



BTWC Review

Sunday 11 – Tuesday 13 September 2011 | WP1124

held in The Netherlands

Introduction

With the Seventh Review Conference of the Biological & Toxin Weapons Convention (BTWC) imminent, a preliminary assessment of the topics likely to be decisive in the success or otherwise of the Conference will be both timely and potentially instructive. Those topics can be identified as, first, the future shape of confidence-building measures (CBMs) and national implementation; second, the implementation of Articles VII and X; third, the prospects for consensus on verification and compliance; fourth, the continuing impact of advances in science and technology; and fifth, the future of the Implementation Support Unit (ISU) and the Intersessional Process after the Review.

CBMs and national implementation

1. The debate here continues to evolve, although it does not yet appear to have crystallised into a coherent consensus ahead of the Review. It may be productive to think of this debate as a two-track process: some issues such as the format and content of the forms may be amenable to quick fixes at the Review itself; deeper issues such as the purpose that is served by CBMs, and the development of new measures, may be better dealt with during the Intersessional Process under a mandate from the Review.
2. There appears to be general consensus that the CBM element in the BTWC regime needs improvement, and also about where the problems lie. In quantitative terms, not enough States Parties are submitting their forms. The 2010 rate of 44% is certainly a considerable improvement on the 27% rate that pertained in 1987, but nonetheless it is unsatisfactory that after 23 years of progress more than half the States Parties are not submitting CBM forms. More recently, the Sixth Review Conference asked States Parties to name a National Contact Point on CBMs; to date, only 65 have done so and improvement there would help with national implementation.
3. In qualitative terms, there is a lack of common understandings of the forms themselves. Differing interpretations of what is required produce inconsistencies between national submissions, and questions remain over whether the forms are asking the right questions for the challenges posed by scientific and technological developments in the 21st century life sciences. Moreover, the process of submission is not as consistent or as transparent as it might be. A large number of submissions are only available on a restricted database, giving potential for generating suspicion rather than confidence, and the capacity for developing good practice is hampered by an absence of discussion about the forms after submission.
4. The two-track process mentioned above begins with the immediate measures that can be taken at the Review itself to remedy the situation. Germany, Norway and Switzerland have put forward a package of proposals, available on the ISU website, for amending the current CBM forms. The suggested revisions would, it is hoped, rectify some of the ambiguities in the forms and hence increase participation. Further proposals with the goal of enhancing transparency have been submitted. These include open access as the default option on CBM forms; and an annual trend analysis of CBM

submissions presented by the ISU to the Meeting of States Parties, which would give an overall qualitative and quantitative pattern of information submitted. The latter may need a small amendment to the mandate of the ISU, but would offer the prospect of better utilisation of the CBM process. The trend analysis would offer an overall picture and thus avoid any undesirable singling-out of individual states. That said, the real utility of trend analysis is not always apparent. Instead, it might be worth investigating how individual submissions can be discussed: it ought to be possible to do this in a non-accusatory fashion. CBMs are usually linked with either compliance or national implementation, but in fact those two links do lead in very different directions; avoiding the former might help in enabling discussion of individual submissions.

5. It is generally recognised that the CBM forms are outdated; the process of changing them will need international agreement of course, but it may also need cooperation between domestic agencies as the information required shifts to ensure timely and accurate annual submissions. Enhancing this might be a task for the longer term workings of the Intersessional Process, which might include CBMs in its work programme between the Seventh and Eighth Review Conferences. Before agreeing to ask the Intersessional Process to look at the future for CBMs, it will be necessary to develop a clear mandate for what that is designed to achieve. One option would be for Track II discussions in a working group. Whatever the format, the goal would be to modernize the CBM forms and process in order to be more responsive to contemporary risks and threats, and to enhance their role in the BTWC regime.

