

Wednesday 25th August 2021

MX3 on national implementation: setting the scene

The third of the 2020 Meetings of Experts (MXs) to the 1972 Biological and Toxin Weapons Convention (BWC/BTWC) is scheduled to convene on 3 September 2021 in Geneva, the first of the one-day MXs. Like the other meetings in this series, MX3 has been delayed by a year due to the COVID-19 pandemic. The overarching topic for MX3 is ‘Strengthening National Implementation’ and there are a number of agreed sub-topics on the agenda to guide discussion. The meeting is to be chaired by Arman Baissuanov (Kazakhstan) and will be the last occasion on which the MX3 topics will be discussed in an MX format before the Ninth BWC Review Conference, now scheduled for 2022.

Each of the WMD treaties obliges states parties to carry out some form of national implementation to fulfil obligations undertaken. 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 to acquire biological weapons.

Since the previous MX3 in 2019, two informal webinars have been held. At the time of writing, two working papers for MX3 had been published. Links to these papers, the webinars and statements/presentations given during the meeting can/will be found via <https://meetings.unoda.org/section/bwc-mx-2020-mx3/>. There is a background paper from 2018 by the Implementation Support Unit (ISU) on MX3 issues available at <https://undocs.org/BWC/MSP/2018/MX.3/2>. [*Note: there is an equivalent paper for each of the MXs; apologies for not mentioning these in the earlier reports.*]

National implementation issues in context

For a number of years it has been observed that many states parties have incomplete domestic implementation measures with widespread acknowledgement that there is much room for improvement. There is also a need for ongoing review of existing legislation and enforcement activities in all countries to ensure they have kept pace with changing contexts in order to face new challenges and incorporate lessons learned.

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 but extends into areas such as licencing and customs controls.

BWC national implementation is not carried out in isolation. For example, some provisions overlap with those required to implement UN Security Council resolution 1540. Other provisions, such as disease surveillance, overlap with public health measures. Another example is that regulations for the control of biological laboratories overlap with health and safety provisions.

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 is a system of Confidence-Building Measures (CBMs) that was initiated at the Second BWC Review Conference in 1986 and subsequently amended. The CBM arrangements provide for returns to be submitted by states parties on certain relevant activities and facilities. While numbers of returns have been rising overall (with some fluctuation between years), there has been wide recognition that participation in CBMs could be improved further. There have been concerns raised that CBMs should not be used as a tool for assessment of whether countries were in compliance with the BWC.

Many treaties that were agreed since the BWC have included obligations for each state party to name a national contact point. The Sixth Review Conference (2006) decided that each state party should designate a national point of contact for BWC issues and provide contact details to the ISU. The ISU annual report for 2019 indicated that about two-thirds of states parties had designated a national contact point.

Proposals and developments relating to national implementation

Proposals relating to national implementation have mostly focused around how international processes could aid states parties in their implementation of the BWC. 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. Some states have expressed opposition to any negotiations on a legally binding instrument and there remain significant divergences of views of what forms of implementation activities should take place at a national vs an international level.

Other proposals have been put forward in which states parties could voluntarily have their implementation considered, either to illustrate compliance or to evaluate the effectiveness of the measures. For example, one proposal by Canada and Switzerland was for ‘compliance assessment’ through voluntary submissions. Another was a ‘peer review’ arrangement proposed by France in which officials from other governments are invited to review implementation. These were followed up by a paper to the Eighth Review Conference (2016) on ‘building confidence through voluntary transparency exercises’ submitted by a number of states parties (including representatives from most continents). Opposition to such proposals has been expressed on the grounds that they are a distraction from the creation of formal verification arrangements.

One proposal on the balance between Article III and X was made by China in 2015 which suggested the establishment of a ‘non-proliferation export control regime’.

There have been a number of proposals for direct assistance between states parties for support for implementation measures.

Examples of connections with other MX topics

There is a balance to be struck between national implementation provisions and Article X [MX1]. In recent years, discussions on risk and benefit analysis have been a useful prelude to discussion about national implementation as the latter can only be effective if it is based on clear understandings of the risks and benefits of the life sciences activities that are taking place within that country [MX2]. There is an overlap with Article VII issues through improvements to disease surveillance and to national-level responses to disease outbreaks [MX4]. The long-standing divergence of views of what implementation activities should take place at a national level rather than those that could be introduced at an international level remain [MX5].

This is the third in a series of reports for the Meetings of Experts for the BWC which are scheduled to be held from 30 August to 8 September 2021 in Geneva. These reports have been produced for all BWC meetings since the Sixth Review Conference in 2006 by the BioWeapons Prevention Project (BWPP). They are posted to <<http://www.bwpp.org/reports.html>> and <<http://www.cbw-events.org.uk/bwc-rep.html>>. An email subscription link is available on each page. The reports are prepared by Richard Guthrie, CBW Events, who is solely responsible for their content. He can be contacted via <richard@cbw-events.org.uk>.