explosive substances, asphyxiating or toxic materials or substances used in their preparation
Fiji Penal Code	'Causes any poison or noxious thing to be administered'
Hungary Criminal Code	Uses weapon 'prohibited by international treaty'
Lithuania Criminal Code	'An order to employ prohibited means of warfare or methods of combat and employing of such in violation of the provisions of international agreements or universally accepted international customs regarding the means or methods of combat'
Macedonia (the former Yugoslav Republic of) Criminal Code	'Manufactures, procures or enables another to get weapons ... as well as poisons'

Mexico Federal Penal Code	Illicitly carries, manufactures, imports or stockpiles instruments which may be used solely for attack purposes and have no work-related or recreational application
Nicaragua Penal Code	'Use of... asphyxiating or poisonous gas'
Norway General Civil Penal Code	Cause the 'introduction or general spread of a dangerous contagious disease'
Panama Act No. 53, 1995	Sells or transfers weapons that it is prohibited by law to possess or bare
Peru Decree Law No. 25475	'manufacture, acquisition, possession, theft, storage or supplying of... asphyxiating, toxic substances'
Poland Penal Code	Release of 'poisonous, toxic or blistering substances'
Romania Government Emergency Ordinance No. 141 2001	'The introduction or release into the atmosphere, soil, sub-soil or water of products, substances, materials, micro-organisms or toxins harmful to human or animal health or to the environment... shall be considered as terrorist acts if they create a serious breach of the peace through intimidation, terror or triggering of panic...' 'Attempts to commit such offences shall also be punishable [unofficial translation]
Russian Federation Criminal Code	'Illegal making, processing, acquisition, storage, transportation or sending for the purpose of sale' potent or toxic substance
Seychelles Penal Code	Dealing in poisonous substances
Solomon Islands Penal Code	Sending or delivery of noxious thing, maliciously administering poison with intent to harm, unlawful poisoning

Turkmenistan Penal Code	Transfer of 'toxic, poisonous substances, biological weapons or other types of weapons of mass destruction'
Vanuatu Firearms Act 1988	Manufacture, sell, transfer, purchase, acquire or have in possession any weapon 'designed or adapted for the discharge of any noxious liquid, gas or other thing or any ammunition containing or designed or adapted to contain any such noxious thing' (prohibited weapon)

Enforcement powers

Ten states parties have expressly included enforcement powers relating to biological weapons offences in their legislation. An illustrative summary of these provisions is contained in Table 3. All states parties should make legislative provision to ensure effective enforcement of their national measures, including such details as the powers of investigation, search and seizure of documents, equipment and substances that are to be given to law enforcement agencies, with due regard to legal process and human rights considerations. Apart from legislation, there is also a need for a wide range of other national measures, such as ensuring effective law enforcement by police and customs, including access to civilian property and cross-border cooperation with other countries.

Table 3 Illustrative summary of enforcement powers

State party and law	Summary of enforcement powers
Australia Crimes (Biological Weapons) Act 1976	Constable may without a warrant seize any substance or article that developed, produced, stockpiled, acquired or retained in contravention of Act
Belize Public Safety Act 2000	Power to arrest without warrant if reason to believe that the delay in obtaining a warrant or written order would defeat the ends of justice or prevent the enforcement of those regulations
Belize War Material Act 2000	Minister may order war material be seized by police officers and detained [no reference to need for warrant], power to search, stop and detain vessels [no reference to warrant]

<p>Canada Public Safety Bill (C-55/Part 20)</p>	<p>Inspector allowed to enter [needs warrant] any place in which the inspector believes on reasonable grounds there are biological agents. Powers given to inspector to allow questioning, taking of samples, enforcing production of documents</p>
<p>Czech Republic Act 281/2002 of 30 May 2002 on Some Measures Related to Prohibition of Bacteriological (Biological) and Toxin Weapons and on Amendments to Trades Licensing Act</p>	<p>Supervision to be carried out by national authority, they are to carry out inspections [surprise ones allowed], analyse samples, request information</p>
<p>France Law No. 72-467, 1972</p>	<p>Implementing law provides for decrees to be issued determining measures for implementing the prohibitions, to include measures with respect to investigating powers of investigators</p>
<p>Germany War Weapons Control Act 1961 as amended</p>	<p>Supervisory authorities may demand information, have access to company records, carry out inspections. Allows entry into premises where required by their functions [restricts right to privacy of home]</p>
<p>Mauritius Prevention of Terrorism Act 2002</p>	<p>Normal powers of investigation with warrant. However, where in a case of urgency not able to get warrant able to enter and search premises if have reason to suspect that offence occurring</p>
<p>Saint Kitts and Nevis Biological Weapons Act 1991</p>	<p>Power for magistrate to grant search warrant based on evidence by oath authorising:</p> <ul style="list-style-type: none"> • to enter at any time within three months of the date of the warrant, any premises or place named therein, if necessary by force, and search such premises or place and every person found therein; • to inspect any document found in the premises or place or in the possession of any person found therein and to take copies of, or seize and detain any such document; • to inspect, seize and detain any equipment so found; and • to inspect, sample, seize and detain any substance so found <p>[The wording of this provision is exactly the same as the Biological Weapons Act [UK], except the St Kitts legislation allows search without warrant where police reasonably suspect or has reasonable cause to suspect offence has been or is about to be committed]</p>

