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The Indonesia/Australia Biological Weapons Convention Regional Workshop process:

Enhancing bio-security and raising the barriers to bio-terrorism.

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Regional Biosecurity Workshop
Singapore, May 28-30, 2007

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Biological Weapons Convention

Some key provisions:

- Article I Prohibitions / Definition
- Article II Disarmament (within 9 months of EIF)
- Article III Transfers / non-assistance for BW
- Article IV National Measures (incl. Legislation)
- Article V Consultations (Compliance issues)
- Article VI Security Council - Investigations
- Article X International Cooperation
- 2/3 RevCon Confidence Building Measures

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Biological Weapons Convention

Article I: 'Each State Party to this Convention **undertakes never in any circumstance to develop, produce, stockpile** or otherwise acquire or retain:

(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;

(b) Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.'

Fourth Review Conference **- includes prohibition of 'use'.**

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Biological Weapons Convention

Article III: 'Each State Party to this Convention **undertakes not to transfer to any recipient whatsoever, directly or indirectly,** and not in any way assist, encourage or induce any State, group of States or international organisations to manufacture or otherwise acquire any of the agents, toxins, weapons, equipment or means of delivery specified in Article I of this Convention'.

Fourth Review Conference **- includes prohibition of transfers to terrorist groups**.

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Biological Weapons Convention

Article IV : 'Each State Party to this Convention shall, in accordance with its constitutional processes, **take any necessary measures to prohibit and prevent 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.'

- **includes enacting national legislation / regulations related to 'bio-security':**
  - **measures to prevent the mis-use of pathogens and toxins**

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Role of BWC in enhancing Biosecurity and Countering Bioterrorism:

Relevant Legislation and regulations to:

- Criminalise BWC prohibitions
- Avoid inadvertent assistance/transfers.
- Avoid ‘safe havens’ for terrorists.

However:

Poor level of National Implementation

- Less than 50% of 155 BWC States Parties have effective national legislation in place
- Many smaller and developing States have limited resources/capacity available to develop legislation.

Lack of Universality / States not party

- ‘Missing 36 states’ and States Parties without effective legislation may also become inadvertent suppliers or ‘safe havens’.

Geneva-based BWC 3-year Program of Work

Agreed in 2002 to discuss, develop common understandings and promote effective action on:

- 2003: adoption of necessary national measures to implement the prohibitions set forth in the BWC, including enactment of penal legislation;
- 2003: national mechanisms to establish and maintain the security and oversight of pathogenic micro-organisms and toxins;
- 2004: enhancing international capabilities for responding, investigating, alleged use of BW or suspicious outbreaks;
- 2004: strengthening institutional efforts and mechanisms for surveillance and combating infectious diseases ...;
- 2005: the content, promulgation, and adoption of codes of conduct for scientists

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UN Security Council Resolution 1540

Adopted 28 April 2004, these measures, as they apply to biological weapons and related materials, include, *inter alia*:

- enact and enforce domestic laws
- establish appropriate controls over biological dual-use related materials;
- develop effective measures to account for biological dual-use related materials;
- develop effective border controls; and
- develop national control lists of relevant biological dual-use items.

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By end of 2004 ....

- The BWC meetings in 2003 and 2004 were regarded as very useful. Many National Working Papers prepared and discussed. Indeed, one commentator had referred to the ‘mountain of papers’ produced.

- However many BWC States Parties, including a number from Asia region, had been unable to become fully engaged in the BWC meetings in Geneva.

- Many UN Member States not yet fully complying with UNSCR 1540 obligations.

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BWC Regional Workshop Process

BWCRW1 – Melbourne February 2005

- Discuss, develop common understandings of:
  - domestic legislation
  - enhanced security of pathogens (‘biosecurity’)
  - outreach to scientists / awareness raising / codes of conduct

BWCRW2 – Bali March 2006

- Promote effective action of these issues.

