National Measures Adopted by the United States to Implement the Prohibitions Set Forth in the Biological Weapons Convention

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Background

1. In Article I, the Biological Weapons Convention prohibits the development, production, stockpiling or other acquisition or retention by States Parties of microbial or other biological agents, or toxins, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes, and of weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

2. In Article III, the Convention prohibits States Parties from transferring to any recipient any of the agents, toxins, weapons, equipment or means of delivery specified in Article I. It also prohibits States Parties from assisting, encouraging or inducing any State, group of States or international organizations to manufacture or otherwise acquire any of these agents, toxins, weapons, equipment or means of delivery.

3. The Convention requires States Parties to take actions to prohibit and prevent private action that would defeat the objectives of the Convention. Specifically, Article IV requires that each State Party “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.”

4. The United States has adopted numerous national measures, including the enactment of penal legislation, to implement the provisions of the Biological Weapons Convention. This paper provides a survey of the types of measures undertaken by the United States, some of which exceed Convention requirements. It is not exhaustive and focuses on the content of these measures as opposed to their format. The United States hopes that this approach may enable other States Parties to consider national implementation measures that will have similar substantive effect.
Criminal Provisions

5. The United States has enacted penal legislation to implement Article IV of the Convention. Specifically, this statutory provision makes it a crime, punishable by a fine and/or imprisonment for up to life, to knowingly develop, produce, stockpile, transfer, acquire, retain or possess any biological agent, toxin or delivery system for use as a weapon. It is also a crime, subject to the same criminal penalties, to attempt, threaten, or conspire to engage in these activities. This statute provides for extraterritorial jurisdiction over any act committed by or against a U.S. national. It is additionally a crime, punishable by fine and/or imprisonment for up to 10 years, to knowingly possess any biological agent, toxin, or delivery system of a type or in a quantity that is not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose. Possession may be punishable under this provision even where it cannot be shown that such possession is “for use as a weapon.” (See section 175 of title 18 of the United States Code (“18 U.S.C. §175”).) Harboring an individual who has violated or is about to violate these provisions is punishable by fine and/or imprisonment up to 10 years. (See 18 U.S.C. § 2339.) Additionally, the United States has criminalized the use, as well as the threat, attempt or conspiracy to use a weapon of mass destruction, including a biological weapon, and has provided that the punishment may include imprisonment for up to life, or capital punishment in cases involving the death of a victim. (See 18 U.S.C. § 2332a)

Seizure

6. To protect the public, the United States Government may seize and destroy biological agents, toxins, or delivery systems that are either related to criminal conduct involving their development, production, stockpiling, transfer, acquisition, retention or possession, or that are of a type or in a quantity that has to apparent justification for prophylactic, protective or other peaceful purposes. (See 18 U.S.C. § 176.)

Security of Dangerous Pathogens and Toxins

7. The United States has also enacted statutory provisions aimed at limiting access to certain biological agents. It is a crime, punishable by a fine and/or imprisonment up to 10 years, for a “restricted person,” as the term is statutorily defined, to handle biological agents that have been determined to be a “select agent” by the Secretary of Health and Human Services. It is also a crime, punishable by a fine and/or imprisonment up to five years, to transfer certain agents to a person who has not registered with the relevant government agency. (See 18 U.S.C. § 175b(b).) Failure to register the possession of certain agents with the relevant government agency is a crime punishable by a fine and/or imprisonment up to five years. (See 18 U.S.C. § 175b(c).) The United States has recently promulgated regulations requiring entities handling certain biological agents to develop and implement safety and security plans. (See section 331.11 of title 7 of the Code of Federal Regulations (“7 C.F.R. § 331.11”) and 42 C.F.R. § 73.10.)

*A “restricted person” includes an individual who (a) is under indictment for a crime punishable by imprisonment for a term exceeding one year; (b) has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year; (c) is a fugitive from justice; (d) is an unlawful user of any “controlled substance”; (e) is an alien illegally or unlawfully in the United States; (f) has been adjudicated as a mental defective or has been committed to any mental institution; (g) is an alien, other than an alien lawfully admitted for permanent residence, who is a national of a country determined to be a state-sponsor of terrorism; or (h) has been discharged from the Armed Forces of the United States under dishonourable conditions. (See 18 U.S.C. § 175b(d).)
Export Controls

8. U.S. law requires the President to establish export controls for products that would assist foreign governments in acquiring the capability to develop, produce, stockpile, deliver or use biological weapons. (See U.S.C. § 5603.) Exports of dual-use items that could assist a foreign country in acquiring the capability to develop, produce, stockpile, deliver or use biological weapons are controlled. (See Executive Order 12938.) Additionally, the United States Government is authorized to impose controls to the extent necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations. (See 50 U.S.C. App. § 2405.)

Sanctions

9. U.S. law requires imposition of economic sanctions in certain cases involving foreign persons where the United States may not otherwise have criminal jurisdiction. The United States Government may not procure goods or services, or allow the import of products, from foreign persons who export goods or technology that contribute to the use, development, stockpiling, or other acquisition of biological weapons. (See 50 U.S.C. § 2410c. See also U.S.C. § 2798.)

Foreign Assistance Restrictions

10. U.S. law controls certain U.S. Government activity in this area. One statutory provision restricts U.S. Government assistance to any person who is involved in the research, development, design, testing or evaluation of biological weapons for offensive purposes. (See U.S.C. § 1526.) Another provision requires the Secretary of State to take steps to ensure that no person who is involved in these activities is a participant in educational or cultural exchange programs. (See 22 U.S.C. § 1442a) Certain U.S. assistance is prohibited to any country that has transferred any material, equipment, or technology that would contribute significantly to the ability to manufacture biological weapons. (See 22 U.S.C. § 2295a.)

Cooperative Threat Reduction

11. Not all U.S. statutory provisions in the foreign assistance area prohibit U.S. activity. For example, the United States Government is authorized to engage in programs to assist in the elimination of biological weapons, and related facilities, in certain other countries. (See 22 U.S.C. § 5952.)

Emergency Preparedness and Response

12. The United States Government is directed to improve the response of governmental entities at all levels to emergencies involving biological weapons and related materials. (See 50 U.S.C. § 2315(a).)