<p>South Africa Non-Proliferation of Weapons of Mass Destruction Act 1993</p>	<p>National authority has the power to:</p> <ul style="list-style-type: none"> • appoint board of inquiry that has extensive powers including power of summons of individual and production of documents etc; • appoint inspectors – they have power to enter any premises in or upon which controlled goods are kept or reasonably suspected to be kept
<p>United Kingdom Anti-terrorism, Crime and Security Act 2001</p>	<p>An authorising officer has the power to: To take with him such other persons and such equipment as appear to him to be necessary:</p> <ul style="list-style-type: none"> • To inspect, seize and retain any substance, equipment or document found on the premises; • To require any document or other information which is held in electronic form and is accessible from the premises to be produced in a form in which he can read and copy it; or from which it can readily be produced in a form in which he can read and copy it; and • To copy any document which he has reasonable cause to believe may be required as evidence for the purpose of proceedings
<p>United Kingdom Biological Weapons Act 1974</p>	<p>A Constable has the power to:</p> <ul style="list-style-type: none"> • To inspect any document found in the premises or place or in the possession of any person found therein, and to take copies of, or seize or detain any such documents; • To inspect, seize and detain any equipment so found; and • To inspect, sample, seize and detain any substance so found

Export and import controls

In order to comply with the obligation not to acquire or possess materials or equipment for prohibited purposes, and to prevent others from acquiring them, states must adopt appropriate export and import control measures. This is best achieved by establishing a licensing system for the export or import of dual-use agents, equipment, intellectual property, materials, patents and technology. Licensing systems are usually adopted under primary legislation passed by a parliament or other legislative or executive body (such as an Export and Import Control Act). Such legislation ideally provides for secondary legislation (such as regulations) or other measures to be issued without the need for a new parliamentary act to be passed, either in response to additional commitments the state has accepted or as new information becomes available on dangerous or prohibited items. Secondary legislation or measures can thus

often be adopted more quickly than primary legislation or measures. Secondary measures may be especially useful in updating lists of prohibited items for which an export or import license will not be authorised. States must, by whatever means, ensure that controlled goods lists are adequate, that export or import licenses are not authorised for prohibited items and that activities which violate the control procedures are detected and the perpetrators punished.

A number of BWC states parties have already issued ‘controlled goods lists’ under existing export and import control legislation, which seek to prohibit the export and import of biological weapons-related agents, materials, equipment and technologies. There are wide-ranging definitions of prohibited items, including ‘biological weapons’, ‘dual-use goods’ and ‘war materials’.

Table 4 contains an illustrative summary of export and import provisions which may restrict access to agents and equipment prohibited by the BWC.

Table 4 Illustrative summary of export and import control provisions	
State party and law	Summary of import and export provisions
Australia Weapons of Mass Destruction (Prevention of Proliferation) Act 1995	Permit system in place to ensure that transfer of goods or provisions of services will not be contrary to Australia’s national interest
Belarus Regulation on Introduction of Bans and Restrictions on Transfer of Goods through the Customs Border of the Republic of Belarus (No. 218, 18/03/97)	Two lists approved, one relates to goods where transfer across the state is banned and the other relates to goods where the transfer across Belarus is restricted. A licence is required for restricted goods. Biological and other types of weapons of mass-destruction, as well as components of the specified types of weapons are restricted
Belgium Royal decree, 8 March 1993	List established of arms, munitions and materials having military use that either prohibited or subject to licensing. An annex lists prohibited items
Belize War Material Act 2000	Exports of war materials prohibited. While there is no direct reference to BW, it may fall within ‘military or naval stores’
Brazil Law No. 9.112, 1995	Authorisation needed for export of sensitive goods. Sensitive goods defined as goods for use in times of war, double purpose goods and goods for use in the nuclear, biological and chemical areas

