AS AMENDED IN THE SENATE

No. 4 of 2011

Second Session Tenth Parliament Republic of Trinidad and Tobago

SENATE

BILL

AN ACT to give effect to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction

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REPUBLIC OF TRINIDAD AND TOBAGO—2011

THE BACTERIOLOGICAL (BIOLOGICAL) AND TOXIN WEAPONS BILL, 2011

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

The purpose of this Bill would be to give legal effect to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction in Trinidad and Tobago.

Clause 1 of the Bill would cite the short title of the Bill being "The Bacteriological (Biological) and Toxin Weapons Bill, 2011".

Clause 2 of the Bill would provide for the commencement of the Act.

Clause 3 of the Bill would provide for the Act to have effect even though inconsistent with sections 4 and 5 the Constitution.

Clause 4 of the Bill would provide for the definition of expressions used in the Bill.

Clause 5 of the Bill would provide for the Act to bind the State.

Clause 6 of the Bill would empower the Minister to whom responsibility for national security is assigned, to appoint a Committee which would, among other things, be responsible for advising the Minister on the implementation of the Act and coordinating the activities of various agencies and government departments that are involved in the different aspects of the operation of the Act.

Clause 7 of the Bill would provide for the functions of the Committee.

Clause 8 of the Bill would provide for the issue of a Search Warrant by a Magistrate to a police officer. A Warrant issued under this clause would, among other things, allow the officer to search any building, place, vessel, aircraft, carriage, box, motor vehicle or any other conveyance.

Clause 9 of the Bill would empower the Minister based on the recommendation of the Committee, to order the immediate seizure and disposal of any biological agent or toxin where there are reasonable grounds for believing that such biological agent or toxin is being kept for any harmful or destructive purposes.

Clause 10 of the Bill would make it an offence for any person to develop, produce or stockpile any biological agent or toxin or any equipment or other means of delivery designed to use these substances for hostile purposes. This clause would also prohibit any person from transferring any biological agent or toxin to another person where that person knows that the biological agent or toxin is likely to be used for harmful purposes. This clause would further make it an offence for failing to take adequate measures to ensure the safety and security of any biological agents or toxins stored, kept or used in any building, place, vessel, etc.

Clause 11 of the Bill would make liable any director, manager, corporate secretary or any similar officer of a body corporate who commits an offence under the Act or regulations made thereunder.

Clause 12 of the Bill would extend the application of the Act to any citizen of Trinidad and Tobago who commits an offence under the Act while outside Trinidad and Tobago.

Clause 13 of the Bill would empower the Minister to make regulations that are subject to negative resolution of Parliament for the more effective administration of the Act.

Clause 14 of the Bill would allow the Minister to whom responsibility for foreign affairs is assigned, the power to amend by Order the Convention contained in the Schedule of the Act.

THE BACTERIOLOGICAL (BIOLOGICAL) AND TOXIN WEAPONS BILL, 2011

Arrangement of Clauses

Clauses

1 Short title

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3. Act inconsistent with Constitution

4. Interpretation

5. Act to bind the State

6. Appointment of Committee

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9. Disposal of biological agent or toxin

10. Offences

11. Liability of directors, managers, corporate secretaries

12. Application of the Act to citizens while outside Trinidad and Tobago

13. Regulations

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SCHEDULE

BILL

AN ACT to give effect to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction

[, 2011]

WHEREAS it is enacted *inter alia* by subsection (1) of section 13 of the Constitution that an Act to which that section applies may expressly declare that it shall have Preamble

effect even though inconsistent with sections 4 and 5 of the Constitution and, if any such Act does so declare, it shall have effect accordingly:

And whereas it is provided by subsection (2) of the said section 13 of the Constitution that an Act to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

And whereas Trinidad and Tobago acceded to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction on July 19, 2007:

And whereas Trinidad and Tobago being a party to the Convention is required to give effect to it by enacting legislation:

Enactment

ENACTED by the Parliament of Trinidad and Tobago as follows:

Short title

1. This Act may be cited as the Bacteriological (Biological) and Toxin Weapons Act, 2011.

Commencement

2. This Act comes into operation on such day as is fixed by the President by Proclamation.

Act inconsistent with Constitution

3. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

4. In this Act— Interpretation

"biological agent" means any microbial, infectious substance or virus **whatever its origin or method of production** capable of causing—

