Regional BWC Workshop

12 - 13 December 2018
Nadi, Fiji

Aldric Hipa
Crown Law Office – Government of Niue
Introduction

“The road to accession of the BWC: Niue’s experience”

1. BWC Regional Universalization Workshop, Nadi 2017

2. Rationale: Niue & Disarmament

3. Ratification Process

4. Challenges and lessons learnt
1. The Invitation to the BWC

BWC Universalization Workshop, Nadi, July 2017

- Introduced to the BWC, relevant agencies, regional State Parties
- Informed of what there is to know about the BWC
- 5 Pacific States yet to ratify the BWC: Federated States of Micronesia, Kiribati, Niue, Samoa & Tuvalu
- Guest Speaker, BWC State Party - Nauru
BWC Universalization Workshop, Nadi, July 2017 contd.

• Following 2017 workshop, began internal ratification process
• Samoa acceded September 2017
• Niue acceded June 2018
2. Rationale - Niue & Disarmament

* Why did Niue accede to the BWC?
  - Peace & Security as fundamental: national, regional, international
  - Align with NNSP & SDG16 ‘Peace & Security’

Accession to the Convention will support and extend the existing policies under the Niue National Strategic Plan in terms of national security and demonstrate Niue’s willingness and efforts to support the international community in its universal implementation. The Convention aligns with Niue’s National Strategic Plan under the pillar of national security, ensuring residents and visitors live in a safe and secure environment.

- International pressure ‘the blacklist’
- Ministerial direction
- Support for disarmament movement
Niue Government actively considering ‘Arms Trade Treaty’
- drive towards & against ‘weapons’

Work on fundamental ‘pillars’ of work against weapons of mass destruction
- Chemical Weapons Convention Act 2007
- Nuclear Test Ban Act 2014

Convention on Cluster Munitions
Anti-personnel Mines Convention
  ‘Anti-personnel Mines and Cluster Munitions Bill’
TPNW – Treaty on the Prohibition of Nuclear Weapons
BWC aligned with Government objectives on disarmament
3. Ratification Process

Domestication of implementing legislation is a requirement prior to ratification/accession of Treaties/Conventions

1. Consideration of Treaty – by invitation or Political will
2. Ratification Proposal
3. Circulation for Government Ministries comments
4. Compilation of Cabinet Proposal
5. Draft of Implementing Legislation (usually model law)
6. Cabinet Submission twofold:
   i) To ratify the Convention
   ii) To pass legislation to implement Convention
7. Should Cabinet approve – prepare documentation for tabling draft legislation in Legislative Assembly, and ratification documentation
8. Subject to Legislative Assembly, enact legislation and deposit Instrument of Ratification
**NAME OF TREATY: BIOLOGICAL WEAPONS CONVENTION (BWC)**

<table>
<thead>
<tr>
<th>Date</th>
<th>January 2018</th>
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<tbody>
<tr>
<td>1 TREATY/AGREEMENT</td>
<td>BIOLOGICAL WEAPONS CONVENTION (&quot;the Treaty&quot; or &quot;BWC&quot;)</td>
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<table>
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<tr>
<th>2 OBJECTIVES (Purpose of Treaty/Agreement):</th>
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<tr>
<td>The Biological Weapons Convention (BWC) effectively prohibits the development, production, acquisition, transfer, stockpiling and use of biological and toxin weapons.</td>
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<td>Formally known as &quot;The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction&quot; the BWC was the first multilateral disarmament treaty banning an entire category of weapons of mass destruction (WMD).</td>
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<td>The objective of the BWC is to ensure that the international community ceases and the world of biological and toxin weapons. The BWC is a key element in the international community’s efforts to address WMD proliferation and it has established a strong norm against biological weapons. The BWC has almost reached universal membership with 11 States not yet Party, including 4 from the Pacific Region – Federated States of Micronesia, Kiribati, Tuvalu and Niue.</td>
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<td>The Treaty: The BWC was opened for signature on 10 December 1972 and entered into force on 26 March 1975.</td>
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<td>Key provisions of the BWC include:</td>
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<td>Article 1: Never under any circumstances to develop, produce, stockpile, acquire or retain biological weapons.</td>
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<td>Article 2: To destroy or divert to peaceful purposes biological agents, toxins, weapons, equipment and means of delivery prior to joining.</td>
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<td>Article 3: Not to transfer, or in any way assist, encourage or induce anyone else to acquire or retain biological weapons.</td>
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<td>Article 4: To take any national measures necessary to implement the provisions of the BWC domestically.</td>
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Article 5
To consult bilaterally and multilaterally and cooperate in solving any problem with the implementation of the BWC.