<p>Brazil Law No. 9.112, 1995</p>	<p>Established an Inter-Ministerial Commission for Controlling Export of Sensitive Goods to ensure exports comply with international treaties and commitments</p>
<p>Bulgaria Law on Control of Foreign Trade Activity in Arms and in Dual-Use Goods and Technologies 2000</p>	<p>Restrictions and bans can be imposed on arms and dual-use goods and technologies</p>
<p>Canada Exports & Imports Act Permits 1985</p>	<p>Export and Import Control Lists established. Export Control List refers to materials used with respect to BW and dual-use materials, prohibited weapons that have to be subject to control</p>
<p>China Regulation No. 365 to Strengthen Export Controls of Dual-Use Biological Agents and Related Equipment and Technologies 2002</p>	<p>Dual-use biological agents and related equipment and technologies subject to licensing. If know or should know that dual-use biological agents and related equipment and technologies exported will be used directly for purpose of BW exportation prohibited regardless of Dual-Use Export Control List</p>
<p>Cyprus Defence (Exportation of Goods) Regulations 1993</p>	<p>Regulations relating to export, import and transit of goods where deemed necessary for purposes of maintaining or restoring the peace and security at any place in the world or for purposes of application of measures that are concluded due to a disturbance or threatened disturbance of the international peace or public order. No direct mention of BW, biological agents, dual-use items</p>
<p>Czech Republic Act 38/1994 of Legal Code (1994)</p>	<p>Prohibition on trade in BW</p>
<p>Estonia Strategic Goods Import, Export and Transit Act 1994</p>	<p>Prohibition of export or transit of BW and materials, hardware, software and technology used for the manufacture thereof, and provision of services related to the manufacture of such articles, regardless of the country of destination.</p>
<p>Finland Decree on the Control of Exports of Dual-Use Goods 1996 (Finland Statute No 645/96)</p>	<p>Export licence needed for dual-use goods, technology and services with respect to biological field</p>

<p>Georgia</p> <p>Law on Export Control for Armaments, Military Techniques and Dual-Purpose Products 1998</p>	<p>‘Disease agents, their genetically altered forms, and fragments of genetical material which can be used for the creation of bacteriological (biological) and toxin weapons, control lists of which are established by international non-proliferation regimes’ subject to export control</p>
<p>Hungary</p> <p>Government Decree 61/1990 on licensing trade in certain internationally controlled goods and technologies</p>	<p>Internationally controlled products require licence, products, technologies and services relating to BW defined as internationally controlled products</p>
<p>Italy</p> <p>Law No. 185 1990 New Provisions Governing the Export, Import and Transit of Armaments</p>	<p>Prohibits manufacture, import, export, transit, and research of BW</p>
<p>Latvia</p> <p>Regulation No. 421 on Control of Strategic Goods 1997</p>	<p>Licensing of strategic goods. No definition of strategic goods in this Act</p>
<p>Liechtenstein</p> <p>Federal Law on Control of Goods Suitable for Civilian and Military Purposes and Specific Military Goods 1996 [Switzerland]</p>	<p>Licence for export/import will be denied if activity violates international agreements</p>
<p>Lithuania</p> <p>Law No. VIII-814 on the Control of Export, Import and Transit of Strategic Goods and Technology 1998</p>	<p>Licensing for controlled goods. Definition includes ‘chemical and biological materials, which may be utilised in the production of chemical and chemical-bacteriological weapons of mass destruction’</p>
<p>New Zealand</p> <p>Customs and Excise Act 1996</p>	<p>Regulations may be made to prohibit goods for export or import. No direct reference to BW or biological material</p>
<p>Norway</p> <p>Ordinance of 10 January 1989 to implement regulations for strategic goods, services and technology</p>	<p>Need licence for goods intended for or will be used in connection with development, production, maintenance, storage, detection, identification or destruction of BW</p>

<p>Poland</p> <p>Law 29/2000 Concerning International Trade in Goods, Technologies and Services of Strategic Significance for State Security and Maintenance of International Peace and Security, and amending selected laws</p>	<p>No licence for trade issued if trade interferes with international obligations. No licence if strategic goods can be used for purpose of implementation, production, operation, maintenance, storage, detection, identification, proliferation of WMD</p>
<p>South Africa</p> <p>Declaration No. 428 of Certain Goods and Technologies to be Controlled and Control Measures Applicable to Goods 2002</p>	<p>Prohibition using BWC language; declares biological agents and toxins and related manufacturing equipment and technology that may be used for the manufacture of biological and toxin weapons to be controlled goods</p>
<p>Sweden</p> <p>Law on Control over Products with Dual-Use and of Technical Assistance 2000</p>	<p>Prohibits technical assistance outside EC if intended for use in connection with development, production, handling, use, maintenance, storage, detection, identification or proliferation of BW [regulations can grant exceptions to ban] Permits needed for dual-use goods</p>
<p>Switzerland</p> <p>Ordinance on the Export, Import and Passage in Transit of Goods usable for Civilian and Military Purposes and Specific Military Goods 1996</p>	<p>Export licence will be denied if reason to assume that goods will be used for production, development or use of BW</p>
<p>Thailand</p> <p>Export & Import Act 1979</p>	<p>Notifications to be issued prohibiting goods to be exported or imported or the need for a licence</p>
<p>Ukraine</p> <p>Regulations on State Export Control of Ukraine No. 117/98 (1998)</p>	<p>Prohibition on transfer of BW</p>
<p>United Kingdom</p> <p>Anti-terrorism, Crime and Security Act 2001</p>	<p>‘A person shall not – (a) transfer any biological agent or toxin to another person or enter into an agreement to do so, or (b) make arrangements under which another person transfers any biological agent or toxin or enters into an agreement with a third person to do so, if the biological agent or toxin is likely to be kept or used (whether by the transferee or any other person) otherwise than for prophylactic, protective or other peaceful purposes and he knows or has reason to believe that that is the case’</p>