Articles VII and X

6. It may also be useful for CBMs to be contextualised more, by offering a clearer picture of the benefits – national and global – of full participation in the submission process. This might be done by using CBM information as relevant to Article X assistance, although this should not be a replacement for other possible measures on Article X. The latter, along with the related Article VII, is another topic on which it may be possible to make genuine progress at the Review.
7. Article X should not be regarded as a zero-sum game, or as a purely developed/developing state issue, but it ought to be possible to make progress on more effective implementation of it. The Canadian proposal for a clearing-house mechanism, based on the premise that the onus for cooperation lies with recipients who need to define needs when making a request for assistance, might help this. Recognising that some States Parties may lack the capacity to define needs in making such a request, Canada has similarly suggested that a needs-assessment mechanism or process could be established to help there.
8. Articles VII and X both deal with cooperation and assistance between States Parties, albeit of a different nature. However, Article X is a permanent and on-going obligation, while Article VII is a case-specific response to violations of the Convention where a State Party has been ‘exposed to danger’; it is important to keep them separate. Nonetheless a certain undeniable synergy between the two exists; although Article X is about building capacity and can enhance infectious disease surveillance, detection, diagnosis and mitigation, it can have a role to play in strengthening Article VII. For example, cooperation to increase capacity to identify and respond to disease outbreaks will also increase the ability to identify deliberate attack. Real expertise in providing a response to Article VII outbreaks remains fairly limited, and Article X can play an important role in increasing the community of individuals qualified to provide assistance and support under Article VII.
9. The Sixth Review Conference considered Article VII, and made some statements only about how it might be put into effective practice. The Seventh Review should instead be looking to take the matter further and possibly take decision on further actions that might be required to give fuller effect to Article VII. For example, the provision of emergency assistance could be made an option. CWC Article X provisions offer a

possible model for how assistance might be pledged and organised in advance, and the BTWC might consider doing something similar. A limitation is that under Article VII no assistance can be provided until the UN Security Council decides that a violation of the Convention has indeed taken place. However, there is a need to think about the mechanism for coordinating and implementing responses before that point, and to ensure that work does not duplicate the work of WHO and OIE for instance. Greater coordination and cooperation between different agencies should be an aim. This would, however, need to be consistent with allowing for a rapid response. The BTWC was negotiated with states in mind as the source of likely use, but today non-state actors have emerged as possible sources. Identifying an attack as an attack is therefore rather more complex, making a rapid response essential.

10. Turning to the issue of wider cooperation in the peaceful development of biological agents, the implementation of Article X has been a contentious and sometimes difficult issue in BTWC Review Conferences. It is one of those issues on which the success or otherwise of a Review can sometimes turn: progress here will, for many States Parties, be a criterion for judging success. This can be regarded as an opportunity rather than a challenge: developing consensus here will further the overall vitality of the regime, and an enhanced profile for Article X assistance may have an important role to play in universalisation of the BTWC. The Article does not have a mechanism for implementation, which some believe can create difficulties in assessing how effectively it is being implemented. Many activities that are very pertinent to the Convention are already taking place, including at regional level, but are not acknowledged or recognised as such. Thus, a considerable significant amount of activity relevant to Article X may be going unremarked.
11. What an implementation apparatus might look like and how it would function is not clear: the Seventh Review can attempt to develop viable and practical processes to aid implementation. Using the ISU as a clearing house for Article X assistance, in the same way that it is currently a clearing house for national implementation, is an example of potential action here, but more is needed. The Non-Aligned Movement (NAM) made proposals for an Article X mechanism in 2009, in which the ISU could report on requests/offers of assistance made during the year to the intersessional working groups, which could make proposals for the Review Conferences. Moreover, Article X cooperation does need to be in support only of activities that are consistent with the Convention. Dealing with the political consequences of export denials is a problem and a few have argued that the Australia Group is incompatible with Article X, but there are in fact very few denials on these grounds, and such issues do not appear to be hampering implementation of Article X in practice or States Parties' capabilities.
12. The issue probably requires an extended consideration, and therefore making it a standing item in the Intersessional Process may be helpful. In light of the fact that biotechnology is increasingly a globalised business rather than a developed world one, it is in everyone's interest to have a working system that allows global transfer wherever possible transfers and exchanges.

Verification

13. The point above about assisting activities consistent with the BTWC touches on the issues of verification and compliance. CBMs are politically binding on States Parties; national implementation is a legal obligation upon them; but compliance is usually thought of as externally verified, and this continues to be the source of disagreement between States Parties. The verification subject may be seen as having two aspects: verifying that the BTWC is not being contravened (which is relatively clear and agreed upon), and verifying that States Parties are entirely living up to the Conventions obligations, something far harder and more controversial. Debates can often founder on the definitions of compliance and of what exactly is being measured.
14. The position of some, and notably the US, is that technical and political factors mean

that it is not possible to establish a verification system that would give meaningful assurance of compliance. The counter-position is that the legal norm of the BTWC, if it is to remain robust, will require verification machinery to monitor compliance and reduce the likelihood of prohibited activities. It is not controversial to say that, as things stand, there appears to be no way to reconcile these two positions.