Article 6
To request the UN Security Council to investigate alleged breaches of the BWC and to comply with its subsequent decisions.

Article 7
To assist States which have been exposed to a danger as a result of a violation of the BWC.

Article 10
To facilitate the fullest possible exchange of equipment, materials and information for peaceful purposes.

3 RESPONSIBLE DEPARTMENT
Secretary to Government – Office for External Affairs

4 REASONS FOR TREATY / AGREEMENT
In order to fully implement the BWC, States Parties are obliged to translate the commitments in the Convention into effective domestic laws. Niue is one of the remaining 11 States in the world who are not Parties to the BWC, 4 of which are Pacific island countries. At the national level, Niue currently does not have any legislation that provides (or prohibits) the development, production, acquisition, transfer, stockpiling and use of biological weapons. A draft Bill to implement the BWC into national law is currently being considered.

However, Niue has made other progress in international law regarding the prohibition of WMD such as the accession of the Nuclear Test Ban Treaty and similarly, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention CWC). Niue has enacted legislation to implement into national law the Nuclear Test Ban Treaty and the Chemical Weapons Treaty, namely the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction Act 2007 and the Nuclear Test Ban Act 2014.

The BWC is one of the three fundamental pillars of the international community's effort against weapons of
B) Issues at national level (What issues arise in law, strategic plans and/or private sector):

(i) Legal

(ii) National Strategic Plan

(iii) Department Corporate Plan

(iv) Private Sector

(i) Legislation - In order to implement the Treaty, legislation is required. The Biological Weapons Convention Bill 2018 is currently under consideration, to implement the BWC into Niue law. Once enacted Niue can accede to the Convention.

Ratification – Once the BWC Bill becomes law, Crown Law will commence process for accession to the Convention.

(ii) National Strategic Plan – National Security – “Residents and visitors live in a safe and secure environment”. The safety and protection of residents and visitors, property and the environment will continue to be a priority within border and domestic processes.

(iii) Department Corporate Plan – International Law

The Crown Law office provides advice and support to the Office of External Affairs for matters related to external (foreign) affairs, this includes work on Treaties.

To assist with reporting and other requirements for bilateral and multilateral International Treaties for which Niue is a party.

Advises government on the legal obligations and costs of compliance versus non-compliance in relation to regional and international treaty action. Advise Government on whether or not a particular treaty action requires policy changes.

(v) N/a.

C) Policy Considerations (Give full explanation where you indicate either one):

(i) Supports existing policy:

(ii) Requires new policy:

(iii) Extends existing policy:

Access to the BWC will support and extend the existing policies under the Niue National Strategic Plan in terms of national security and demonstrate Niue’s willingness and efforts to support the international community in the universal implementation of the BWC.

Niue has already ratified the Chemical Weapons Convention and the Comprehensive Nuclear Test Ban Treaty and the BWC will demonstrate Niue’s stance against weapons of mass destruction.