United Kingdom Export Control Act 2002	Export Controls can be put in place for any goods, control list prohibits goods capable of being used in relation to BW
United States Chemical and Biological Weapons Control and Warfare Elimination Act 1991	List to be established of goods and technology that would directly and substantially assist a foreign government or group in acquiring the capability to develop, produce, stockpile or deliver BW, licensing system in place in respect of such goods
Vietnam Decision of the Minister of Trade No. 238/TM/XNK 1994	Prohibited to export and import toxic chemicals

External territories

As states parties are legally obliged to ensure that treaty prohibitions are enforceable within all of their territory, or in any other area under their jurisdiction or control, whether geographically contiguous or not, they must extend their national implementing measures to any external territories they might have. VERTIC has not been able to determine whether legislation adopted by all states parties with external territories has been so extended. The following list (table 5) is indicative of states with known external territories for which additional measures may need to be adopted to ensure that legislation is applied to all territories under their jurisdiction or control. It would be helpful if these states would clarify publicly whether their national measures have been extended to these territories and, if so, under which legislative instrument.

Table 5 Known external territories of selected BWC states parties

State party	External territories
Australia	Ashmore and Cartier Islands, Australian Antarctic Territory, Christmas Island, Cocos (Keeling) Islands, Coral Sea Islands, Heard Island and McDonald Island and Norfolk Island [The Crimes (Biological Weapons) Act 1976 ‘extends to every external Territory’ (section 4)] [The Weapons of Mass Destruction (Prevention of Proliferation) Act 1995 ‘extends to the external Territories’ (section 5)]
Denmark	Faeroe Islands and Greenland
France	Clipperton Island, French Polynesia, French Southern and Antarctic Lands, Mayotte, New Caledonia, St Pierre and Miquelon, and Wallis and Futuna Islands

Netherlands	Aruba and Netherlands Antilles
New Zealand	Cook Islands, Niue, Ross Dependency and Tokelau [As of 24 October, New Zealand has not extended BWC implementing legislation to these areas]
Norway	Bouvet Island, Jan Mayen, Peter I Island, Queen Maud Land and Svalbard
United Kingdom	Crown dependencies: Bailiwick of Guernsey, Bailiwick of Jersey, Isle of Man Overseas territories: Anguilla; Bermuda; British Antarctic territory; British Indian Ocean Territory; British Virgin Islands; Cayman Islands; Falkland Islands; Gibraltar; Montserrat; Pitcairn, Henderson, Ducie and Oeno Islands; St Helena and dependencies (Ascension and Tristan da Cunha); South Georgia and South Sandwich Islands; Sovereign Base Areas in Cyprus (Akrotiri and Dhekelia); and Turks and Caicos Islands
United States	American Samoa, Guam, Northern Mariana Islands, Puerto Rico and United States Virgin Islands 'Minor Outlying Islands': Baker Island; Howard Island; Jarvis Island; Johnston Atoll; Kingman Reef; Midway Islands; Navassa Island; Palmyra Atoll; and Wake Island

Extraterritoriality and universal jurisdiction

The Third Review Conference in 1991 invited states parties to consider applying their national measures—including penal sanctions—to actions taken by their nationals ('natural persons') outside their territory (this is known as the application of 'extraterritoriality'). States parties might also wish to consider similarly applying their national measures to actions taken outside their territory by 'legal persons', such as companies and other organisations, registered in their territory. A state may also consider giving itself 'universal jurisdiction' over offences involving biological weapons, in the same way that states have attempted to deal with crimes against humanity. Such universal jurisdiction would allow the state to prosecute any natural or legal person present in its jurisdiction who is suspected of violating laws prohibiting biological weapons anywhere.

Twenty-four states parties are known to have some provision for extraterritoriality or universal jurisdiction in their BWC implementing measures, including Albania, Australia, Belarus, Belize, Bulgaria, China, Ecuador, Estonia, France, Germany, India, Latvia, Lithuania, Mauritius, New Zealand, Norway, Poland, Russian Federation, Solomon Islands, South Africa, Switzerland, Uzbekistan, the United Kingdom and the United States.