(a) death, disease or other biological malfunction in a human, animal, plant or other living organism;

(b) deterioration of food, water, equipment, supplies or other material of any kind; or

(c) deleterious alteration of the environment;

"Convention" means the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction as specified in the Schedule, which was acceded to by Trinidad and Tobago on July 19, 2007; Schedule

"imprisonment for life" in relation to an offender means for the remainder of the natural life of the offender;

"means of delivery" means any apparatus, equipment, device or delivery system specifically designed to deliver or disseminate a biological agent or toxin or vector;

"Minister" means the Minister to whom responsibility for national security is assigned;

"toxin" means—

(a) any poisonous substance produced by a living organism; or

(b) any poisonous isomer, homolog, or derivative of such substance,

whatever its origin or method of production;

"vector" means any living organism capable of carrying a bacteriological agent or toxin to a host.

Act to bind the State

5. This Act binds the State.

Appointment of Committee

6. (1) The Minister shall, for the purposes of this Act, establish a Committee to be known as the Bacteriological and Toxin Weapons Committee (hereinafter referred to as "the Committee") consisting of at least seven and not more than eleven members as the Minister may from time to time appoint in writing.

(2) The members appointed under subsection (1) shall comprise—

***(a)* a medical doctor;**

***(b)* a toxicologist;**

***(c)* an attorney-at-law;**

***(d)* a microbiologist;**

***(e)* two representatives from the Ministry of Health; and**

***(f)* such other persons who by virtue of their skill or experience can contirbute meaningfully to the work of the Committee.**

(3) The Minister shall appoint a Chairman and Deputy Chairman from the members of the Committee.

(4) A simple majority of the members of the Committee shall constitute a quorum.

(5) The Committee shall meet as often as may be required for the performance of the functions of the Committee.

(6) The terms and conditions of the appointment of a member of the Committee and the period of tenure of office shall be such as the Minister may set out in the instrument of appointment.

(7) The Committee, with the approval of the Minister, may make such Rules governing its proceedings as it may consider appropriate.

Functions of the Committee

7. (1) The functions of the Committee shall be—

(a) to advise the Minister on matters relevant to the making of regulations under the Act;

(b) to advise on and monitor the implementation of regulations made under the Act;

(c) **to advise the Minister on policies, procedures and systems to improve the administration and operation of the Act;**

(d) to coordinate the activities of all agencies involved in the implementation and enforcement of the requirements under the Act or Regulations made thereunder; and

(e) such other functions as are from time to time conferred on the Committee by virtue of this Act or any other written law.

(2) The Committee in the performance of its functions under the Act shall be subject to such general or special directions as the Minister may give from time to time.

Search Warrant

8. (1) A Magistrate who is satisfied, by proof upon oath, that there is reasonable ground for believing that there is in any building, place, vessel, aircraft, carriage, box, motor vehicle, or any other conveyance any biological agent or toxin, which is being stored or utilized **in contravention of this Act** shall issue a warrant under his hand authorizing a police officer to search such building, place, vessel, aircraft, carriage, box, motor vehicle or any other conveyance and to—

(a) take any sample thereof, and examine anything he reasonably believes is used or capable of being used for the manufacture or storage of any biological agent or toxin;

(b) open and examine any receptacle or package that on reasonable grounds he believes contain any biological **agent or toxin;**

(c) examine any book, document or other records electronic or otherwise that he reasonably believes is necessary to obtain any information on biological **agent or toxin** that are manufactured or stored;

(d) use or cause to be used any computer or data processing system to examine any data contained in or available to any computer system used;

(e) reproduce or cause to be reproduced any record from data contained in or available to any computer system used in the form of a printout or other output, and remove the printout or other output for examination or copy;

(f) use or cause to be used any equipment at the building, place, vessel, aircraft, carriage, box, motor vehicle, or any other conveyance to make copies of any data or any record, book of account or other document obtained; and

(g) seize and retain for such time as may be necessary any—

(i) equipment that is being used or is intended to be used for any purpose that would contravene any requirement of the Act or Regulations made thereunder;

(ii) biological agent or toxin which he **reasonably** believes is being manufactured or stored in contravention of this Act or Regulations made thereunder; or

(iii) weapon, equipment or means of delivery designed to use any biological agent or toxin for hostile purposes or in armed conflict.

