

Friday 4th August 2023

National implementation issues - setting the scene

The topic for the final two days of the Second Session of the Working Group (WG) on the strengthening of the 1972 Biological and Toxin Weapons Convention (BWC/BTWC) is 'Measures on national implementation of the Convention'. This is topic (e) of those allocated to the WG.

The Working Group is scheduled to convene in Geneva from 7 to 18 August 2023, as decided by the Ninth BWC Review Conference (2022). The First Session of the WG met during March 2023 to discuss organizational issues. Reports in this series from those meetings, together with reports from BWC meetings since 2006, are available from the links provided overleaf.

Without effective implementation, any international treaty is essentially just a declaration of intent. As the treaties dealing with control of weapons of mass destruction (WMD) are each concerned with types of weapons that are perceived to be of strategic importance, effective implementation is considered to be a high priority. Each of the WMD treaties therefore obliges states parties to carry out some form of national implementation to fulfil the obligations undertaken. In the case of the BWC, Article IV reads: 'Each State Party to this Convention shall, in accordance with its constitutional processes, take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition, or retention of the agents, toxins, weapons, equipment and means of delivery specified in article I of the Convention, within the territory of such State, under its jurisdiction or under its control anywhere.' In addition, BWC Article III contains obligations not to assist others (not just states) to acquire biological weapons.

The phrasing of Article IV is a reminder that the BWC is not a treaty between governments but a treaty between sovereign states. This is important for two reasons. One is that when there is a change of government within a state the obligations under the BWC still apply to that state. The other is that the provisions of the Convention apply to all activities within states parties, not just those owned or operated by the government.

To assist with discussions, Grisselle Rodríguez (Panama), Athikarn Dilogwathana (Thailand), Reski Ilahi (Indonesia), Faith Bagamuhunda (Uganda) and Michelle Carr (Australia) have been appointed as facilitators on these issues.

National implementation issues in context

There are many reasons why a state party might have incomplete or ineffective national implementation. For some, this may start with a lack of specific implementation legislation owing to challenges in finding parliamentary time against competing priorities. For others it may be resource limitations that mean legislation is not properly enforced. In numerous statements in BWC meetings there has been widespread acknowledgement that there is much room for improvement in the field of national implementation. Additionally, there is a need for ongoing review of existing legislation and enforcement activities in all states parties as ever-changing contexts (and in particular scientific and technological (S&T) developments) mean that implementation arrangements need to be kept up to date.

National implementation has many facets – from security of pathogens (i.e., disease-causing micro-organisms) to controls on certain types of equipment. One of the lessons of past revelations of illicit trading networks of proliferation-sensitive materials and technologies was that countries can be host to companies that are contributing to proliferation activities without the relevant governmental authorities being aware. Effective national implementation therefore includes much more than simply the enactment of legislation.

BWC national implementation is not carried out in isolation. For example, some provisions overlap with those required to implement UN Security Council resolution 1540 which is focused on preventing access to WMD-relevant materials to those who might use them for acts of terror. Indeed, for some states parties this is the key aim of enhanced national implementation. Yet it should not be forgotten that other provisions, such as disease surveillance, overlap with national public health measures. A further example is that regulations for the control of biological laboratories overlap with health and safety provisions and therefore issues of public safety.

There has been a balance to be struck with Article III obligations to ensure that direct and indirect transfers relevant to the Convention, to any recipient whatsoever, are authorized only when the intended use is for purposes not prohibited under the Convention and Article X obligations to allow access for peaceful purposes.

There are areas of overlap between national implementation and S&T developments. One of these is to ensure any BWC system for S&T review informs and assists national policy processes. Another is the issue of codes of conduct for scientists. Work over a number of years on model codes has led to the creation of the Tianjin Biosecurity Guidelines for Codes of Conduct for Scientists which were endorsed in July 2021 by the Inter-Academy Partnership, a global network of national academies of sciences. These guidelines were presented to the Ninth BWC Review Conference for further endorsement, but the challenges to reach consensus in the final week resulted in them not being referred to in the Final Document.

Proposals and developments relating to national implementation

Proposals relating to national implementation have mostly focused around how international processes, including coordination of national offers of assistance, could aid states parties in their implementation of the BWC. There is a significant overlap here with capacity-building activities under international cooperation and assistance measures associated with Article X. An example of this is the Signature Initiative to Mitigate Biological Threats in Africa (SIMBA) supported by the Global Partnership and highlighted in a working paper for this session, (WP.7) submitted by Japan, co-sponsored by Canada and Germany.

There have been suggestions that if there were a new legally binding instrument to strengthen the Convention this could contain guidance on what legal provisions were required nationally. The decision to convene the BWC Working Group is a clear sign that discussions in this area are developing and it remains to be seen whether there is an evolving convergence of perspectives on what forms of implementation activities should take place at a national vs an multilateral level.

As national circumstances and legal and political systems vary between countries, it has long been recognised that there is no one-size-fits-all solution for implementation arrangements. At the same time, there has been recognition that there are many lessons to be learned by states parties from the implementation experience of others. One of the side events of the WG Second Session will see the ‘live launch’ of the BWC National Implementation Measures Database being developed by UNIDIR and VERTIC which had its ‘soft launch’ during May.

These reports have been produced by the BioWeapons Prevention Project (BWPP) for all BWC meetings with NGO registration since the Sixth Review Conference (2006). They are available from <<https://www.bwpp.org/reports.html>> and <<https://www.cbw-events.org.uk/bwc-rep.html>>. A subscription link is available on each webpage. Financial support for reporting for the Second Session of the Working Group has been gratefully received from Global Affairs Canada. The reports are written by Richard Guthrie, CBW Events, who is solely responsible for their contents <richard@cbw-events.org.uk>.