
**Réunion des États parties à la Convention
sur l'interdiction de la mise au point,
de la fabrication et du stockage des
armes bactériologiques (biologiques)
ou à toxines et sur leur destruction**

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Anglais et français seulement

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Point 8 de l'ordre du jour

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renforcement de l'application nationale

**Étude de l'UNIDIR sur la création d'un mécanisme de Revue
par les pairs dans le cadre de la Convention d'interdiction
des armes biologiques et à toxines**

Présenté par la France*

**A Peer-Review Mechanism for the Biological and Toxin Weapons
Convention**

Executive Summary

1. At the Seventh Review Conference of the Biological and Toxin Weapons Convention (BTWC) in December 2011, a working paper submitted by France sought to initiate debate on the potential of developing a peer-review system for the BTWC to build confidence in the implementation of the Convention. The concept of peer review has precedent in the activities of a number of other international organizations, yet the objectives, format, participants, and structure of peer-review mechanisms vary. Accordingly, this study seeks to take forward this debate by looking at what peer review is, how it works elsewhere, how it could be applied in the context of the BTWC, what would be required to move forward, and what possible advantages or disadvantages a peer-review process would confer to the BTWC in light of the Convention's recent history.

* Lundi 10 décembre 2012, en marge de la journée d'ouverture de la réunion annuelle des États parties à la Convention d'interdictions des armes biologiques (CIAB), l'UNIDIR et la France ont organisé un séminaire pour discuter de l'opportunité de la création d'un mécanisme de revue par les pairs dans le cadre de la CIAB.

Au cours de ce séminaire, M. James Revill a présenté les résultats d'une étude de l'UNIDIR sur cette question.

La France souhaiterait porter à la connaissance de tous les États parties les principales conclusions de ce travail. Le résumé de cette étude en anglais, consultable dans sa version intégrale à l'adresse suivante (<http://unidir.org/pdf/ouvrages/pdf-1-92-9045-012-Q-en.pdf>), est disponible ci-dessous.

La France souhaiterait souligner que les opinions exprimées dans cette étude sont celles de son auteur et ne reflètent ni celles du Secrétariat de l'Organisation des Nations Unies ni celles de la France.

2. The proposal for some form of peer review has to be examined in the context of the BTWC, which remains devoid of effective mechanisms to assess compliance, despite a decade of looking at a set of measures to strengthen confidence in the Convention through the development of a protocol that collapsed in 2001. Since then the BTWC has undergone two intersessional processes that were unquestionably valuable, yet fell short of the expectations of more ambitious States parties. As States parties begin a third intersessional process following a hard fought, yet ultimately disappointing result from the Seventh Review Conference, the danger is that the high-level attention required to nurture the BTWC may begin to diminish. The success or failure of arms control and disarmament regimes depends on the actions of their States parties, which need to cultivate the regimes and ensure their continued relevance in changing scientific and political contexts. When looking for measures to strengthen the Convention, rather than reigniting old debates over the protocol, it is perhaps time to look at what steps could improve confidence in compliance outside of those politically sensitive areas. One means to achieve this could be to address compliance with the obligations of the BTWC through a systematic review of the performance of a State party by other States parties—in short, by adopting a peer-review process.

3. Peer review has different meanings in different contexts. In academia, this is widely used to refer to a process of “evaluation of research findings for competence, significance, and originality by qualified experts”.¹ However this is not the conceptualization of peer review that is being addressed here. Rather, the term peer review in the context of this study assumes a meaning that is particular to the practice of international organizations and has been defined by the Legal Directorate of the Organisation for Economic Co-operation and Development (OECD) as “the systematic examination and assessment of the performance of a State by other States, with the ultimate goal of helping the reviewed State improve its policy making, adopt best practices, and comply with established standards and principles”.²

4. In this study, five peer-review mechanisms that fall within this definition are considered: the African Union’s African Peer Review Mechanism (APRM); the OECD’s Development Assistance Committee (DAC) peer-review system; the Financial Action Task Force (FATF) peer-review mechanism on money laundering; the International Atomic Energy Agency’s Integrated Regulatory Review Service (IRRS) peer reviews; and the European Nuclear Safety Regulators Group (ENSREG) stress tests. These five mechanisms vary in detail considerably. Nevertheless, there are a number of common themes:

- Peer reviews are evaluations carried out by equals that function with the objective of variously identifying deficiencies, showcasing and fostering best practice, sharing experiences, and improving individual and collective performance. They are not inspections or audits.
- Peer reviews derive influence from the associated peer pressure and scrutiny they generate, something that can be particularly effective when reviews are viewed as credible, contain a follow-on process, and are made publicly available.³
- Peer review requires the completion of some form of data collection process in order to generate a baseline of data on which to carry out a review. Some mechanisms do

¹ D. Benos et al., “The ups and downs of peer review”, *Advances in Physiology Education*, vol. 31, no. 2, 2007.

