

Enhancing BWC Implementation: A Modular Approach

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Unlike the treaties prohibiting nuclear and chemical weapons, the 1972 Biological Weapons Convention does not provide for a permanent body for verification and compliance or to assist states parties to implement their obligations under the treaty. Efforts to establish an international verification organization for the treaty failed in 2001, when US opposition led to the collapse of negotiations on a verification protocol to the treaty, which would have established an Organization for the Prohibition of Biological Weapons.

The need for a dedicated BW verification body remains unsatisfied and should be the ultimate goal. Rapid advances in the biological sciences and the resultant greater opportunities for development of BW make verification of compliance with the BWC even more important than when the treaty was negotiated. In addition, thirty years after the treaty's entry into force, surveys have shown that many states parties have not fulfilled all their legal requirements under the treaty, notably the adoption of national implementation measures. Many states require assistance to meet such obligations. In addition, all states, whether they are parties to the BWC or not, have derived additional obligations to prevent biological weapons proliferation, especially to non-state actors, pursuant to Security Council Resolution 1540 of April 2004. No coordinated assistance is available to assist states to implement these obligations.

The most preferable solution to these problems would be for BWC states parties to revisit and adopt a verification protocol which would establish a comprehensive, multilateral verification organization. This organisation would conduct ongoing monitoring and verification of the ban on biological weapons, provide a standing compliance mechanism and provide and/or facilitate the range of assistance needed by states parties. However as there are no immediate prospects that negotiations will be resumed, states must consider alternative routes.

This paper sets out a range of possible mechanisms that could be established or enhanced to fulfil the BW verification and implementation tasks that have been identified. Each mechanism may be established individually. Each is capable of working independently or in combination with others to contribute to a stronger BW regime. They need not be established simultaneously, but can be launched whenever the politics, diplomacy and resources permit. They may be combined in various ways in what we describe as a modular approach. Some are likely to attract ready support in the short term while others may be more controversial. The critical point is to pursue what is possible and add modules as they become feasible.

The paper will describe the functions of each module, where it might be located, either physically or virtually, and what funding opportunities may be possible, as well as the advantages and disadvantages of each option.

An interim BWC secretariat¹

There is currently no standing secretariat for the BWC to carry out the usual functions of a treaty secretariat. The three depositary states, the three UK, US and Russia are responsible for administering the treaty, but in practice this is devolved to the UN Secretariat. The Secretariat hires the assistance of a small number of personnel in Geneva, on a non-permanent basis, to help organize and staff BWC treaty meetings, including review conferences and the series of expert meetings currently being held. This is paid for by assessed contributions from BWC states parties collected in the usual manner by the UN Secretariat.

In New York a small number of UN Secretariat staff collate and distribute the agreed BWC Confidence-Building Measure (CBM) reports. These staff and the necessary accompanying resources are paid for out of the regular UN budget. The UN has made no attempt to collect financial support for what it regards as a minimal activity from BWC states parties.

There is a need for a permanent body, supported by states parties, to perform standard secretariat functions along with the BWC CBMs. It could be established on an interim basis until a more comprehensive OPBW could be established and could be progressively given more tasks as states became comfortable with its role.

Suggested functions

- providing secretariat support for all meetings under the treaty framework (review conferences, meetings of states parties, experts meetings and formal Consultative Meetings held under the Article V consultation procedure in cases of allegations of non-compliance)
- promoting universality of the treaty
- representing states parties collectively in relations with the UN and other bodies (for example the Security Council 1540 Committee and other committees dealing with weapons of mass destruction-related issues)
- liaising between and facilitating the work of the depositary states
- promoting universal compliance with treaty obligations by acting as a focal point for advice and as a clearing-house for treaty-related information
- facilitating the provision of technical assistance to states which are having difficulty implementing treaty provisions, including by matching states willing to provide assistance with those needing it
- following up decisions by states parties made at review conferences and meetings of states parties
- handling the collection, collation and distribution of CBM declarations.

Practicalities

- such a body would need to be established by a states parties meeting at a review Conference or Special Conference and could begin by absorbing the current UN staff involved with BWC matters
- ideally it would require at least five permanent personnel staffing an office located in the UN Secretariat's Department for Disarmament Affairs, preferably in Geneva, which is where BW meetings have traditionally been held
- needed staff expertise would include: administrative, legal, political affairs and public information

- ideally it should be funded by assessed contributions of states parties; alternatives include funding by the depositary states or a trust fund comprising voluntary contributions from supportive governments.

Advantages

- such a body could evolve into or be absorbed into a future international verification and compliance organization for the BWC
- it could provide other BW-related bodies/units, such as those described below with secretariat and other support.

