



BIOTERRORISM IN NATIONAL COUNTER-TERRORISM LEGISLATION: DEVELOPMENTS SINCE 2004

*The potential use of biological materials for malicious purposes represents a grave threat to international security;
Credit: National Cancer Institute*

ABSTRACT

Since the adoption of United Nations Security Council resolution 1540 (2004) (UNSCR 1540), most of the new legislation criminalizing activities related to biological weapons has been counter-terrorism legislation. There are three different main approaches to biological weapon-related terrorist activity that can be identified: 1) the inclusion in the definition of terrorist acts; 2) separate specific provisions; and 3) inclusion in the definition of a 'lethal device' or 'weapon'. Regardless of the chosen approach, it is common that not all activities referred to in UNSCR 1540 are criminalized in national counter-terrorism legislation. The most comprehensive approach is commonly seen in counter-terrorism legislation that incorporates biological weapon-related acts under the definition of terrorist acts.



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INTRODUCTION

United Nations Security Council resolution 1540 (2004) (UNSCR 1540) is pivotal for combating weapons of mass destruction (WMD) terrorism, imposing obligations on States to adopt effective laws prohibiting non-State actors to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their

means of delivery, particularly for terrorist purposes. This requires the adoption of national penal legislation addressing these acts. It has now been 20 years since the adoption of this resolution, during which many States have adopted legislation seeking to prohibit and prevent terrorism, including provisions related to WMDs. To date, most of the legislation criminalizing biological weapon-related

activity since the adoption of UNSCR 1540 has specifically been counter-terrorism legislation.¹ This contribution analyses counter-terrorism legislation adopted in the last 20 years to determine how bioterrorist activities have been criminalized. To this end, a near comprehensive collection of counter-terrorism legislation has been analysed.

¹ Barry de Vries, "Recent Developments in the National Implementation of Biological Weapons Convention: What Happened Since Resolution 1540?", (2023)28(3) *Journal of Conflict and Security Law*, Vol. 28, No. 3 (Winter 2023), p. 579.

When considering the legislation adopted in the last 20 years, it becomes clear that different States have chosen to take varying approaches. However, three main approaches to criminalizing bioterrorism can be identified. Namely, the inclusion of biological weapon-related activities under the definition of terrorist acts, their inclusion in a separate provision providing for their criminalization and lastly, the inclusion of biological weapons under the definition of deadly devices or weapons. Although other approaches exist, they are not

very common. This article will provide an overview of these three different approaches and identify to what extent they address all relevant activities, before providing best practices for criminalizing acts of bioterrorism in line with UNSCR 1540.

TERRORIST ACTS

The first common inclusion of bioterrorist acts is through the definition of terrorist acts. There are two different ways this has been done. The first concerns the specific prohibition of the use of a biological agent. An example of this type

of provision can be found in the definition of terrorist acts in the counter-terrorism legislation of the Seychelles, which includes:

(vi) involves releasing into the environment or any part of it or distributing or exposing the public or any part thereof to—

(...)

(c) any microbial or other biological agent or toxin;²

Nearly identical provisions can be found in, for example, the counter-terrorism legislation



Scientific research represents a peaceful use of biological toxins that is not prohibited by the resolution;
Credit: National Cancer Institute

² Prevention of Terrorism Act 2004, Act 7 of 2004.

of Cote d'Ivoire,³ Vanuatu⁴ and Zambia,⁵ Different formulations, however still restricted to the use or another related act, can be found in, for example, the legislation of Botswana,⁶ Cameroon,⁷ Chad,⁸ and Chile.⁹ This approach, however, generally does not comprehensively address proliferation of biological weapons for terrorist purposes.

The other approach is to include a more comprehensive list of biological weapon-related activities in the definition of terrorist acts. An example of this can be found in the definition of terrorist acts in the Nigerian Terrorism (Prevention) Act which includes

the following:

(c) involves or causes, as the case may be: (...)

(iv) the manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons without lawful authority.¹⁰

Similar provisions can be seen in, for example, the legislation of Albania,¹¹ Cyprus,¹² Lesotho,¹³ Malta¹⁴ and Mauritania.¹⁵ This approach comprehensively addresses the issue

of bioterrorism and criminalizes all acts referred to under UNSCR 1540.

SEPARATE PROVISIONS

The second common inclusion of bioterrorism is to have related acts as separate crimes in the counter-terrorism legislation. Examples of such provisions can be found in the 2018 Zambian Anti-Terrorism and Non-Proliferation Act, which prohibits proliferation.¹⁶ Other examples include Article 10A of the Indonesian Law on Counter-Terrorism¹⁷ and Article 5(1) of Grenada's Terrorism Act.¹⁸ These examples specifically address proliferation activities