15. That, however, does not preclude the pursuit of other ways to constrain misuse of biological agents and maintain confidence in compliance. The Review will need to strike a delicate but feasible balance between development of such measures and recognition that several States Parties will require assurance that the measures are not supplanting the eventual possibility of a verification mechanism. Such measures will focus on the issue of compliance, and the US has suggested that an overhaul of the CBM system might help to increase confidence that the precepts of the BTWC are being adhered to. This may be challenged by States Parties that have stressed the need to keep CBMs and compliance separate, on the grounds that the latter inevitably tends to be thought of as verification. CBMs are a unilateral statement by a state on how it sees itself as complying with the BTWC; verification is about how other states satisfy themselves that compliance is taking place.
16. The US has also suggested that increasing understanding of how States Parties are implementing the BTWC will be beneficial, and that an enhanced consultative process for resolving concerns as they arise, plus a stronger mechanism for the UN Security Council to conduct investigations, would give greater ability to resolve compliance questions.
17. Other States Parties remain committed to the eventual goal of a verification mechanism, arguing that without such a mechanism the BTWC will be incomplete, and that the difficult experience of the Verification Protocol, and the undisputed complexity of the task, should not make a taboo of debates about how to pursue the goal. At the same time, the current impasse is recognised and few argue that it should preclude finding other ways to strengthen confidence in compliance within the BTWC.
18. One option could be to operationalise the BTWC's Article VI, which establishes the right of States Parties to refer cases of alleged use violation of the Convention of biological weapons to the UN Security Council. This could involve actively promoting the availability and modalities of the clarification procedure under Article V. This could involve mechanisms for the necessary clarification procedure under Article V, and establishing a database of qualified experts and laboratories for such investigations, perhaps through the ISU. This would not be a permanent inspectorate, but a more a list of designated people and institutions as a sort of investigative unit. Potentially this may act as a deterrent to possible use, as well as a way to deal with a serious violation of the Convention.
19. However, steps have already been taken to reinvigorate the existing UNSG IAU mechanism – training of inspectors and revising the technical guidelines for the conduct of such an investigation - so it would be wasteful of time, effort and resources to duplicate this just for the BTWC. One option instead might be a recognition that could be codified at the Review Conference that in the event of an Article VI investigation, the States Parties would be content that the UNSG mechanism could be used to deal with any case of alleged use brought to the UNSC and where the Council decided to investigate. In any case, any State may invoke the UN Secretary-General's mechanism for investigating alleged use of biological and toxin weapons in violation of the 1925 Geneva Protocol.
20. Other suggestions have come from Belgium and Australia. Belgium will publish a working paper on this subject shortly, looking at the development of international quality standards by the life sciences industry. These standards exist outside the BTWC treaty framework and even outside the governmental framework, and are about developing international standards to facilitate global trade, investments and communication. It may be possible for States Parties to establish a dialogue with these industries and

propose extra elements that can further BTWC objectives. Governments could also support and call for the creation of global standards. These are industry standards, of course, and so States Parties can have only a limited role in establishing them. Neither should they be seen as removing from Governments prime responsibility for implementing the Convention. However, such standards may have a role to play in raising awareness about the risks related with dual-use items, increasing the threshold for unauthorised use of agents and technologies, and providing an increased level of assurance that life science institutions are complying with the prohibitions and obligations of the BTWC. They may also facilitate international transactions that can be relevant for Article X cooperation.

21. Australia is also submitting a working paper to the ISU, arguing for the Review to establish a working group during the Intersessional Process, which would attempt to draw out a consensus on exactly what constitutes compliance with the BTWC, and how States Parties can better demonstrate that compliance.
22. There may be scope for the Review to make some progress on verification, although it is possible that such progress may require States Parties to agree to disagree on the feasibility of a mechanism, and concentrate on what other measures can be put into place to help provide assurance and confidence in compliance with the Convention.