(2) A search warrant issued under subsection (1) may authorize any suitably qualified person named in the search warrant to accompany the police officer and assist him in taking any of those steps specified in the warrant.

(3) The owner or person in charge of any building, place, vessel, aircraft, carriage, box, motor vehicle, or any other conveyance entered by a police officer pursuant to subsection (1) and every person found therein shall give the police officer and any other suitably qualified person named in the warrant all reasonable assistance that may be required to access any information reasonably required.

(4) A person who—

(a) fails to comply with subsection (3);

(b) knowingly makes any false or misleading statement, either verbally or in writing, to a police officer or any other suitably qualified person engaged in carrying out his duties under this Act or Regulations made thereunder; or

(c) removes, alters or interferes in any way with any biological **agent or toxin** seized or detained under this Act or Regulations made thereunder without the authority of a police officer or any other suitably qualified person,

commits an offence and shall on conviction on indictment, be liable to a fine of one hundred thousand dollars and imprisonment for ten years.

(5) Any biological agent or toxin seized by a police officer or any other authorized person under this section may be kept or stored in **any building, place, vessel, aircraft, carriage, box, motor vehicle, or any other conveyance** in which they were seized or subject to the approval of the Minister, be removed to any other place or location.

Disposal of biological agent or toxin

9. (1) The Minister may, upon the recommendation of the Committee, give directions in writing—

(a) for the immediate seizure and disposal of any biological agent or toxin that is being kept in any building, place, vessel, aircraft, carriage, box, motor vehicle, or any other conveyance for any reason other than for prophylactic, protective or other peaceful purposes; or

(b) to the owner or occupier of any building, place, vessel, aircraft, carriage, box, motor

vehicle, or any other conveyance in which biological agent or toxin **is** being kept, for the immediate disposal of where adequate measures are—

(i) not being taken; and

(ii) unlikely to be taken,

to ensure the safety and security of **persons and the environment.**

(2) The Minister may in giving directions under subsection (1)*(b)*—

(a) specify the manner in which, and time that the biological agent or toxin must be disposed of; and

(b) require the owner or occupier to produce the biological agent or toxin to a specified person.

(3) Notwithstanding subsection (1)*(b)*, the Minister may in appropriate circumstances, give directions to an owner or occupier of any building, place, vessel, aircraft, carriage, box, motor vehicle or any other conveyance in which any biological agent or toxin is kept to ensure the safe storage of the biological agent or toxin.

(4) A person who fails to comply with subsections (1), (2) and (3), commits an offence and shall on conviction on indictment, be liable to a fine of one hundred thousand dollars and imprisonment for ten years.

(5) The Minister shall exercise his power under subsection (1) only in circumstances where—

***(a)* an immediate danger is posed to the health, safety and security of persons or the environment;**

(b) **the biological agent or toxin is unclaimed or no longer required in connection with the prosecution or any offense under this Act or under any written law.**

Offences

10. A person who—

(a) develops, produces, stockpiles, acquires, **conceals, imports, retains or possesses any biological agent or toxin that has** no justification for prophylactic, protective or other peaceful purposes;

(b) develops, produces, stockpiles, acquires, **conceals or retains** any weapon, equipment or means of delivery designed to use any biological agent or toxin for hostile purposes or in armed conflict;

(c) transfers any biological agent or toxin to another person where he knows or has reason to believe that the biological agent or toxin is likely to be kept or used otherwise than for prophylactic, protective or other peaceful purposes**,**

commits an offence and shall on conviction on indictment be liable in the case of an individual, to imprisonment for life or in the case of a body corporate, to a fine of **not less than five million dollars with its assets liable to forfeiture in accordance with the Proceeds of Crime Act or any other written law;** and

(d) fails to ensure that adequate measures are taken for the safety and security of any biological **agent or toxin** manufactured, stored, kept or used in any building, place, vessel, aircraft, carriage, box, motor vehicle, or any other conveyance in accordance with

Regulations made under section 13(1), commits an offence and shall on conviction on indictment, be liable—

(i) in the case of an individual, to a fine of one hundred thousand dollars and imprisonment for **twenty years**; or

(ii) in the case of a body corporate, to a fine of **not less than five hundred thousand dollars.**

Liability of directors, managers, corporate secretaries

11. Where an offence is committed under this Act and is proved to have been done with the consent,connivance oracquiescence of a director, manager, corporate secretary or other similar officer of the body corporate or any other person purporting to operate in such capacity, that person shall on conviction on indictment, be liable to a fine of **not less than five millions dollars** and imprisonment for **twenty** years.