Objectives of BWC Regional Workshops

To help States Parties in our region become better engaged with the Geneva-based BWC work program (and Res 1540) as a means to:

- reduce the possibility of the inadvertent assistance by states in our region to biological weapons programs being developed elsewhere
- reduce the possibility of bio-terrorism in our region
  - no ‘safe-havens’

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Participants

- Australia
- Brunei
- Cambodia
- Indonesia
- Lao People's Democratic Republic
- Malaysia
- New Zealand
- Papua New Guinea
- The Philippines
- Singapore
- Thailand
- Viet Nam
- ICRC
- WHO
- (Timor Leste also invited, could not attend)

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Legislation

- Discuss, and promote common understanding and effective action on the adoption of necessary national measures to implement the prohibitions set forth in the Convention, including the enactment of penal legislation, including:
  - A presentation of draft Elements of Legislation designed to facilitate the development of the necessary legislation for those States Parties which have yet to have all the necessary legislation in place.
  - Presentations by a number of participants of their country's experiences in the national implementation of the BWC.

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Importance of Article IV BWC National Implementation

Unless a State Party has appropriate criminal legislation that details offences and establishes penalties for activities prohibited by the treaty (i.e. penal sanctions), that State Party is vulnerable to a prohibited activity being carried out within its territory, without being able to prosecute and punish offenders.

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Legislation for BWC / UNSCR 1540

Extensive discussion of the various requirements

- Preference for ‘Checklist’ and ‘Drafting elements’ rather than ‘Model Legislation’
  - ‘No one size fits all’

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BWC Legislation Elements

Objective: A Flexible /Modular Approach

- Model Elements being drafted for each BWC prohibition / obligation.
- BWC States Parties encouraged to review existing legislation for ‘gaps’.

Options: BWC States Parties could use relevant Model Elements to :

- Develop a new Legislative Act; &/or
- Amend existing legislation; &/or
- Add regulations to existing legislation.

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Security of Pathogens ('Bio-security')

- Discuss, and promote common understanding and effective action on national mechanisms to establish and maintain the security and oversight of pathogenic micro-organisms and toxins, including:
  - A number of presentations on regional perspectives.
  - A discussion on the role of the BWC, if effectively implemented, as a means to raise the barriers to bio-terrorism.
  - Overlap between BWC and UNSCR 1540 obligations.

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Security of Biological Materials

- Major Problem: the dual-use dilemma

- Major Challenge: how to develop control measures /monitoring procedures to avoid assisting BW-proliferation and bio-terrorism in ways that do not hamper the growth and sharing of scientific knowledge and the global spread of beneficial advancing biological sciences and technologies.

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‘Bio-security’ - Monitoring of domestic biological activities

- Required under BWC Article III and UNSCR 1540
- Identification of facilities and activities which should be subject to enhanced security measures
- Identification of the types of security measures necessary to enhance the security at identified facilities / activities

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Security of Biological Materials

Possible approaches for enhanced security of biologicals, including licensing, monitoring domestic transfers, include:

- A ‘Select list’ of pathogens.
- A list based on ‘Australia Group’ dual-use listed items.
- All PC4 and PC3 facilities (WHO guidelines).
- All PC4, PC3 facilities, together with PC2 facilities undertaking genetic manipulation.
- All scientists accessing pathogens to be licensed.

Optimum solution may be a combination of two or more of the above – ‘no one size fits all’.

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Codes of Conduct

- Consider the development and implementation of codes of conduct for biological scientists, including various outreach and awareness-raising activities among biologists and the broader scientific community.

- Panel discussions on the roles of the scientific community in supporting effective national implementation of the BWC/1540, including as a means to enhance bio-security and raise the barriers to BW-proliferation and bio-terrorism.

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Layer of Codes*

It is useful to think of Codes of Conduct as occurring in a number of layers, including:

- ***Guiding Principles (A Universal Code cf. Hippocratic Oath)***
- ***Scientific Society Codes (Codes of Ethics)***
- ***Institutional or Workplace Codes (Codes of Practice)***

We would see these various codes as complementary and mutually reinforcing, and may be most effective if developed as a package.

