

**Meeting of the States Parties 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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Meeting of Experts

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Item 8 of the provisional agenda

**Biennial item: how to enable fuller participation
in the Confidence-building Measures (CBMs)**

Making the most of the Confidence-building Measures

Submitted by the United States of America

I. Introduction

1. The Confidence-Building Measures (CBM) process was established by the Second Review Conference in order “to prevent or reduce the occurrence of ambiguities, doubts, and suspicions.” As the United States of America noted in a working paper submitted to the 2012 Meeting of Experts (BWC/MSP/2012/MX/WP.4), meeting this goal requires us not only to increase the number of States Parties submitting CBM reports, but to increase participation in the analysis and use of CBMs, for example by enhancing the accessibility and relevance of the information they contain. As one wit noted during debate at the Seventh Review Conference, “the purpose of Confidence-Building Measures is to build confidence.” Submission of CBM reports – even universal submission – will not achieve that goal unless those submissions are complete, accurate, and consistent with other sources of information, and are actually examined by States Parties.

2. Submission of complete and accurate CBM reports, the analysis of CBM submissions, and action to clarify ambiguities or questions if they arise all require time and effort on the part of States Parties. As with other implementation tasks, sharing of national experiences may help to identify useful approaches and best practices. With that in mind, this paper describes key elements of the USA CBM reporting process and discusses ways in which we make use of CBM reports, with a view to identifying themes or lessons that are more broadly applicable.

II. U.S. Experience in Compiling and Submitting CBM Returns

3. Since the CBM regime was established in 1986, the United States has been committed to submitting CBM returns and seeks to make each one complete and accurate.

Over the years, the process by which the USA Government compiles CBM returns has evolved: lessons have been learned and improvements made. The United States remains committed to continued improvement of the CBM process – not only at the national level, but among States Parties as well – and will continue to make refinements to its reporting and to propose improvements to the CBM regime where appropriate.

4. The CBMs require, inter alia, reporting on national biodefense programs and related facilities; maximum-containment laboratories; unusual disease outbreaks; national implementing measures, including those related to export licensing, biosafety and biosecurity; and vaccine production. No single agency is likely to have oversight of all of these areas or ready access to all of the necessary information. In fact, in the United States we have found that it is rare that a single agency can furnish all the needed information for even a single form. This raises a number of challenges for the agency or individual charged with compiling the CBM report: identifying reportable facilities or activities; identifying points of contact who can provide the necessary information; maintaining the ability to do both over time (as both reportable facilities/activities and points of contact are subject to change); and ensuring the consistency of information provided by multiple agencies. In addition, reporting agencies may face bureaucratic hurdles or have concerns about disclosing information that they may deem sensitive. The United States has taken a number of steps to address these challenges:

(a) Building a network of stakeholders: The completeness and accuracy of CBM returns depends in large part on the range and quality of the intra-governmental network of BWC stakeholders. Each agency is unique in terms of organizational structure and culture; developing direct relationships with interagency stakeholders ensures that all those who contribute to CBMs are aware of their purpose and understand the inputs required. Understanding and addressing the concerns of reporting agencies, whether they relate to reporting timelines, burden, or sensitivity about information, helps to ensure complete, accurate reports not just this year, but in years to come.

(b) Regular consultations: The Department of State hosts periodic meetings with representatives from the eight federal agencies that routinely provide data for the USA CBM return. This enables stakeholders to hear how other agencies gather data, and the CBM reporting process promotes transparency not only among States Parties, but within our government as well. Periodic meetings help to identify problems and improve subsequent reporting. They also serve as a means of identifying and engaging with new agency representatives: in any government, employees do turn over, and engagement is thus important for continuity. Moreover, because these stakeholders have networks of their own, such meetings can help to identify additional entities that should be engaged.

(c) An electronic tool (eTool) to compile data: In 2010, in order to increase the completeness and accuracy of its CBM returns, the United States developed an “eTool” to standardize, collect, and aggregate those data that are required in the CBM forms. The eTool enables relevant USA Government personnel to directly input data about facilities and activities for which they have responsibility. Further, the eTool provides detailed instructions and standardized data fields to ensure accuracy and consistency. To promote transparency, the United States offered demonstrations of the eTool to interested States Parties at both the Seventh Review Conference and the 2012 Meeting of Experts. We remain willing to share technical details and lessons learned.