Application of the Act to citizens while outside Trinidad and Tobago

12. Sections 10 and 11 also apply to a citizen of Trinidad and Tobago who commits an offence under this Act while outside Trinidad and Tobago.

Regulations

13. (1) The Minister may make Regulations prescribing—

(a) measures required to ensure the security of any biological agent or toxin manufactured, stored or used in any building, place, vessel, aircraft, carriage, box, motor vehicle, or any other conveyance; or

(b) any matter that is required or permitted by this Act to be prescribed or is necessary or convenient to be prescribed for carrying out or giving effect to the purposes of this Act.

(2) Regulations made under this section shall be subject to negative resolution of Parliament.

Amendment of Schedule

14. Where an amendment to the Convention, including any Protocol thereto, is accepted by Trinidad and Tobago, the Minister with responsibility for foreign affairs may by Order, amend the Schedule for the purpose of including therein such amendment.

SCHEDULE

(Section 4)

CONVENTION ON THE PROHIBITION OF THE DEVELOPMENT, PRODUCTION AND STOCKPILING OF BACTERIOLOGICAL (BIOLOGICAL) AND TOXIN WEAPONS AND ON THIER DESTRUCTION

The States Parties to this Convention:

Determined to act with a view to achieving effective progress towards general and complete disarmament, including the prohibition and elimination of all types of weapons of mass destruction, and convinced that the prohibition of the development, production and stockpiling of chemical and bacteriological (biological) weapons and their elimination, through effective measures, will facilitate the achievement of general and complete disarmament under strict and effective international control.

Recognizing the important significance of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on June 17, 1925, and conscious also of the contribution which the said Protocol has already made, and continues to make, to mitigating the horrors of war.

Reaffirming their adherence to the principles and objectives of that Protocol and calling upon all States to comply strictly with them.

Recalling that the General Assembly of the United Nations has repeatedly condemned all actions contrary to the principles and objectives of the Geneva Protocol of June 17, 1925.

Desiring to contribute to the strengthening of confidence between peoples and the general improvement of the international atmosphere.

Desiring also to contribute to the realization of the purposes and principles of the United Nations.

Convinced of the importance and urgency of eliminating from the arsenals of States, through effective measures, such dangerous weapons of mass destruction as those using chemical or bacteriological (biological) agents.

Recognizing that an agreement on the prohibition of bacteriological (biological) and toxin weapons represents a first possible step towards the achievement of agreement on effective measures also for the prohibition of the development, production and stockpiling of chemical weapons, and determined to continue negotiations to that end.

Determined for the sake of all mankind, to exclude completely the possibility of bacteriological (biological) agents and toxins being used as weapons.

Convinced that such use would be repugnant to the conscience of mankind and that no effort should be spared to minimize this risk.

Have agreed as follows:

ARTICLE I

Each State Party to this Convention undertakes never in any circumstances to develop, produce, stockpile or otherwise acquire or retain—

(*a*) 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; and

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

ARTICLE II

1. Each State Party to this Convention undertakes to destroy, or to divert to peaceful purposes, as soon as possible but not later than nine months after entry into force of the Convention, all agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention, which are in its possession or under its jurisdiction or control.

2. In implementing the provisions of this Article all necessary safety precautions shall be observed to protect populations and the environment.

ARTICLE III

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

ARTICLE IV

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.

ARTICLE V

1. The States Parties to this Convention undertake to consult one another and to cooperate in solving any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention.

2. Consultation and Cooperation pursuant to this Article may also be undertaken through appropriate international procedures within the framework of the United Nations and in accordance with its Charter.

