

WORKING PAPER
ON THE REVIEW OF THE NATIONAL IMPLEMENTATION OF THE BWC

prepared by Japan¹

INTRODUCTION

1. The 2006 Review Conference of the Biological and Toxin Weapons Convention (BWC or BTWC) provides the States Parties with a valuable opportunity to show their resolve to strengthen the effectiveness and improve the implementation of the Convention. In recognition of the vital importance of this opportunity, the States Parties should redouble their efforts to hammer out a significant Final Declaration. Given today's challenges to the BWC, namely the threat of bio-terrorism and the dramatic progress in life science, national implementation is a particularly important issue for the achievement of the full and effective implementation of the Convention. Japan will make a substantial contribution to the successful outcome of this Conference by addressing this issue required by Article IV of the Convention.

2. The primary purpose of the BWC is to prohibit and eliminate biological and toxin weapons of *States Parties*. However, recently international concern has been growing regarding the risk of theft or diversion of BW-related materials and technologies for harmful use by non-state actors. Consequently, it has become more than ever critical that States Parties also ensure full compliance with the Convention by *any individuals or groups of individuals* under their jurisdiction or control by taking "*any necessary measures*" as required by Article IV.

3. Even though what "*any necessary measures*" actually entails is unspecified in Article IV, there is a broad understanding among States Parties that effective legislative measures, including penal legislation, are a fundamental requirement. But in order to ensure the prohibitions and preventions as required by the Convention, the States Parties should take or complement, as appropriate for their domestic systems and requirements, national measures in different fields related to the Convention, such as export controls, biosecurity, preventive/response capabilities, as well as education and enlightenment.

4. With these issues in mind, this paper aims to propose elements of relevant *national measures* considered appropriate to ensure the full and effective implementation of the Convention. Moreover, it encourages States Parties' further efforts to continuously enhance national implementation. All of these proposals are intended for inclusion in the review language of the relevant provisions at the Sixth Review Conference.

¹ This is one of a series of papers prepared in consultation with Japan, Australia, Canada, Republic of Korea, Switzerland, Norway and New Zealand (JACKSNNZ).

ELEMENTS OF APPROPRIATE NATIONAL MEASURES

5. Based on previous reviews and recent discussions among States Parties, the following are elements of fundamental or complementary national measures considered appropriate for the implementation of the BWC.

I. Effective legislative measures to ensure the prohibitions and preventions as required by the Convention

6. The importance of effective legislative measures, including penal legislation, has been recognized at previous Review Conferences. Today, faced with the emerging threat of bio-terrorism and criminal activity by non-state actors, enactment of legislative measures for criminalizing activities prohibited by the Convention taking into account the grave nature of the offences has become essential, as discussed at the 2003 BWC meetings. UNSCR 1540 also requires UN Member States in this regard to adopt and enforce appropriate effective laws for the non-proliferation of WMD vis-à-vis non-state actors.

7. Taking into account the increasingly borderless nature of the globe, non-state actors participating in illegal activities may seek a country with less severe penalties and regulations against their activities. Therefore it is important that each State Party carry out reviews to enhance national legislation in order to realize the strict regulation of individuals and groups under its jurisdiction or control, to ensure that no criminal receives safe haven anywhere in the world. Such enhancements could include: extraterritorial extension of penal legislation to acts committed by nationals abroad, improvement of the ability to prosecute or extradite criminals, and legal assistance.

8. Elements of proposal:

- Enactment of effective legislative measures, including penal legislation, to ensure the prohibitions set forth in the Convention;
- Enhancement of national legislation through extension of penal legislation to actions taken by nationals abroad;
- Promotion of legal assistance where appropriate;
- Full implementation of UNSCR 1540 (2004) and 1673 (2006).

II. Export controls

9. As a result of the dramatic progress in biotechnology and the development of bio-industry, the number of States possessing BW production capabilities is increasing. These advancements have also increased the likelihood of non-state actors, including terrorist

groups, becoming recipients of BW-related materials and technologies. In this text, strict export controls are an effective and necessary tool for the full implementation of Article III and would also serve the purpose of Article IV. With this in mind, discussions took place at the 2003 BWC Meeting of Experts about possible measures to reinforce export controls, such as introducing catch-all controls and the controls on the intangible transfer of technology.

10. Elements of proposal:

- Enactment of national legislative and administrative measures for export controls and enhancement of its implementation, including the introduction of catch-all controls;
- Promotion of educational outreach to domestic industry about national export control systems.

III. Security and oversight of pathogens and toxins

11. In the context of countering bio-terrorism, measures to prevent intentional theft, misuse, diversion or release of pathogens and toxins (biosecurity), as well as preventive measures against the accidental exposure to pathogens and toxins (biosafety), have become increasingly important. It is thus imperative to develop national measures to control where, how and by whom dangerous pathogens and toxins are handled. Such controls could reduce as a result the risks of – intentional or unintentional – illicit transfers of such materials, complementing export control regimes which bear heavy administrative and financial burdens.

12. In this regard, Japan submitted its working paper “Possible measures for strengthening biosecurity” (BWC/MSP/2003/MX/WP.11), which reviewed biosecurity measures in a number of countries and then compiled a set of measures deemed effective for strengthening biosecurity. Encouragement of the effective operation of these measures at the laboratory and facility level is also crucial.