² F. Pagani, *Peer Review: A Tool for Co-operation and Change—An Analysis of an OECD Working Method*, OECD document SG/LEG(2002)1, 11 September 2002, para. 3.

³ K.L. Gardner, “Fighting terrorism the FATF way”, *Global Governance*, vol. 13, no. 3, 2007.

this through a structured questionnaire, while others require a reviewed State to demonstrate that it has considered various criteria.

- Baseline data are in turn gauged against some form of standard or principle by a team of reviewers; however, most peer-review systems recognize that no “one size fits all”, and take into consideration the national context, thus ensuring flexibility and “scalability” in the review process.
- Peer review can be applied in a modular fashion whereby a State can select areas that warrant particular attention for review.
- Peer review ensures some form of consultation and clarification process takes place in which the reviewers can check what has been submitted, clarify any ambiguities, and examine the situation from different perspectives.
- Peer-review mechanisms often work with a broad range of stakeholders from the national to the local level.
- Finally, peer-review mechanisms often include on-site visits with both staff interviews and observations of practices in order to understand the implementation of certain measures in practice.

5. As there is a diversity of relevant peer-review mechanisms, this study, in considering how best a peer-review mechanism might be integrated into the BTWC, develops a modular approach in order to demonstrate the benefits that are potentially available to the States parties.

6. A modular approach would offer States parties a basic “peer-review package” that would most logically focus on implementation of national legislation and regulations. However, depending on the level of ambition and enthusiasm, States parties could select additional modules related to, inter alia, export control provision; biosecurity and biosafety provision; outreach, codes, education and engagement; disease outbreak detection and response capacity; international cooperation and assistance; or oversight mechanisms.

7. Under this model, a review would start with the collection and collation of relevant data, which would be assessed by small teams of reviewers with relevant expertise who were nominated by States parties and selected on a geographically representative basis. Taking the basic legislation-focused package as an example, such a team would be tasked with conducting an assessment of whether all key aspects of legislation are in place and also whether these have been effectively implemented using agreed criteria (drawn up from past intersessional discussions) for consideration.

8. If other modules were required and States sought a more ambitious review, additional components could be requested that could provide an increasingly comprehensive assessment of implementation. This process could be augmented through an activity report from others engaged in the life sciences at the local level, such as biosafety officers working in academia and industry, to provide information on what the situation is locally. This could be followed by a series of transparency visits to key facilities selected by the State party being reviewed, conducted by a team of peers nominated by participating States parties. The visits would allow the team to speak with staff and observe certain procedures to see how implementation works in practice and then share best practices and lessons learned—a process that is similar to a number of contemporary industry practices such as registration to ISO 14001 or the process of certification for OHSAS [Occupational Health and Safety Assessment Series] 18001.

9. After analysis, reviewers and representatives of the reviewed State party could engage in a process of consultation and clarification that would seek to arrive at agreement on a draft report. This would include a factual description of measures in place, an analysis

of whether they were fit for purpose, and, if required, recommendations and comments. In the case where serious deficiencies were identified the report could include a time frame for implementation of recommendations and a plan for the provision of the necessary support and capacity-building required to implement the recommendations. This could be achieved through using the database agreed upon at the Seventh Review Conference and in turn could help stimulate the use of the database and open up channels of assistance for all States parties (not just those subject to a peer-review process). The next stage would be to present the findings at a meeting of States parties when the reviewers, States parties, and other interested parties could explore, clarify, and further resolve ambiguities, and share lessons learned. The additional advantage of an open plenary session would be to generate peer pressure to fulfil any recommendations and to provide an additional layer of public scrutiny that may encourage States to undertake recommended actions.