Disadvantages

- some states parties oppose any institutionalization of the BWC as being the ‘thin edge of the wedge’ of a full-scale verification or compliance body along the lines of the Organization for the Prohibition of Chemical Weapons (OPCW).
- It would only be an interim mechanism with no verification or compliance functions.

An enhanced BW use investigation mechanism

The UN General Assembly and Security Council have both authorized the UN Secretary-General, on his own initiative, at the request of a UN member state or when asked by the Assembly or Council, to investigate the alleged use of chemical, biological and toxin weapons.² This was intended to be a provisional procedure for verifying compliance with the 1925 Geneva Protocol pending the adoption of a Chemical Weapons Convention (CWC) and the enhancement of verification of the BWC. The Security Council made clear, however, that it is available to investigate allegations against any UN member state, not just parties to the Geneva Protocol.

Despite the fact that the mechanism has not been used for over a decade it is still, in theory, available and is currently the only international mechanism for verifying alleged BW use. To date the mechanism has carried out on-site inspections where the alleged use took place only with the consent of the state involved. The Security Council could, however, under Chapter VII, order a state to cooperate with the UN Secretary-General in his investigations by permitting an on-site inspection.

At present, the mechanism is a virtual one, comprising lists of experts nominated by states for fact-finding missions; a list of laboratories available for sample analysis; and guidelines for the conduct of missions. The UNDDA was requested to maintain the lists but has not done so regularly. Despite a request by the Secretariat in early 2004 to states to provide new names, few states have responded. The guidelines, agreed by a UN group of experts in 1989, contain guidance on assessing whether to proceed with a fact-finding mission; relevant inspection techniques and modalities; descriptions of expertise that it would be useful to have on a mission; and procedures for accrediting laboratories for analyzing samples.

At a minimum the mechanism could be enhanced by updating the lists and guidelines and keeping them updated. The guidelines could be improved by incorporating lessons learned in Iraq by the UN Special Commission (UNSCOM), the UN Monitoring, Verification and Inspection Commission (UNMOVIC) and the Iraq Survey Group (ISG) in the BW and CW fields. The lists would benefit from adding the names of the hundreds of inspectors with actual on-site inspection experience in regard to BW in Iraq, the first time such an array of

expertise has existed. The United Kingdom has identified procedural and substantive aspects of the existing mechanism that need improvement in a working paper submitted to the July 2004 meeting of BWC experts.³ A simple General Assembly resolution would suffice to require the UN Secretary-General to urgently update and lists and to convene a meeting of experts to revise the guidelines.

Ideally, though, the mechanism should become a permanent body with, in addition to an on-call inspectorate and designated laboratories, a permanent core operational staff. This would enhance its capacity to respond rapidly, thereby making it more likely that a clear determination of non-compliance could be made and the violator identified.

Suggested functions

- regularly update the guidelines for the instigation and conduct of investigations and inspections
- develop inspection protocols and procedures beyond the current guidelines, drawing on UNSCOM/UNMOVIC/ISG experience
- liaise with states to continuously update the list of experts and laboratories
- regularly certify laboratories that may be called on to conduct sample analysis
- acquire and maintain standing equipment to support a verification mission (vehicles, helicopters, detector equipment, sampling equipment, equipment for sample analysis in the field, personal protective equipment etc)
- conduct continuous training of listed inspectors, ideally, given the overlap between CW and BW, in cooperation with the OPCW

Practicalities:

- an enhanced mechanism could remain within the UN Secretariat as part of the UN Department for Disarmament Affairs (UNDDA)
- alternatively, if the UN Security Council mandated a more permanent status for the mechanism it could be given some degree of independence as a subsidiary body of the Council, as UNSCOM and UNMOVIC had
- If set up by the General Assembly the enhanced mechanism would be funded by assessed contribution of all UN member states; if by the Security Council alternative funding arrangements could be considered.

Advantages

- more rapid investigations of alleged use, helping overcome some of the disadvantages of previous cases where delays in dispatching the mechanism led to loss or degradation of evidence, including environmental and other samples, and the dispersal of victims and eyewitnesses.
- the existence of a standing mechanism, ready to be used, might act as a deterrent to biological and toxin weapons use.

Disadvantages

- is would still only be mandated to investigate allegations of use, not non-compliance with other aspects of the BW ban (although a confirmed allegation of use would imply violation of the ban on acquisition, for instance)
- while bringing the existing mechanism up to date should be relatively straightforward, there may be political opposition to a permanent mechanism on several grounds: the cost of maintaining something that might never be used; the fact that all UN member states are not BWC states parties and should not therefore pay for and be subject to such a mechanism (although with the passage of Security

Council resolution 1540 and the Security Council's assumption that WMD proliferation is a threat to international peace and security this is increasingly unsustainable); and the argument that such a mechanism is the 'thin edge of the wedge' towards an OPBW.