3 Art. 3 Law No. 2015-493 of 7 July 2015 on the suppression of terrorism.

4 Section 3 Counter-Terrorism and Transnational Organised Crime Act, Act 29 of 2005.

5 Section 1 the anti-terrorism and non-proliferation act, 2018.

6 Section 2(1)(f) Counter-Terrorism Act 2014 (this also refers to transporting, however no other proliferating acts).

7 Section 2(2)(b) Law No. 2014/28 of 23 December 2014 of the suppression of Acts of Terrorism.

8 Art. 16 Law on the Suppression of Terrorism 2015.

9 Art. 2(4) Law 18.314 on terrorist behaviour and related penalties (as amended).

10 Art. 1(2)(c)(v) Terrorism (Prevention) Act, Act. No. 10 2011.

11 Art. 230 Penal Code of Albania.

12 Art. 5 The Anti-Terrorism and Victim Protection Law of 2019, Number 75(l) of 2019.

13 Art. 96 Penal Code Act 2010.

14 Art. 328A Malta Criminal Code (Amendment) Act, Act No. VI of 06 June 2005.

15 Art. 3 Mauritania Law No. 2010-035 of 21 July 2010 Repealing and Replacing Law No. 2005-047 of July 26, 2005 relating to the Fight against Terrorism.

16 Art. 21 Anti-Terrorism and Non-Proliferation Act No. 16 of 2018.

17 Law No. 5 2018 amending law number 15 of 2003 concerning the stipulation of government regulations in lieu of law number 1 of 2002 concerning the eradication of criminal acts of terrorism.

18 Terrorism Act, 2012, Act No. 16 of 2012.

and do not include use, instead relying on separate but more general provisions to address use. Dominica,¹⁹ Guyana,²⁰ Trinidad and Tobago²¹ are, on the other hand, examples that specifically only address use in their separate provision on biological weapons. Some States have sought to address the issue comprehensively in a specific provision of their counter-terrorism legislation, such as Burundi,²² although this is uncommon in these types of provisions.

'LETHAL DEVICE' OR 'WEAPON'

The third way bioterrorism has been addressed is through including biological weapons under the definition of 'weapon' or 'lethal device'. In the case where they are included under the definition of 'lethal device', this is a clear imple-

mentation of the International Convention for the Suppression of Terrorist Bombings, which uses the exact same verbiage.²³ It is then subsequently prohibited to use such a lethal device in a public place, a government facility or in public transport or other infrastructure facilities. This can be found in, for example, the legislation of Afghanistan²⁴, Belize,²⁵ Jamaica,²⁶ and Kiribati.²⁷

Other States have subsumed biological weapons under the definition of 'weapon' and provide for general provisions addressing the providing, stockpiling or possessing of weapons in different terrorist contexts. Such an approach can, for example, be found in the legislation of Eswatini,²⁸ Ghana,²⁹ and Kenya.³⁰ These provisions however generally do not address the issue comprehensively and do not incor-

porate all acts referred to in UNSCR 1540.

THE WAY FORWARD

The counter-terrorism legislation that has been adopted in the last 20 years generally does attempt to incorporate biological weapons and bioterrorism, however, in many instances, these do not address the issue comprehensively. Not all acts referred to in UNSCR 1540 are incorporated in many pieces of legislation. Counter-terrorism legislation most commonly does specifically address the use of biological weapons. In many instances, such approaches could possibly address some of the proliferation-related acts, such as acquiring and development, under preparatory acts, however this would generally not address all proliferation activities. At the

19 Section 29 2018 Anti-Terrorism Act.

20 Section 29 Anti-Terrorism and Terrorist Related Activities Act 2015.

21 Section 22 Anti-Terrorism Act 2005.

22 Art. 617 Law No. 1/05 of 22 April 2009 revising the Penal Code.

23 UN, *Treaty Series*, vol. 2149, No. 37517.

24 Art 3, 14 Law of Combat against Terrorist Offences 2008.

25 Section 2C(1)(a)(i) Money Laundering and Terrorism (Prevention) Act.

26 Section 3 Terrorism Prevention Act 2005.

27 Section 2, 39 Measures to Combat Terrorism and Transnational Organised Crime Act 2005.

28 Art. 13 Suppression of Terrorism Bill 2008.

29 Arts. 13, 40 Anti-Terrorism Act 2008, 10 October 2008.

30 The Prevention of Terrorism Act, No. 30 of 2012.

same time, in the case that there are specific provisions for biological weapons, these generally are restricted to proliferation activities, not explicitly addressing use. Consequently, especially in the case where there is no other legislation addressing biological weapons, which is the case in many States, the counter-terrorism legislation does not address all acts referred to in UNSCR 1540.

While there has been significant development since the

adoption of UNSCR 1540, the counter-terrorism legislation in many States is not yet in the capacity to address bio-terrorism in a comprehensive manner, especially related to early prevention, and continued efforts are necessary to ensure further development and improvement. Consequently, there are still significant efforts that need to be made to ensure full implementation of the obligation to enact penal legislation under UNSCR 1540. It is therefore important that care is taken in the develop-

ment of new counter-terrorism legislation or that a comprehensive approach is pursued when amending existing legislation. There is a need for a comprehensive approach in national counter-terrorism legislation and, from State practice, this currently has best been achieved by incorporating a comprehensive list of prohibited activities under the definition of terrorist acts.