Science and Technology

23. Of the topics likely to be decisive for success at the Review, the one that probably has the greatest consensus is the evolving impact of science and technology on the BTWC. Challenges here include scientific advances, such as synthetic biology, which may produce new agents; and technological advances, such as garage biology, which may allow the production of biological agents with readily-available technology. Developments in science affect both the scope and the implementation of the Convention, and require a regular process of review and of cross-sector engagement. Reviewing the science and technology will need the active input of scientists; assessing its implications will need national technical experts, and deciding how to respond will need the Meeting of States Parties. (The pace and scope of advance means that the five-yearly Review Conferences are unsuitable for keeping track of developments.) The MSP will need regular topics to monitor, but also the flexibility to respond to new and/or unexpected developments. Scientists, policymakers and diplomats will need to work together, and some more scientist-scientist engagement (for example, between government scientists and their academic counterparts) will be important.
24. Given the near-universal consensus that better review is necessary, Australia has put forward a proposal that attempts to develop a model of what a review process might look like. Under the proposal, each Meeting of States Parties would identify one or more topics to be kept under review during the following year, and invite a factual report on these from international scientific organisations. A Science & Technology Working Group, after discussing the reports, would prepare a report of its own for discussion at the Meetings of States Parties, which in turn would submit recommendations to the Review Conference.
25. Some States Parties have proposed the establishment of a Scientific Advisory Board, along similar lines to that of the Organisation for the Prohibition of Chemical Weapons (OPCW). This has some problems, such as the very different institutional structure of the BTWC and also the wider and more diffuse nature of the life sciences as opposed to chemistry. An another option is that S&T issues should be on a standing item on the agenda for annual meetings, but any decision on actions would be left to a Review Conference. Conversely there may well be occasions when it is to the advantage of an intersessional process on S&T issues and to the States Parties themselves to be able to take some minor decisions without having to wait until the Eighth Review Conference in 2016. There appears to be very clear convergence on the need to review more

frequently, but less on how this might best be put into practice.

The Intersessional Process and the Implementation Support Unit

26. Turning to the future role of the Intersessional Process and the ISU, these two can be seen as the great successes of the Sixth Review Conference, and there appears to be unanimous support for continuing with both. How to develop them further will be another issue for the Seventh Review. The UK has put forward a proposal for a new intersessional work programme, which deploys recurring reviews of key issues through a set of three Task Groups looking at national implementation, cooperation and assistance through Articles VII and X, and the impact of science and technology. The outcomes from these groups would be submitted to the Meeting of States Parties, and it is further proposed that appropriate levels of decision-making should be open to the Intersessional Process rather than deferring until the Review Conferences. The latter would remain responsible for major decisions and the consensus rule would apply to all deliberations, but the Meetings of States Parties could have the mandate to make some decisions.
27. This latter point may not find immediate consensus. Some States Parties have concerns that the Meetings of States Parties should not be seen as mini-Reviews, and decisions on their decision-making role will need careful negotiation. The agenda for the Intersessional Process, however, seems the subject of near-universal consensus, and the number of and length of meetings might be extended. Japan and Australia have also prepared a joint proposal with similar ideas to those proposed by the UK ones, involving three working groups (similar to those proposed by the UK – national implementation, assistance, and science and technology) meeting for one week in August each year.
28. The ISU looks almost certain to be retained after the Review. Prolonging its mandate is not controversial, and States Parties appear keen to see it play a greater role in facilitating CBM submissions, strengthening outreach activities, and promoting universality. These roles are currently within its mandate, and so developing them further may need expansion of its staff. One way to achieve the latter might be through a fellowship programme, under which the ISU could take on an official from a States Party's foreign ministry for a year. As well as expanding the ISU staff, this would also have an impact in capacity building among States Parties.
29. There is however some caution about extending the current mandate; it is probably broad enough as it stands to enable the Unit to support outcomes from the Review Conference. Many have argued that the ISU's task can usefully be expanded into issues such as a CBM database without needing to revisit the mandate. Involving the ISU in universalisation and outreach is also suggested, but the job of convincing non-signatory states to join the BTWC is perhaps one for States Parties, with civil society playing a useful supporting role. A small bureau could be created to assist with coordination and organisational matters during the Intersessional process and would have the ISU Head, the Task Group Leaders, the regional group coordinators and the Depositary Powers as members. There are also several regional processes relevant to ISU and Intersessional Process taking place. These could have a more dynamic relationship with the Convention itself. Some proposals, such as the UK ones, can allow the BTWC to engage with these processes more effectively.

Conclusion

30. On CBMs, the value of the system does not appear to be in dispute, but there is also a growing consensus that the current mechanism does not fully serve the transparency objective and that the data is under-utilized as a means of enhancing confidence in compliance. For the Review Conference, a two-track approach involving an immediate decision to amend the current CBMs (perhaps guided by the Germany-Switzerland-

Norway paper) and a longer-run mandate for a conceptual review during the Intersessional Process might produce the most effective results. Consideration should also be given to the role of the ISU in facilitating the CBM process.