A confidence-building measures unit

The second BWC Review Conference in 1986 agreed that states should make annual declarations on various BW-related matters to increase transparency and act as confidence-building measures. These were revised and expanded at the third Review Conference in 1991. States parties are obliged to submit a CBM return by 1 April each year to the UNDDA, which collates and distributes the reports only to states parties. So far only two countries, Australia and the US, have made theirs public (Germany on request).

Participation in the CBMs has been poor, with only 53 states parties submitting a return in 1996, the peak year for submissions.⁴ In 2003 only 33 submitted declarations. Many states parties have never submitted one. Canada has prepared a guide to assist states to complete the CBM forms,⁵ although the low level of participation is not solely attributable to a lack of understanding. As the data is not publicly reviewed and is unlikely to be substantially studied by states parties themselves, there is little incentive for states to fully or accurately report.

A CBM Unit is one way of enhancing and supporting the lacklustre CBM process. Ideally this would be established in combination with a decision making compliance with the CBM reporting requirements mandatory on all BWC states parties and that they should be made public. A further step would be for the Security Council to require all UN member states to submit such declarations.

Possible functions

- ensure that states parties have the CBM report forms
- collect, collate, translate at least into English but preferably all UN official languages and distribute the CBM reports
- analyze reports submitted and engage states in a dialogue about gaps or lack of clarity, perhaps using open source information to supplement the analysis
- assist states with their reporting process, both in terms of gathering the data and including it in the correct form and format
- liaise with states parties over the procedural aspects of reporting (reminding of reporting due dates, providing blank forms)
- provide and facilitate technical assistance for reporting (training, distributing the Canadian 'Guide to CBM Reporting', facilitating assistance between states parties)
- regularly review and update the categories for which states parties are requested to provide information for recommendation to states parties meetings for adoption
- maintain a website providing information on assistance as well as the CBM reports and analytical papers
- enhance the transparency of the CBM process.

Practicalities

- the unit could be established in the UNDDA, preferably in Geneva but perhaps in New York
- it would be funded by assessed contributions of BWC states parties

- alternatively, supportive states may establish and fund an actual or virtual unit which could begin carrying out the functions described above just for participating states (such states would publicly release their reports in addition to information on aspects of treaty implementation not required by the CBMs and provide coordinated and targeted assistance to others)
- such a voluntary unit could be extended to other states by invitation or by ultimately acquiring official status under the BWC.

Advantages

- increased attention given to the CBM process should increase the rate and quality of participation and reporting
- if states parties cannot agree to establish such a unit, it could be established outside the formal treaty structure.

Disadvantages

- a CBM regime, whether voluntary or mandatory, will never be able to deal with states parties intent on deliberately violating their obligations, so this will only ever be a partial measure
- some states will see even a modest CBM unit as the beginning of the slippery slope towards institutionalization of the BWC.

A legal advisors network

Thirty years after the BWC entered into force many states parties have still not adopted national measures, specifically legislation, to effectively prevent and prohibit activity banned by the treaty throughout their territory, as is required by the treaty's Article IV. A study by VERTIC⁶ in 2003 concluded that many of these states lacked knowledge of this obligation, in addition to lacking the necessary resources and expertise to comply with it. The exchanges during the 2003 BWC Experts Meeting on this topic were seen by many states as helpful but insufficient.

Even states that consider themselves as having good measures in place need to regularly review their effectiveness to ensure that they are in compliance with the treaty, particularly in light of the rapid advances in dual-use scientific techniques and equipment. There is thus a need for the continuing assistance to be made available.

In addition, all states need to adopt and implement national measures to prevent non-state actors acquiring and using BW in order to comply with Security Council resolution 1540 adopted in April 2004. The resolution envisages that some states will need substantial assistance to comply and requests those states in a position to do so to provide such assistance. However the resolution creates no framework to coordinate or facilitate this assistance.

An OPBW would have been tasked with providing legal assistance for member states. In the case of the CWC, alongside the assistance provided by the OPCW's Legal Advisor's Office, states parties have established an informal network of legal advisors, comprising national officials with responsibility for reviewing and drafting national implementation measures. This could be emulated for the BWC.

Suggested functions

- promote the obligation to adopt appropriate national implementation measures

- provide information to assist states in adopting national implementation legislation
- establish a database of national implementation legislation and model legislation suggestions
- provide contact details of legal advisors in supportive states
- organize meetings between nominated legal advisors and states parties' representatives during BWC or related meetings to conduct training and provide advice or assistance
- liaise with legal officers of international organizations working on related issues (for example, the World Health Organization (WHO), the Food and Agriculture Organization (FAO), the World Organization for Animal Health, Interpol, the World Customs Organisation and Security Council Committee established under Resolution 1540 and related Council resolutions).

