
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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Item 9 of the agenda

Standing agenda item: strengthening national implementation

Compliance

Submitted by Australia, Canada, Costa Rica, Finland, Japan, Lithuania, New Zealand, Spain and Switzerland

I. Introduction

1. Australia, Canada, Costa Rica, Finland, Japan, Lithuania, New Zealand, Spain and Switzerland look forward in the context of the standing agenda item on strengthening national implementation, to continuing a focused examination at the Meeting of States Parties 2013 of key questions about what constitutes compliance with the Convention and how States Parties can better demonstrate their compliance.

2. Strengthened implementation of the Biological Weapons Convention (BWC) is critical to national and international security. Full compliance with the BWC is in the security interests of all States Parties, as this will reduce the possibility of Biological Weapons (BW) proliferation / production and raise barriers to bioterrorism. In addition, as a consequence of the rapid scientific and technological developments in the life sciences and the increasing globalisation of the biotechnology sector, there is a clear need for States Parties to address compliance in a fresh, critical and creative manner and to develop concrete and practical responses which reflect these contemporary scientific and technological realities.

3. We underline that there is a real opportunity for States Parties to *work together* in order to obtain a better common understanding of what BWC compliance means, and how States Parties can work cooperatively to achieve enhanced compliance with the Convention, including with national implementation obligations. The discussion should include identifying how States Parties *achieve* compliance, and how they can most effectively *demonstrate* to other States Parties that they are in full compliance with their obligations under the BWC. By considering what compliance with the BWC means *now*, we may be able to improve national implementation efforts and to collectively undertake effective multilateral action on compliance in the lead up to the Eighth BWC Review Conference in 2016.

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II. Background

4. At the Seventh Review Conference, Australia, Japan and New Zealand submitted a working paper¹ proposing the establishment of an intersessional working group *inter alia* to discuss and develop common understandings on issues relevant to enhancing assurance of compliance with the BWC.

5. While this proposal was not endorsed at the Review Conference, further consideration of the issue of what constitutes compliance, and how States Parties can better demonstrate their compliance with the BWC, took place at the Meeting of States Parties 2012 with a Working Paper submitted by Australia, Canada, Japan, New Zealand and Switzerland entitled “We need to talk about compliance”. This Working Paper was designed to promote common understanding of what constitutes compliance with the BWC and what effective action can be undertaken to enhance assurance of compliance.

6. More recently at the Meeting of Experts, 2013, a number of delegations responded to the questions raised in the paper. These delegations, under the standing agenda item on strengthening national implementation, discussed their common understandings on issues relevant to enhancing assurance of compliance with the BWC. In particular, they responded to the following two broad questions:

(a) What constitutes compliance with the BWC?

(b) How can States Parties better demonstrate their compliance with the BWC and thereby enhance assurance for other States Parties?

Hence, the questions posed about compliance in the 7th RevCon working paper (BWC/CONF.VII/WP.11), in particular how they relate to compliance with national implementation obligations, are now positioned within the framework of the current intersessional process.

III. What constitutes compliance with the BWC and effective national implementation?

7. In our view, the key compliance issues are:

(a) Domestic enactment, effective enforcement and timely review of national implementation measures (Article IV), including domestic legislation to criminalise the prohibitions contained in BWC;

(b) The destruction, or diversion to peaceful purposes, of all agents, toxins, weapons, equipment and means of delivery not originally intended for peaceful uses (Article I and Article II);

(c) Enactment, effective enforcement and timely review domestically of national legislation and / or regulations to prohibit transfers (Article III), including an effective national export control licensing system, and appropriate national biosecurity measures;

(d) Willingness to co-operate with other States Parties in resolving any concern related to the application of the provisions of the BTWC (Article V);

(e) Willingness to co-operate with other States Parties in resolving any issue related to alleged breaches of the BTWC (Article VI);

¹ BWC/CONF.VII/WP.11.

(f) Willingness to assist other States Parties in situations where a State Party has been exposed to danger as a result of a violation of the Convention (Article VII); and

(g) Effective arrangements which facilitate the fullest possible exchange of relevant equipment, materials and scientific and technological information for peaceful purposes, notably by industry and academic and research institutions, and for those States Parties in a position to do so, contributions to international cooperation activities in the life sciences for peaceful purposes (Article X).