ARTICLE VI

1. Any State Party to this convention which finds that any other State Party is acting in breach of obligations deriving from the provisions of the Convention may lodge a complaint with the Security Council of the United Nations. Such a complaint should include all possible evidence confirming its validity, as well as a request for its consideration by the Security Council.

2. Each State Party to this Convention undertakes to cooperate in carrying out any investigation which the Security

Council may initiate, in accordance with the provisions of the Charter of the United Nations, on the basis of the complaint received by the Council.

3. The Security Council shall inform the States Parties to the Convention of the results of the investigation.

ARTICLE VII

Each State Party to this Convention undertakes to provide support or assistance, in accordance with the United Nations Charter, to any Party to the Convention which so requests, if the Security Council decides that such Party has been exposed to danger as a result of violation of the Convention.

ARTICLE VIII

Nothing in this Convention shall be interpreted in any way as limiting or detracting from the obligations assumed by any State under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on June 17, 1925.

ARTICLE IX

Each State Party to this Convention affirms the recognized objective of effective prohibition of chemical weapons and, to this end, undertakes to continue negotiations in good faith with a view to reaching early agreement on effective measures for the prohibition of their development, production and stockpiling and for their destruction, and on appropriate measures concerning equipment and means of delivery specifically designed for the production or use of chemical agents for weapons purposes.

ARTICLE X

1. The States Parties to this Convention undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes. Parties to the Convention in a position to do so shall also cooperate in contributing individually or together with other States or international organizations to the further development and application of scientific discoveries in the field of bacteriology (biology) for prevention of disease, or for other peaceful purposes.

2. This Convention shall be implemented in a manner designed to avoid hampering the economic or technological development of States Parties to the Convention or international cooperation in the field of peaceful bacteriological (biological) activities, including the international exchange of bacteriological (biological) and toxins and equipment for the processing, use or production of bacteriological (biological) agents and toxins for peaceful purposes in accordance with the provisions of the Convention.

ARTICLE XI

Any State Party may propose amendments to this Convention. Amendments shall enter into force for each State Party accepting the amendments upon their acceptance by a majority of the States Parties to the Convention and thereafter for each remaining State Party on the date of acceptance by it.

ARTICLE XII

Five years after the entry into force of this Convention, or earlier if it is requested by a majority of Parties to the Convention by submitting a proposal to this effect to the Depositary Governments, a conference of States Parties to the Convention shall be held at Geneva, Switzerland, to review the operation of the Convention, with a view to assuring that the purposes of the preamble and the provisions of the Convention, including the provisions concerning negotiations on chemical weapons, are being realized. Such review shall take into account any new scientific and technological developments relevant to the Convention.

ARTICLE XIII

1. This Convention shall be of unlimited duration.

2 Each State Party to this Convention shall in exercising its national sovereignty have the right to withdraw from the Convention if it decides that extraordinary events, related to the subject matter of the Convention, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other States Parties to the Convention and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

Article XIV

1. This Convention shall be open to all States for signature. Any State which does not sign the Convention before its entry into force in accordance with clause 3 of this Article may accede to it at any time.

2. This Convention shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the United States of America, the United Kingdom of Great Britain and Northern Ireland and the Union of Soviet Socialist Republics, which are hereby designated the Depositary Governments.

3. This Convention shall enter into force after the deposit of instruments of ratification by twenty-two Governments, including the Governments designated as Depositaries of the Governments.

4. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Convention, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit or each instrument of ratification or of accession and the date of entry into force of this Convention, and of the receipt of other notices.

6. This Convention shall be registered by the Depositary Governments pursuant to Article 02 of the Charter of the United Nations.

Article XV

This Convention, the English, Russian, French, Spanish and Chinese texts of which are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of the Convention shall be transmitted by the Depositary Governments to the Governments of the signatory and acceding states.

Passed in the Senate this day of , 2011.

Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say by the votes of Senators.

Clerk of the Senate

I confirm the above.

President of the Senate

Passed in the House of Representatives this day of , 2011.

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House, that is to say by the votes of members of the House.

Clerk of the House

I confirm the above.

Speaker

No. 4 of 2011

SECOND SESSION
TENTH PARLIAMENT

REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to give effect to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction

Received and read the

First time .....

Second time .....

Third time .....