Divulgence of BW-related information

States parties have agreed to share BWC-related information under the Confidence-Building Measures agreed at the Third Review Conference in 1991. This information is to be provided annually to the

UN Secretary-General via the UN Department for Disarmament Affairs, which then distributes it to other states parties. In addition, in order to effectively implement the treaty at the national level, government departments, agencies, industry and others need to share BW-relevant information. Depending on its constitutional requirements, a state party may need to specifically authorise the sharing of BWC-related information, both internationally and domestically, by passing appropriate legislation.

National focal point

To facilitate information-sharing and other aspects of treaty implementation, states parties may choose to establish a national focal point. The focal point's tasks might include:

- routinely reviewing the effectiveness of national measures to prevent and prohibit biological weapons
- initiating the adoption of new measures or amendments deemed necessary
- liaising with stakeholders at the national level to inform them of the state's responsibilities under the BWC
- liaising with other states parties to share experiences of treaty implementation
- providing assistance to other states parties on treaty implementation as requested
- coordinating enforcement activities with other states at the regional and international level
- coordinating the completion and submission of CBMs annually to the UNDDA, and
- coordinating the completion and submission of compliance reports for each Review Conference to the UNDDA.

The budget and personnel required for establishing and maintaining a national focal point will depend on the range of requirements the state must undertake to ensure treaty compliance. For states without military defence research programmes, a civilian biotechnology or pharmaceutical industry, or relevant governmental or academic research activities, the requirements may be minimal. States which have such activities on their territories should take appropriate steps to ensure coordinated promotion of BWC obligations and compliance with them. It may be helpful to establish a list of technical and legal experts in the state who can advise on and assist with this work.

Table 6 sets out which states parties have enacted, or are drafting, legislative provisions establishing a focal point to coordinate aspects of treaty implementation and which enable information-sharing at either the national or international level.

Table 6 List of states parties with a national focal point	
State party and law	Focal point
Argentina Decreto No. 603/92 (09/04/1992)	Autoridad Nacional (National Authority)
Belarus	Research Institute for Epidemiology and Microbiology
Brazil Law No. 9.112 1995	Inter-Ministerial Commission for Controlling Export of Sensitive Goods

<p>Bulgaria Council of Ministers Decree No. 38 1996</p>	<p>Commission for the control and permission of the foreign trade transactions with arms and dual-use goods and technologies</p>
<p>Canada Public Safety Bill (C-55/Part 20)</p>	<p>National authority</p>
<p>Czech Republic Act 281/2002 of 30 May 2002 on Some Measures Related to Prohibition of Bacteriological (Biological) and Toxin Weapons and on Amendments to Trades Licensing Act</p>	<p>The State Office for Nuclear Safety (has been assigned responsibility for compliance with BWC; issues licences, keeps records of hazardous substances etc.)</p>
<p>Hungary Government Decree 61/1990 on licensing trade in certain internationally controlled goods and technologies</p>	<p>Office of Export Control and Prohibition of Chemical and Biological Weapons (regulates licensing requirements)</p>
<p>Nigeria Currently drafting legislation</p>	<p>National Authority for the CWC also handles BWC</p>
<p>Russian Federation Decree No. 374 of the Government of the Russian Federation on the Statute of the Russian Agency for Munitions (2002)</p>	<p>Russian Munitions Agency National Authority for CWC also handles BWC</p>
<p>South Africa Non-Proliferation of Weapons of Mass Destruction Act 1993</p>	<p>South African Council for Non-Proliferation of WMD</p>
<p>Thailand</p>	<p>The National Center for Genetic Engineering and Biotechnology (BIOTEC) within the Ministry of Science and Technology serves as the national BWC Secretariat</p>

Penal sanctions

States parties have agreed that in discussing and promoting common understanding and effective action on the adoption of necessary national implementation measures, they will include a specific focus on penal sanctions. There is no consistent approach to offences and penalties among states parties. Some states have not enacted penal sanctions for the full range of activities prohibited by the BWC. Even where penalties are in place, states have applied a disparate range of sanctions. Where jail terms are envisaged, they range from eight days in Belgium, up to 10 years in New Zealand and Norway and life imprisonment in Australia, the United Kingdom and the United States. In some cases, offenders

may also be fined. In Australia, natural persons may be fined A\$10,000 (US\$6,500) while corporations may be fined only A\$200,000 (US\$129,500). Some penal sanctions incurred for such offences are nominal and do not reflect the gravity of the offences. For example, Belgium's maximum fine is only 100,000F (US\$3,000). The Czech Republic does not impose a jail term at all and, while the maximum fine of CZK 100 million (US\$3,550,000) envisaged is substantial, it would appear an inappropriate penalty for activities which may cause widespread suffering, death and economic damage. An additional penalty that may be invoked is to prohibit offenders from holding professional positions for a period of time, as, for example, France and Ukraine do.