8. A domestic review of relevant national measures would need to take into consideration the relevant developments and advances in the life sciences. Particularly in terms of science and technology, security and the increasingly globalised nature of the life sciences and the relevant biotechnology sectors.

IV. How can States Parties better demonstrate their compliance with the BWC and thereby enhance assurance for other States Parties?

9. At the present time, annual submission by States Parties of Confidence Building Measure returns (CBMs), as agreed at the Third Review Conference in 1991 and revised at the Seventh Review Conference in 2011, provide the primary tool by which States Parties can demonstrate some aspects of their compliance with the provisions of the BWC. It was positive that 69 States Parties submitted CBMs in 2012 and, noting only 58 States have submitted returns in 2013, we strongly encourage an increase in CBM submission levels.

10. In addition, prior to each Review Conference, all States Parties are invited to provide information which forms the basis of the BWC Compliance Report. The Compliance Report prepared for the Seventh Review Conference in 2011 contained information provided by 36 States Parties.² As an outcome of the Seventh Review Conference, reports by States Parties on their implementation of Article X were encouraged, with several having already been provided by a number of States Parties during meetings of the intersessional process.³

11. These submissions and reports are important. Participation by a larger number of States Parties in the CBMs, the Compliance Report and Article X reporting enable more States Parties to demonstrate their commitment and their compliance with the provisions of the BWC. This enhances assurance for other States Parties.

12. While these measures provide some measure of assurance, they could be further enhanced in their scope. A number of recent proposals provide States Parties with the opportunity to better demonstrate their compliance with the BWC and thereby enhance assurance for other States Parties. The proposals include, *inter alia*:

(a) Additional information included in CBMs;⁴

² United Nations, Compliance by States Parties with their obligations under the Convention – Background information document submitted by the Implementation Support Unit, Document BWC/CONF.VII/INF.2 (and Add.1) (Geneva: United Nations, 23 November 2011), available at <http://www.unog.ch/bwc>.

³ For example, Australia's 2012 report contained in document BWC/MSP/2012/MX/INF.8.

⁴ United Nations, Working Paper: Next steps on the CBMs: some key questions for 2013 – Submitted by the United Kingdom of Great Britain and Northern Ireland, Document BWC/MSP/2012/WP.1, (Geneva: United Nations, 12 November 2012), available at <http://www.unog.ch/bwc>.

- (b) A compliance assessment process, including potential national plans on biosecurity, where appropriate;⁵
- (c) A Peer review mechanism;⁶ and
- (d) A Bio-transparency and Openness Initiative.⁷

13. This is not an exhaustive list. As mentioned in (earlier WP.11), other questions that could be also considered in this context include:

(a) whether there would be a role for mandatory declarations in demonstrating compliance, and if so, whether additional information to that which is already requested in the current CBMs would enhance assurance of compliance;

(b) whether the consultation and cooperation mechanisms under Article V require further development, including, for example, consideration of mutually agreed visits to sites of compliance concern;

(c) whether mechanisms for the investigation of alleged use of biological weapons (Article VI) require further attention, including the role of the UN Secretary-General's Investigation Mechanism;

(d) the potential impact of advances in the life sciences on demonstrating compliance and enhancing assurance of compliance, including, for example, the impact of rapid advances in bio-forensics.

14. This discussion can and should be complemented by side-events and workshops that support deliberations in the main sessions of the States Parties meetings, and as a whole, pave the way to substantive decisions on next steps or measures at the 2016 BWC Review Conference.

⁵ United Nations, Working Paper: National implementation of the BWC: compliance assessment: update – Submitted by Canada, Czech Republic and Switzerland, Document BWC/MSP/2012/WP.6, (Geneva: United Nations, 5 December 2012), available at <http://www.unog.ch/bwc>.

⁶ United Nations, Working Paper: A Peer-Review Mechanism for the Biological and Toxin Weapons Convention – Submitted by France, Document BWC/MSP/2012/WP.12, (Geneva: United Nations, 18 December 2012), available at <http://www.un.org>.

⁷ United Nations, Working Paper: The United States Government's Bio-transparency and Openness Initiative – Submitted by the United States of America, Document BWC/MSP/2012/WP.3, (Geneva: United Nations, 3 December 2012), available at <http://www.un.org>.