31. General support also exists for improved analysis of CBM data, although there is not yet consensus on what form this analysis might take or who might prepare it. Concerns remain over the value of trend analysis, and over the possible use of CBMs as compliance assessment. Ensuring that appropriate assistance is available for compiling CBM returns, possibly through the ISU, would also be beneficial.
32. On national implementation, consensus is emerging that the Review Conference should task a working group on national implementation (probably jointly with CBMs) which would consider measures to increase transparency about national implementation and facilitate experience sharing, cooperation and assistance. This appears to be a key criterion for success at the Review Conference. Continued engagement with stakeholders, including civil society and industry, on national implementation issues through the BTWC and related activities remains a priority, as does improved coordination with other relevant organizations in the BTWC network on implementation and universalization. The Review Conference could also renew the call for States Parties to nominate a national focal point for the Convention.
33. On Article VII and X, it is widely recognised that the Articles are linked, in that cooperation activities under Article X can play a key role in building national capacities to respond effectively to the use of biological weapons, and thus contribute directly to the implementation of Article VII. On Article VII, the provisions of the article itself are of limited practical application, as in many scenarios involving alleged or suspected use of biological weapons, assistance would be required immediately, without waiting for the decision of the Security Council. The Seventh Review Conference could agree suitable procedures for rapid provision of assistance, and hopes remain that the Conference will go further than the Sixth, which had only "taken note" of the desires of certain States Parties in this regard. National preparedness and coordination of international resources, including through the involvement of relevant international organisations, are also seen as important factors. The Intersessional Process could consider these issues.
34. On Article X, the need for a more coordinated approach to implementation appears to be widely recognised, as is the need for better sharing of information about cooperation activities, given that much relevant activity was taking place but was not identified as being related to Article X, or to the BTWC in general. At least one specific proposal for an implementation mechanism has been put forward. This would involve submission to the ISU of requests for and offers of assistance, to be entered into a database, which the ISU would use to facilitate "matchmaking". This procedure would be supplemented by an open-ended working group on Article X, which would monitor implementation and serve as a forum for discussion of cooperation activities and issues. Many agree on the general approach of this proposal, mentioning the need for some kind of database and matchmaking process, and highlighting the central role of the ISU. The assistance clearing house provisions of the UN's small arms process might be a useful model. Some also emphasise the importance of getting specific requests for assistance, and the possible utility of a structured process of assessing needs.
35. It is important to remember the need to include human, animal and plant health in cooperation activities, and the role that Article X activities could play in building links with international organisations working in these fields. The importance of integrating regional and sub-regional activities into the overall Article X effort is also emphasised, as is the importance of networking and coordination with international organisations to avoid duplication and make the best use of limited resources.
36. On verification and compliance, and despite the differences that remain between states on verification, there are a number of issues that could be raised for further discussion during and after the Review Conference. There is perhaps now an argument to be

made for including the issue of defining compliance as a specific agenda item for inter-sessional consideration by a Task Team or Working Group. This could include setting criteria for compliance, and perhaps some time in the future even the identification of how to measure adherence to these criteria by States Parties.

37. On the ISU and the Intersessional Process, the latter has near-universal support for a continued mandate and for an enhanced role in implementation of the BTWC. There is less on widening the mandate, as some States Parties feel that the ISU's work can be sufficiently developed within the man date that currently exists. Similarly, the continued mandate of the Intersessional Process does not appear to be in any real dispute, and general support exists for an enhancement of its role, particularly in conducting better review of science and technology, and in-depth work on CBMs. The issue of whether it can have any decision-taking capacity is more controversial.
38. To summarise, the potential for substantial agreement at the Review Conference appears to be good. There appears to be little dispute about which issues are in need of decision and further action, and in many of those issues the outline shape of potential agreement is becoming clearer. Key areas where further work is needed include: possible mechanisms for improving the ensurance of compliance; the decision-making capacity, if any, of the Intersessional Process; the shape of science and technology review; and the exact nature of improved implementation of Articles VII and X.

Mark Smith

Wilton Park | October 2011

Wilton Park reports are brief summaries of the main points and conclusions of a conference. The reports reflect rapporteurs' personal interpretations of the proceedings – as such they do not constitute any institutional policy of Wilton Park nor do they necessarily represent the views of the rapporteur.

Should you wish to read other Wilton Park reports, or participate in upcoming Wilton Park conferences, please consult our website www.wiltonpark.org.uk

To receive our e-newsletter and latest updates on conferences subscribe to <https://secure.wiltonpark.org/en/secure/subscribe?action=subscribe>