5. To meet the goal of building confidence, CBM reports must provide sufficient information to respond to the questions posed and to provide an appropriate level of transparency and clarity about activities. At the same time, excessive reporting is not only potentially burdensome (a concern that has been cited as a possible reason for low participation rates), but may make analysis more difficult and time consuming. The 2011 USA CBM submission was 296 pages long, raising questions about whether we had the

balance right. Recently, USA agencies have held a series of discussions on how best to balance a dedication to completeness, accuracy and transparency with the desire to make CBM returns more useful. To that end, we have identified a number of steps, some of which have already been implemented, to make our reports more accessible and useful:

(a) More web links. USA scientists are encouraged to publish their research results in the open literature, where the global community can access and build upon them. The United States will consistently include web links to publications listed on Form A along with their full references. On Form C, we have also included many web links to enable readers to learn in-depth about the many mechanisms in place to encourage publication and use of life science knowledge. We will consider use of web links in other parts of the CBM report where appropriate (for example, linking to legislation and regulations reported under Form E).

(b) Streamlining the reporting of microorganisms and toxins studied: Form A, part 2 (iii) requires reporting on the microorganisms and toxins studied at declared biodefense facilities. However, the list of microorganisms and toxins that the United States has reported in the past is extremely long and included a very large number of nonpathogenic organisms and genetic fragments, many of which were in fact research tools, rather than objects of study. While this may constitute transparency in its purest form, it seems likely that such a long list is of limited utility, in that it does not highlight pathogenic microorganisms under study. Therefore, a group of microbiologists from USA stakeholder departments convened to consider a set of standards for use by facilities when reporting microorganisms and toxins. Per the recommendations of this group, the United States will report microorganisms and toxins that appear on either the Select Agent or the National Institute of Allergy and Infectious Diseases (NIAID) Category A pathogen lists, beginning in 2014.¹

(c) Amplifying Form E: While some of the steps above streamline our submissions, the United States provides additional information in Form E, describing what legislation, regulations, or guidelines have been developed or amended. We believe that the simple check-box approach agreed by States Parties provides insufficient transparency into what steps are being taken to implement the requirements of Articles III and IV. We encourage other States Parties to include such information in their submissions.

6. Given the complexity of the task and the number of agencies involved, it should not be a surprise that CBMs occasionally contain inaccurate or incomplete information. While completeness and accuracy are important, States Parties should not allow concerns over their ability to ensure completeness and accuracy to deter them from reporting. The United States has established a practice of submitting amendments or corrigenda in cases where we have discovered errors. This allows the original submission to stand (to ensure an accurate historical record of our reporting) but also makes the correct information available to other States Parties. We believe this provides additional transparency and demonstrates the seriousness with which we take the CBM process, but it also recognizes the practical reality that CBM submissions may not always be perfect. We hope that wider use of this approach might reduce any apprehensions that may be discouraging States Parties from submitting CBM returns.

¹ The select agent and NIAID Category A pathogen lists are available at <http://www.selectagents.gov/select%20agents%20and%20toxins%20list.html> and <http://www.niaid.nih.gov/topics/biodefenserelated/biodefense/pages/cata.aspx>, respectively.

7. At the 2009 Meeting of States Parties, the United States announced its intention to work toward the goal of making its CBM submissions publicly available. We met that goal just a few months later when we submitted our 2010 report. The United States was not the first State Party to take this step, but we considered it important. The decision to make our submission publicly available required extensive interagency discussion to assess potential security concerns as well as legal/regulatory questions. The United States government determined that it was possible to manage these concerns in a publicly accessible CBM report. As we noted in our 2012 working paper, public submissions allow academics and other analysts to study submissions and publish their analyses, which can then be drawn upon by States Parties. Since not every State Party has the resources to analyze all CBMs of potential interest, leveraging the resources of academic and other non-governmental analytical communities may enable greater use of CBM information. Today, roughly a third of all CBM submissions are publicly available. We welcome the decisions of Japan, the Netherlands, and Poland to make their CBMs publicly accessible this year, and we encourage other States Parties to do so as well. We stand ready to discuss the issues we encountered and the ways we found to address them with any State Party considering this step.