States that do not have adequate penal provisions for such crimes may find that they are more susceptible to such actions being carried out within their territories. States must send a clear message that they are serious about these offences by adopting appropriate penal sanctions.

Recommendations for strengthening national implementation legislation

Since dealing with the threat of biological weapons threat is both complex and increasingly urgent, it is essential that all states parties adopt appropriate, *well designed* national implementation measures as soon as possible. Whether states have a monist legal system, in which a treaty may be automatically enforceable as domestic law once the state has ratified it ('self-executing'), or a dualist system which requires implementing legislation to incorporate treaty rights and obligations into domestic law, all need to examine the appropriateness and comprehensiveness of their existing implementation legislation. Making repeated declarations that it is complying with the treaty's prohibitions is not an effective substitute for a BWC state party's adoption of effective national legislation, in addition to any other necessary measures. Without national legislation, state and non-state actors, government employees and private citizens, and companies and other organisations may engage in prohibited activity with impunity.

While all states must adopt, at a minimum, basic legislation to prevent and prohibit activity covered by the treaty, this may be all that is necessary for some states, especially small ones. As at least one small island state, Saint Kitts and Nevis, has demonstrated, it may be achieved in legislation as short as two pages. The majority of states parties will, however, require more extensive measures. And all states parties need to not only adopt legislation and other measures on paper, but ensure through their implementation that, in practice, all activities on their territory are treaty-compliant and that prohibited activities are deterred and detected and perpetrators punished.

Promoting common understandings

States parties should be prepared to reach common understandings on at least the minimum measures to be implemented. They should also agree that they may need to adopt further measures, sometimes on an emergency basis as new threats arise or are identified, to ensure effective implementation. They must then be prepared to take effective action to ensure effective national implementation of the measures they adopt.

States parties must, at a minimum, ensure that their legislation criminalises the development, production, stockpiling, acquisition, retention and transfer of microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification or prophylactic, protective or other peaceful purposes. States must also criminalise these actions for weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict. In order to avoid loopholes, states parties should agree that the best solution is the replication of treaty language, word for word, in any new legislation adopted.

Implementing legislation must be enforceable against all persons within the state's jurisdiction, including government and military personnel, companies and individuals. Consideration must be given to the distinction, in practice, between defensive and non-defensive research which is captured in Article 1's 'general purpose' criterion. Like the CWC, the BWC bans activities based on their purpose: peaceful purposes are permitted, while non-peaceful activities are banned.

To ensure compliance with the provisions in Article 3, appropriate export and import controls should be in place to restrict access to relevant agents, equipment, intellectual property, materials and technology. It might be useful to formulate standard definitions of prohibited items which states might adopt under their export and import control procedures.

States should also consider applying national measures to their citizens and companies outside their jurisdiction, including making prohibited activity punishable in other states' jurisdictions through 'universal jurisdiction' provisions. It is essential to have appropriate penal sanctions in place for offences which violate the treaty.

States parties should agree that mechanisms for appropriate enforcement of national legislation and other measures are required. This might be achieved by including enforcement powers in national legislation, as some states parties have done already, and increased cooperation and information sharing between customs, border control, police and others involved in treaty implementation.

Together, these form the basic commitments for implementing the BWC prohibitions at the national level. States parties should also reach an understanding that more legislative controls may be necessary to effectively implement the BWC's prohibitions, especially in states with military defence programmes, research programmes involving dual-use biological agents or techniques, or a private biotechnology and/or biopharmaceutical industry.

As the BWC is relevant to other international, legally-binding commitments for which states may also be required to adopt national implementation measures, it might be advisable to adopt comprehensive legislation encompassing all BW-related obligations, which would reduce duplication, the waste of scarce resources and parliamentary time. In addition, all national measures could be gathered into a comprehensive policy document on implementation of the BWC. Among a states' BW-related obligations might be the following:

- preventing terrorist use of BW, mandated under Security Council resolution 1373 (2001) of 28 September 2001 which is binding on all UN member states;
- implementing comprehensive biosafety measures, where states are also party to the 1992 Convention on Biological Diversity and its 2000 Cartagena Protocol on Biosafety; and
- implementing appropriate biosecurity measures, where states are also party to agreements regulating biological research and facilities (such as European Union regulations).

All of these issues could be considered under a 'toolbox' approach, whereby all potential elements of legislation necessary to implement the BWC and related treaties are identified. States can then decide which elements are applicable to them and therefore necessary to most effectively enforce the ban on biological weapons in their territory.

States parties should also have due regard to their existing BWC legislation when adopting subsequent national measures for other international obligations. For example, states adopting new national measures to ensure compliance with Security Council resolution 1373 (2001) on counter-terrorism, might concurrently review whether the BWC is effectively implemented and consider making appropriate provision in the new measures.