10. The peer-review approach is one possible step forward that goes considerably beyond and builds upon United Nations Security Council resolution 1540 activities and, assuming adoption of a constructive and ambitious approach via a number of different modules, could provide greater transparency, a cooperative approach to clarification of a State party's implementation submission, an enhanced understanding of how national security and safety rules and regulations operate in practice, an awareness-raising and best-practice sharing process for academia and industry, and a greater understanding of the extent of international cooperation and best practice in such cooperation. The process of presenting the outcome to a meeting of States parties could lead to assistance in capacity-building and providing the resources for a State party to carry out concrete actions as appropriate to improve the situation; something that could stimulate the use of the database facility and open channels for the delivery of assistance to all States parties, not just those under peer review. Such an approach is attractive as many of the necessary components can readily be developed from what already exists. Moreover, by providing what Lennane calls "A structured and systematic means of providing an increased level of assurance that States parties are complying with the ... obligations of the convention",⁴ peer review would be a step towards strengthening implementation of the Convention and enhancing its effectiveness.

11. This study sets out a number of prerequisites for any peer-review system, including:
- The nomination of an objective, expert set of "peers" to produce a credible review; this is essential if reports and recommendations are to be taken as soundly based.
 - The development of a baseline of information from which to conduct a review. Clearly confidence-building measures are a useful starting point although additional documentation (such as copies of national laws and regulations) will be required in the reviewer's language. A questionnaire tool could facilitate information gathering in this regard.
 - Some principles, criteria, or standards from which to conduct an objective review. There is a wealth of material from the intersessional processes and regional standards that could be employed, although the peer-review system will need to take into consideration the context and thus be "scalable" and "adaptable" enough to be applicable to the range of participating States.
 - A peer-review process will need clear incentives for participation—and such incentives will need to be delivered as agreed. One option could be to link a review process to the delivery of any resources necessary to rectify any gaps identified,

⁴ R. Lennane, "Verification for the BTWC: if not the Protocol, then what?", *Disarmament Forum*, no. 1, UNIDIR, 2011, p. 41.

something that could perhaps be mutually beneficial in linking up with other activities, such as the database.

- A credible follow-up process will need to be designed to ensure that any agreed recommendations are carried out.
- Most importantly, any peer-review process will require political will to proceed. A review of statements and working papers submitted to the Seventh Review Conference in 2011 shows that there is already some support for aspects of a peer-review process. Rather than seeking a multilaterally negotiated route to a peer-review mechanism, a smaller group of like-minded States parties that are committed—and willing to be reviewed themselves—could pilot such a peer-review process and report back to the States parties.

12. This study concludes by identifying a number of advantages and disadvantages of a peer-review process and recommends that one useful preliminary step that States parties could undertake would be communication with counterparts in agencies with experience of peer-review mechanisms in other areas to gain an understanding of whether participation in such existing peer-review processes generates sufficient benefits to offset the costs in time and resources. This study concludes that the advantages would outweigh the disadvantages and a peer-review system that looks at broad implementation of the Convention could be an attractive and effective way of moving the overall confidence in the Convention forward through a systematic review of national compliance of individual States parties with its obligations, thereby enhancing international confidence in the Convention.

Summary of the modular approach to a BTWC peer-review mechanism

Objective	Voluntary evaluation of the implementation of the Convention by a State party
Basic module	Legislative and regulatory environment
Additional modules	<ul style="list-style-type: none"> • Implementation and enforcement of legislation • Export-control provision • Biosecurity and biosafety provision • Outreach, codes, education, and engagement • Disease outbreak detection and response capacity • International cooperation and assistance • Oversight mechanisms
Reviewers	<p>The basic module would require a small team of legal experts nominated as representatives of States parties. The team would need to be selected on the basis of language, experience, and the type of legal system being assessed.</p> <p>Depending on whether additional modules were selected, a team comprising the following areas of expertise could be required: customs; law enforcement, biosecurity and biosafety; and public health and BTWC policy. The team would need to be nominated by States parties on the basis of expertise but also language and geographical representation.</p>
Process	<ol style="list-style-type: none"> 1. The preparatory phase 2. On-site transparency visit

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3. Analysis phase
 4. The consultation and clarification phase
 5. Plenary discussion and publication of report
 6. Follow-up
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Summary of the advantages and disadvantages of the modular approach

Advantages

- Improved transparency
- Provides a safe space for clarification and consultation
- Structured mechanism for sharing best practice
- Provides an applied mechanism to enhance national implementation
- Provides a flexible and “scalable” assessment mechanism
- Potential to support outreach and engagement with academia and industry
- Peer pressure could encourage improvement in implementation
- It would not require new structures
- It is not verification

Disadvantages

- Any mechanisms will require resources and political will
 - States may be reluctant to expose themselves to scrutiny
 - The process may serve as a distraction from the central question of compliance with the prohibitions embodied in the Convention
 - It is not verification
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