III. U.S. Experience in Using CBM Returns

8. The United States routinely makes use of the reports submitted by other States Parties under the Confidence-Building Measures. CBM reports are one of many sources of information we draw upon in reaching our national assessments of the compliance of BWC States Parties with their obligations. By themselves, CBMs are of limited value. In most respects, their value emerges when they are compared with other information. CBMs that are consistent with other available information concerning, for example, the existence of maximum-containment facilities, the scope of a biodefense program, or the nature of work undertaken at declared facilities tend to build confidence that our information and judgments are sound. Conversely, CBMs that omit seemingly relevant programs or facilities (including through use of the “nothing to declare” or “nothing new to declare” options), or that appear to conflict with other available information, are valuable because of the questions such discrepancies pose: Are the other references reliable? Does the CBM reflect a difference of interpretation about what should be reported? Or is the discrepancy an indication of an issue more substantive in nature?

9. In principle, Form E should provide insight into the extent to which a State Party is implementing various obligations under the Convention, particularly in relation to Articles III and IV. However, despite the modest improvements agreed on by the Seventh Review Conference, Form E provides so little information that it is effectively useless in trying to gauge whether and how a State Party is implementing the BWC. Although imperfect in some respects, the best source of organized, useful information for this purpose is the collection of national implementation matrices published by the UNSCR 1540 Committee. Information about how and to what extent States Parties are implementing the Convention is important both from a security perspective (in order to maintain confidence that States Parties are taking measures to address the threat of bioterrorism and non-state actors, which has consistently been emphasized by Review Conferences since 1995) and from an international cooperation perspective (in order to identify areas of need so that targeted implementation assistance can be provided). As we recommended in our 2012 Working Paper on national implementation, States Parties should clarify what information about national implementation would be of greatest value and develop a means to gather it. Revising and expanding CBM Form E to ask for more information on relevant laws, regulations, and guidelines in a structured way would be one logical approach.

10. Not all inconsistencies or omissions are equally significant or require clarification. This is ultimately a decision that lies with each State Party as it reviews the returns. In cases where clarification is sought, Article V of the Convention allows for a wide range of consultative tools and approaches. In our experience, quiet, non-confrontational bilateral dialogue is often the most useful and appropriate tool, and one that we have used as recently as this year. When such an approach leads to constructive, substantive interchange, it can be effective in addressing concerns. When an approach is rebuffed or does not result in meaningful clarification, however, concerns are likely to be reinforced rather than allayed.

IV. Improving the CBM Process for All

11. There is a clear need to improve the CBM process: The rate of submission remains very low (typically, between 35 and 40 percent of States Parties submit reports in any given year). To date, only 51 of 170 States Parties have submitted reports this year – less than one in three. In addition, the quality of the reports submitted is uneven, and current reporting practices make analysis time- and labor-intensive, disadvantaging smaller States Parties. While 2013 marks the end of formal consideration of CBMs as an agenda item in the current intersessional process, it will be important for States Parties to remain engaged in efforts to address these issues in the coming years.

12. The United States has learned many lessons as its CBM process has evolved, and remains ready to share those lessons with States Parties developing or refining their own processes for preparing CBM returns. Further, we encourage States Parties to develop a CBM assistance network. Such a mechanism could institutionalize a sort of CBM “experts group” that Parties could turn to for assistance. Those States Parties that have never submitted a CBM return would especially benefit from such a standing experts group, since building a strong national CBM process requires some initial refinement – a process that can be explained by those who have been through it. Finally, building a complete list of National Points of Contact would greatly facilitate the effectiveness of a CBM assistance network. Of 170 States Parties, only 80 (or 47 per cent) have provided National Points of Contact since the Sixth Review Conference agreed on this measure in 2006.²

13. The United States applauds the European Union’s BWC Action decision to fund the development of an electronic platform for use by all States Parties to submit annual CBM returns. Such a platform will further facilitate national CBM processes, and should aim to increase the utility of CBM returns by making the data more accessible.

V. Recommendations

14. The 2013 Meeting of States Parties should:

(a) Call on all States Parties to designate National Points of Contact as agreed at the Sixth Review Conference and reiterated at the Seventh Review Conference, and request the Chair to follow up with those States Parties that have not done so.

(b) Encourage States Parties who have not yet submitted annual CBM returns to do so.

² As of 31 May 2013.

- (c) Urge establishment of a CBM assistance network, coordinated by the ISU, to provide expert advice in an ongoing, consistent manner upon request.
 - (d) Urge States Parties in a position to do so to offer and coordinate assistance, training, translations, and workshops in support of CBM processes and submissions.
 - (e) Agree to further consider, in the context of the standing agenda item on Strengthening National Implementation, options for gaining better information on national implementation measures in each State Party.
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