A mechanism for providing assistance

States parties should consider establishing a mechanism for sharing their experience, expertise and resources in respect of the adoption of national implementation measures for the BWC. This might take the form of: an open-ended, informal working group; an information clearing-house; a technical assistance clearing-house; or a national measures support unit. There are useful models of each type of forum in other treaty regimes which states parties may consider applying or adapting to suit the BWC's requirements.

Open-ended, informal working group

States parties willing to share their experience and expertise, along with specialist international organisations and others with relevant expertise, may choose to meet, on an informal, ad hoc basis, to discuss approaches and methods with states parties considering adopting BWC national measures. States parties may be more willing to request and agree to provide technical, financial or other assistance in such a 'working group' setting than in a large, formal meeting. An example of such a forum is the informal, ad hoc working group established by states parties to the 1997 Ottawa Convention banning anti-personnel landmines. The working group encourages annual reporting, as required under Article 7 of that treaty, promotes appropriate reporting using a guide developed by VERTIC in cooperation with states parties, and provides assistance.

There are many organisations which might provide assistance in drafting specific aspects of BWC implementation legislation, some of which have already been doing so. For example, the Legal Advisory Service of the International Committee of the Red Cross (ICRC) already provides specialist, confidential assistance to states drafting national measures to implement international humanitarian law generally, and the prohibitions of the BWC specifically. Other specialist international organisations with expertise relevant to BWC implementation, as well as regional organisations, might consider what they can provide. Such organisations include: the African Union (AU), the Andean Community, the Association of Southeast Asian Nations (ASEAN), the Caribbean Community (CARICOM), the Commonwealth Secretariat, the Counter-Terrorism Committee (CTC), the EU, Interpol, the Inter-American Committee Against Terrorism (CICTE), the League of Arab States, the Organization for Security and Co-operation in Europe (OSCE), the Organisation of Eastern Caribbean States (OECS), the Organisation for the Prohibition of Chemical Weapons (OPCW), the Pacific Island Forum, the World Customs Organisation (WCO) and the World Health Organisation (WHO).

As no single organisation has the expertise to address all aspects of BWC implementation, these organisations might consider collaborating and consulting with member states and BWC states parties as to the type of coordinated assistance they might be able to provide.

In the chemical weapons area, the OPCW and OECS have cooperated to develop an integrated model law for controlling pesticides and toxic chemicals, while the Organisation of African Unity (now African Union) has developed a model law on rights and access to biological resources; see respectively:

- www.opbw.org/nat_imp/model_laws/opcw-carib-model-law.pdf
- www.opbw.org/nat_imp/model_laws/oau-model-law.pdf.

International information clearing-house

It would be helpful to establish an international clearing-house for information related to the adoption of national measures, as a resource for those still considering adopting appropriate measures. As legislation is necessarily public information, this clearing-house should be made open to the public. It could include the texts of legislation adopted, papers by government legislative drafters on approaches taken in drafting and adopting legislation, as well as analytical papers by states parties and others on the effectiveness of certain measures.

This function might be given to an existing body, such as the United Nations Office of Legal Affairs, UNDDA or the BioWeapons Prevention Project (BWPP), or a government body or academic institution. The costs of establishing and maintaining such a clearing-house are likely to be minimal, yet highly cost-effective. States parties might consider establishing a voluntary trust fund to meet its costs.

Technical assistance clearing-house

A combination of the two functions described above, a technical assistance clearing-house would facilitate the provision and receipt of assistance by willing states and organisations and promote the exchange of information related to the adoption of national measures.

An example is the Assistance Database of the UN Counter-Terrorism Committee established under Security Council resolution 1373 (2001) (see www.un.org/Docs/sc/committees/1373). UN member states, along with international, regional and sub-regional organisations willing to share information and offer assistance, provide this information to the CTC Assistance Database. The database, maintained by a small Technical Assistance Team, consists of an on-line directory of assistance offered, relevant legislative texts and training tools and a private register of requests for assistance. The requests section is only available to those offering assistance and to the Technical Assistance Team, which facilitates the matching of offers and requests. The CTC, its Assistance Database and Technical Assistance Team are paid for through mandatory UN assessed contributions. BWC states parties might consider establishing a similar database and facilitation team, funded on a voluntary basis.

National measures support unit

States parties might consider establishing a dedicated, standing unit to act as a clearing-house for information on the adoption of national measures, a depository of legislative texts and a facilitator of relevant assistance and resources for the adoption of national measures on all issues relating to BWC implementation.

An example is the Implementation Support Unit established for the Ottawa Convention (see www.gichd.ch/mbc/isu/index.htm). While its mandate is to facilitate state party implementation of all aspects of the treaty, it achieves this with a staff of just two. Funded by voluntary contributions from states parties, it provides reports on its operation and financial management to Meetings of States Parties.