13. Elements of proposal:

- Legislation or regulations for the security and oversight of pathogens and toxins (with penalties, if necessary), such as (a) compilation of a list of dangerous pathogens and toxins controlled for biosecurity; (b) establishment of a national authority responsible for national biosecurity implementation; (c) registration of facilities and individuals possessing controlled agents; (d) introduction of an inspection system; (e) monitoring acquisition and national transfers of controlled agents; (f) establishment of packing and labeling requirements for pathogens; and (g) establishment of guidelines or requirements for physical protection;

- Effective operation of biosafety/biosecurity measures at the laboratory level, through (a) standardization and promulgation of a series of biosecurity measures; (b) encouragement of continuous and systematic training for the practice of these measures by laboratory worker.

IV. Enhancing preventive and response capabilities for natural or deliberate epidemics in cooperation with international mechanisms

14. In the event of bio-terrorism, hazardous diseases could spread to a number of countries in a relatively short period of time. Therefore, enhancing national capabilities to prevent and respond to epidemics – both natural and deliberate – is needed so that it render biological attacks ineffective, thus deter the misuse of biological agents and toxins. Such capabilities could as a consequence complement the requirements of Article IV. Realistic and effective approaches in this regard are to strengthen such national capabilities globally through the application and development of existing national mechanisms in the fields of emergency preparedness, infectious disease surveillance, or medical treatment.

15. As a result of the acute awareness of threats such as terrorism, proliferation of weapons of mass destruction, and infectious disease outbreaks, the international community has already launched a number of concrete efforts and initiatives. Therefore a series of the aforementioned national mechanisms should be coordinated with or made complementary to international ones.

16. Elements of proposal:

- Enhancement of national disease surveillance capabilities, including the establishment of mandatory reporting mechanisms, early detection and notification system to enable rapid response;
- Enhancement of national capabilities for responding to, investigating and mitigating the effects of cases of both natural and deliberate epidemics, in cooperation with the relevant regional, sub-regional and international organizations;
- Coordination with international mechanisms responsible for the surveillance and reporting of infectious diseases, such as WHO (e.g. IHR, PDE, GOARN), FAO, OIE;
- Enhancement of and coordination with existing initiatives relevant to bio-terrorism, such as those in the framework of GHSI, G8, APEC, INTERPOL, etc.

V. Education and enlightenment about BW related issues

17. For the purpose of ensuring adherence by individuals or groups to various national measures for the implementation of the Convention, States Parties should raise awareness about international norms against BW. In particular, the scientific community and industry,

who play a significant role in the development and application of biotechnology, should be involved in educational and enlightenment processes. The 2005 BWC Meetings discussed and recognized that codes of conduct for scientists can support the objectives and purposes of the Convention, by making a significant and effective contribution to combating present and future threats posed by BWs.

18. Elements of proposal:

- Development of education programmes regarding the provisions of international norms (such as the 1925 Geneva Protocol) and BW-related issues, including the risks involved in the rapid development of life sciences;
- Encouragement of the development and promulgation of codes of conduct for scientists.

FURTHER ENHANCEMENT OF NATIONAL IMPLEMENTATION

19. The aforementioned elements were directly or indirectly covered by the programme of work over the 2003-2005 period, in which States Parties successfully discussed and promoted common understanding and effective action on five topics. As a result, most of the States Parties seem to be convinced that enhancing national implementation would make a significant contribution to the full and effective implementation of the Convention. Therefore, pursuing further enhancement of national implementation during an intersessional process in the intervening period to the Seventh Review Conference in 2011 would be a valuable endeavor for maintaining the momentum toward strengthening the Convention.

20. There are various proposals in this regard. Firstly, encourage necessary assistance (e.g. dispatching experts, holding seminars), on a voluntary basis, to those States that have not yet taken the necessary measures or who aim to further develop their measures, from other States Parties or regional, sub-regional and international organizations. Also, it is encouraged to assist States not Party to the Convention to facilitate their preparation process for accession. Establishment or designation of a national point of contact facilitating communication between States and the BWC Meetings Secretariat (or Implementing Support Mechanism) is a helpful step to this end. Furthermore, States Parties should share information and lessons-learned from past/ongoing efforts, such as those of the EU Joint Action in support of the BWC, to ensure efficient assistance and necessary coordination.

21. Secondly, promote continuing, in-depth discussions on appropriate national measures based on the exchange of national experiences in different fields. A certain amount of material is already available, not only those provided by the BWC forum but also by other international mechanisms, such as the legislative database of the 1540 Committee. Nevertheless, national measures should be enhanced or complemented as necessary

according to developments in life science or the security environment. Therefore, a mechanism providing the opportunity to discuss appropriate national measures at an expert level has great value for the full and effective implementation of the Convention.

22. Elements of proposals:

- Encouragement of necessary assistance, on a voluntary basis, for enactment and enhancement of appropriate national measures;
 - Establishment or designation of a national point of contact;
 - Sharing information and lessons-learned from assistance efforts;
 - Continuing discussions on appropriate national measures at the expert level in the regular meetings;
 - Review the achievements of these efforts and decide further actions at the Seventh Review Conference in 2011.
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