5 LEGAL AND REPORTING OBLIGATIONS UNDER TREATY/AGREEMENT

Treaty Action or Entering into an International Agreement
<table>
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<th>(i)</th>
<th>Legal Obligations:</th>
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<td></td>
<td>Niue’s legal obligations at this stage would be to pass legislation, the Biological Weapons Convention Bill 2018 and enact into national law as part of domestic procedures. Once legislation is passed, Crown Law Office will commence acceding to the BWC in accordance with national constitutional processes and BWC procedures. Financing the BWC requires States Parties to make financial contributions as annual subscriptions that are assessed against variables of individual States Parties. In Niue’s case, it was agreed that a country of Niue’s size would pay an annual fee of $10 USD.</td>
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<th>(ii)</th>
<th>Responsible Office/Department:</th>
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<td>Any reporting requirements would be undertaken by External Affairs.</td>
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<th>(iii)</th>
<th>Period of Reporting:</th>
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<td>(iv)</td>
<td>Extent of Obligations(Explain whether such obligations fall within existing responsibilities or add to existing responsibilities):</td>
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<tr>
<th>CBM A</th>
<th>Research centres, laboratories and biological defence research and development programmes;</th>
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<td>CBM B</td>
<td>Exchange information on outbreaks of infectious diseases and similar occurrences caused by toxins;</td>
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<td>CBM C</td>
<td>Encouragement of publication of results and promotion of use of knowledge;</td>
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<tr>
<td>CBM D</td>
<td>Declaration of legislation, regulations and other measures;</td>
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<td>CBM E</td>
<td>Declaration of past activities in offensive and/or defensive biological research and development programmes;</td>
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<td>CBM F</td>
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<td>CBM G</td>
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<td><strong>6 BUDGETARY SUPPORT REQUIRED:</strong></td>
<td>Declaration of vaccine production facilities.</td>
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<td>If at the next annual conference of the Parties there is no difference to the CBMs for countries, a simple 'no change to CBMs' will suffice.</td>
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<td><em>CBM D got deleted at the Seventh Review Conference of the Parties.</em></td>
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<td><strong>7 TECHNICAL ASSISTANCE REQUIRED</strong></td>
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<td>(Indicate areas where TA may be required in future):</td>
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<td>No budgetary support required for Niue at this stage for national implementation.</td>
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<td><strong>8 IMPLEMENTATION PLAN</strong></td>
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<td>An Implementation/Work plan to match work plan of how the Department will internally prepare to implement the Treaty/Agreement. Below are suggested headings)</td>
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<td></td>
<td>February 2018</td>
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<td></td>
<td>Introduce Biological Weapons Convention Bill to Niue Legislative Assembly.</td>
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<td>March 2018</td>
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<td>Once enacted, submit Instrument of Accession for deposition at the BWC.</td>
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<td><strong>8 Key responsible department (Where appropriate- indicate responsible department(s) if implementation requires cooperation between two or more departments):</strong></td>
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<td>Other(s):</td>
<td>Secretary to Government – Office of External Affairs Crown Law Office</td>
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Biological Weapons Convention Bill 2018

- Domestic procedures - legislation requisite of Ratification of Treaties
- BWC Bill based on model legislation, amended to Niue context

“An Act to implement into the law of Niue, the Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction”.
Biological Weapons Convention Bill 2018

- Cabinet authorized accession to the BWC in March 2018
- Bill tabled in Parliament, 1st reading March 2018
- Referred Bills Committee
- Amendments made
- 2nd reading in May 2018
Parliamentary Bills Committee – Internal Select Committee

- Sitting in Parliamentary Bills Committee Meetings
- Clause by clause analysis
- Convincing Parliamentarians – deliver in an understanding way
- MP’s ask why?
- Security incl. national, food, economic

Example: Ebola virus, agricultural ‘pest’ as a weapon
- BWC as weapons of mass destruction
- WMD have no borders, no one is safe!
- FULL SUPPORT by Legislative Assembly
Biological Weapons Convention Bill 2018

- 2nd and 3rd reading in Parliament
- Enacted into Niue law, Parliament May 2018
- Constitutional requirement: translated into Vagahau Niue
Ratification Documentation

- Signed in May 2018
- Sent to depository in Washington DC, USA
- Accession to the BWC as of 14th June 2018
4. Challenges and lessons learnt

1. Convincing Assembly Members

2. Translation into Vagahau Niue – difficulty in terminology

“Ko e Fakatufono Tohi mae fakavēaga he tau Kanavaakau (pomu) moko kona 2018”
4. Challenges and lessons learnt

1. **Difficulties with the Depository - Washington DC**
   
i. Questioned ‘Niue’s competence to join the BWC in its own right’
   
ii. Niue’s status as a sovereign self-governing State in free association with New Zealand

iii. New Zealand Declaration to the UN in 1988, that Niue (and the Cook Islands) will no longer be subject to international agreements as a result of New Zealand treaty action.

4. Challenges and lessons learnt

2. Difficulties in communication
   i. Instrument of Accession: sent May 2018, received June 2018, received notification late July 2018.
   ii. Lack of official communication to Niue Government, for Niue’s accession and New Zealand’s declaration
   iii. Notification via social media
   iv. Learnt: New Zealand’s 1972 BWC ratification applicable to Niue
Promote Universalisation

- Encourage accession by remaining non-State Parties in the Pacific Region
- Encourage active participation of States in the Region already Party to the BWC
Acknowledgements

* Government of Fiji
* Government of Australia
* BWC ISU

SPECIAL THANKS

* Peter Barcroft & Parliamentarians for Global Action (PGA)
* Hon. Associate Minister Taefu, Samoa
Questions

* Email: aldric.hipa@mail.gov.nu
Fakaue Lahi – Thank You