Ensuring national legislation is implemented and enforced

It is not sufficient simply to have legislation and other measures in place. States parties must ensure that they are effectively implemented and that they are regularly reviewed and amended if necessary.

Given the complexity of implementing the BWC, especially for states with biological defence programmes or a civilian biotechnology industry, this will be best achieved by establishing a focal point for coordinating treaty implementation within that state. Maintaining communication channels for sharing information relevant to treaty implementation and enforcement, both within a state party and between states parties, will assist compliance efforts.

Establishing a national focal point or national authority

There is a range of national tasks involved in ensuring compliance with the BWC, such as coordinating national policies, regularly reviewing the adequacy of national measures in light of the rapid advances in biotechnology and the life sciences, annual reporting under CBM declarations and reporting on compliance to Review Conferences, as well as liaising with states parties and others on BWC implementation. States parties might therefore find it helpful to establish a national focal point for BWC implementation. Such a body might mirror the national authorities required under other disarmament treaties, such as the CWC, or it may simply act as a designated body to carry out particular functions as required. Its tasks may be assigned to an existing body, as some states parties have already done, or a new body may be established, whose size and budget reflects the complexity of treaty implementation activities required of the state. Canada is currently in the process of establishing a national authority for BWC implementation, the first country to do so.

The 11 states parties known to have established a national focal point for BWC implementation are listed in Table 6 above.

Enhancing transparency

The establishment of an international information clearing-house where the texts of legislation and other national measures are deposited and made publicly available would, in addition to assisting states parties individually, have the added benefit of enhancing the transparency of BWC implementation generally. VERTIC has received support from many states parties in its attempts to acquire legislative texts and information on the status of national legislation for this project. Yet the amount of information on national measures that states parties have undertaken to regularly report to each other in CBM Form 'E', is minimal, while the level of reporting by those actually submitting the form has been patchy.

States parties should urgently adopt a decision to make more information available using Form 'E' (see Annex). This should include listing the names and dates of adoption of national legislation and other measures and any other information they may wish to report, as well as providing texts of national measures to the UNDDA or any information clearing-house established.

States parties should also consider making Form 'E', and all CBM forms, publicly available. This could be easily achieved by posting them on the UNDDA website. The UNDDA has been tasked by Ottawa Convention states parties with posting states parties' Article 7 implementation reports on its website, which has proved successful for all involved (see <http://disarmament.un.org/MineBan.nsf>).

Of course, states parties should be encouraged to provide information on their national measures on their own governmental or national focal point websites. Along with being a useful tool for other

states considering adopting measures, it will enhance the transparency of the requirements for industry and others under national law, thereby assisting them in complying with national laws. Likewise, states parties should consider making publicly available their own CBM reports, either on request or, preferably, on a website.

Conclusion

VERTIC's Survey of National Implementation Legislation has revealed that a large proportion of states parties to the Biological Weapons Convention have no implementing legislation in place as required under Article 4 of the treaty. In effect these states are in non-compliance with their legal obligations. The Meeting of States Parties in November 2003 should at the very least remind all states parties of their legal obligation to adopt necessary measures and take concrete steps to give each other any assistance necessary to ensure that this is achieved. The establishment of mechanisms to provide such assistance should be considered, among them those suggested in this report. States parties should, in addition, be reminded of their commitment to provide information on national implementation measures, specifically national implementation legislation, in their CBM transparency reports and should be encouraged to also make this information available publicly. Greater transparency will not only encourage states to regularly review the effectiveness of their measures, but it will stimulate information-sharing and the mobilisation of international assistance to those states parties which need it.

About the author

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Annex

Confidence-Building Measure Form 'E': Declaration of legislation, regulations and other measures

States parties agreed to provide information each year on the status of their national measures under the Confidence-Building Measures they agreed at the Third Review Conference in 1991. This information should be provided on Form E (below) and submitted to the UNDDA. States parties are also encouraged to provide additional information, such as descriptive summaries of their national measures, as well as the texts of any measures adopted. States parties might also consider making information on their legislation available publicly, for example on the state's BWC national focal point website.

Form E				
Declaration of legislation, regulations and other measures				
Relating to	Legislation	Regulations	Other measures	Amended since last year
(a) Development, production stockpiling, acquisition or retention of microbial or other biological agents, or toxins, weapons, equipment and means of delivery specified in Article I	YES/NO	YES/NO	YES/NO	YES/NO
(b) Exports of micro-organisms* and toxins	YES/NO	YES/NO	YES/NO	YES/NO
(c) Imports of micro-organisms* and toxins	YES/NO	YES/NO	YES/NO	YES/NO

* Micro-organisms pathogenic to man, animals and plants in accordance with the Convention