* Australia, Working Paper, BWC/MSP/2005/MX.35 (24 June 2005)
* Chair ‘Synthesis Paper’, BWC/MSP/2005/L.1 (16 November 2005)

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Institutional or Workplace Code (Code of Practice)

(more detailed codes applicable to a particular workplace)

The code could either be a new code, or elements added to an existing workplace code. These elements would include:

- full awareness by the scientific community of national laws related to biological activities;
- commitment to full compliance with all such laws; and
- a focus on ethical considerations, including scientific responsibility when working on certain research projects that may lead to discoveries that could make BW more effective.

NB. a 'bottom up' approach. Could become part of a formal workplace agreement.

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[Name of Institution] Workplace Code [Drafting elements]

The **[Name of Institution]** Workplace Code is the following a set of requirements developed to ensure that scientists employed by **[Name of Institution]** comply with all obligations, legislation, regulations and oversight mechanisms, and to prevent activities by **[Name of Institution]** scientists which would deliberately or inadvertently assist in the development of biological weapons.

1) Awareness of international obligations under the Biological Weapons Convention (BWC) (see Annex 1).
2) Awareness of national legislation and associated regulations related to Australia's obligations under the BWC (see Annex 2).
3) Awareness of the various regulatory and oversight mechanisms applicable to the **[Name of Institution]** research program, including the **[Name of Institution]** Research Oversight process / Advisory Committee , the Institutional Biosafety Committee (IBC), the Office of the Gene Technology Regulator (OGTR) and Australian Quarantine (AQIS) (see Annex 3).
4) A personal commitment by all scientists employed by **[Name of Institution]** Workplace Code to fully comply with all international obligations, national legislation and related regulations, and the various regulatory and oversight mechanisms applicable to the **[Name of Institution]** research program.
5) Awareness of the dual-use nature of biological materials, equipment and 'know-how', and a personal commitment by all scientists employed by **[Name of Institution]** to not deliberately or inadvertently assist anyone in any BW-proliferation or bio-terrorism activity.
6) A personal commitment by all scientists employed by **[Name of Institution]** to report to Senior Manager, **[Name of Institution]** any issue or activity that they consider may be relevant to compliance with BWC obligations, Australia's national legislation and associated regulations, or **[Name of Institution]** regulations and oversight mechanisms.

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BWCRW2 – Agreed follow-up activities

Those activities include:

- encouraging bilateral and regional sharing of information on national implementation measures
- provision of technical assistance focusing on the capacity building of States Parties in framing / or expanding national legislation and control.
- establishing regional partnerships on enhancement of bio-security among related agencies.
- strengthening national and international surveillance, detection, diagnosis, and combating infectious diseases.
- exploring the possibilities of taking regional concerted action to promote awareness among scientists.
- submitting the outcome of Workshops to the 6th Review Conference of the BWC.
- encourage further workshops (regional and national).
- develop Website to facilitate the sharing of information and document distribution. http://www.law.unimelb.edu.au/events/bwc/

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Concluding Comments - 1

- Important role of regional workshops
- Important role for BWC, dual-use lists, and UNSCR 1540 to avoid inadvertent assistance to bioterrorism and ‘safe havens’.
- Useful role of Model Legislation/drafting elements.
  - But passing legislation is not sufficient in itself.
- Effective domestic implementation will require:
  - sound legislative basis
  - credible control lists of dual-use items
  - implementation and enforcement measures
  - effective training of law enforcement officials
  - information sharing.

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Concluding Comments - 2

- Effective domestic implementation will also require high levels of cooperation:
  - Internationally
  - Within Government departments (including law enforcement, health, defence, customs)
  - Between Gov't officials and scientific community.

- Role for scientific /industry associations, including
  - Awareness raising among scientific community
  - Supporting Codes of Conduct for scientists.

- Importance of Follow-up Regional Workshops
  - Governments
  - International organisations
  - Academic institutions