Practicalities

- the least costly option would be a virtual network supported by a website managed by a willing state party or even a non-governmental organization (NGO)
- network members could physically meet, but this could be done on the margins of BWC and related meetings rather than by holding costly special meetings
- if states representing all regions, legal systems and languages can be persuaded to participate, this would greatly increase the scope of the initiative, making technical legal assistance available to more states.

Advantages

- it is cheap and does not require authorization from an official treaty body to begin
- it helps meet a major need identified by all states parties, even those opposed to institutionalization of any kind.

Disadvantages

- such a network would be unable to replicate the level and quality of activity of a permanent legal office of a treaty verification organization like the OPCW
- the initiative may lose momentum if the national implementation issue itself is not kept to the forefront of states parties' concerns (as has happened with the CWC Network of Legal Advisors).

BWC national authorities network

Although the BWC, unlike the CWC, does not oblige states parties to establish a national authority to coordinate national implementation, many states parties have assigned these duties to one or more government departments or agencies. Some states that are also CWC parties have assigned coordination of their BWC implementation to their CWC National Authority. Canada is the only state that has so far established a BWC National Authority under legislation and granted it wide-ranging implementation and enforcement powers.

States parties could strengthen BWC implementation by establishing a network of actual or quasi- BW national authorities or their equivalent. Such a network could promote best practice and share implementation support and assistance. An existing model is the 1994 Convention on Biological Diversity (CBD). States parties to the CBD have each nominated a national focal point to collect and disseminate information on national implementation of their obligations which are linked by a virtual network via the treaty's official website.⁷

Suggested functions

- promote the range of activities needed to ensure national compliance
- provide information to assist states parties to comply with all BWC obligations
- ensure transparency of national implementation
- provide contact details of states parties' national authorities that may provide technical assistance or advice
- host meetings during BWC or related meetings to conduct training, provide advice or assistance and to discuss technical issues (such as developments in export controls and law enforcement)
- liaise with international organizations working on BW-related issues (see examples above).

Practicalities

- a virtual network could be supported by a website provided and maintained by a supportive government or NGO; ideally the network should be supported by an actual unit (see below)
- network members may meet during BWC and related meetings to avoid additional expense.

Advantages

- in the absence of an international verification organisation, this will provide much needed mutual support and assistance to states parties
- it would formalize the type of assistance envisaged under Resolution 1540 but for which no guidance or resources have been provided
- it would be cheap.

Disadvantages

- it would be reliant on the continuing goodwill of supportive states
- if it remains virtual, without a support unit, it may not have sufficient resources to provide much assistance, as nominated national officers rotate out of their posts or have other pressing obligations.

BWC technical implementation support unit

There is a need for a body to coordinate technical assistance to states parties to help them in implementing their various treaty obligations as provided by a range of actors, including other states parties and international and regional organizations. Such technical assistance would go beyond legal assistance to such areas as customs, law enforcement, safety and security of pathogens, some forms of biodefence (compatible with nonproliferation objectives) and assistance in case of a BW attack. There are existing models, in particular the Implementation Support Unit,⁸ established within the Geneva International Centre for Humanitarian Demining (GICHD),⁹ to support states parties to the 1997 Ottawa Landmine Convention.

Suggested functions

- coordinate offers and requests for assistance between states in regard to implementation of the BWC and/or Resolution 1540, perhaps using the Counter-Terrorism Committee's Directory of Assistance as a model

- promote compliance with treaty obligations (for example through presentations at BW-relevant meetings, publishing papers and informational materials)
- act as an information clearing-house (with a website providing information on specific assistance that states, international organizations and regional organizations are willing to provide)
- coordinate and service meetings on BW and related issues (for a range of stakeholders, including BWC states parties, signatories, non-states parties, international organizations, NGOs, industry, academia)
- liaise with international organizations working on issues related to BW (World Health Organisation, the Food and Agriculture Organization, the World Organization for Animal Health, Interpol and the World Customs Organization, the 1540 Committee and other Security Council monitoring bodies).

Practicalities

- a small office could be established either as a stand-alone unit or housed in a supportive institution
- may need as few as 2-3 staff members, depending on availability of administrative support from host institution
- funding could be provided by supportive states, as it is in the Ottawa Landmine Convention case.

Advantages

- the unit could take on tasks without the need for agreement or authorization of BWC states parties
- it can expand personnel as the need for its services increase and requisite funding is obtained
- it would serve to generate support and precedents for further BWC institution-building.

Disadvantages

- it would only be quasi-official and reliant on the political, financial and technical support of a small number of states and may attract the hostility of those opposed to any, even voluntary, institutionalization
- unlike the Ottawa Landmine Convention, the presumption is that BWC states parties have no biological weapons to get rid of: therefore a major function of the landmine unit, assistance to states getting rid of their weapons stockpiles, would not apply.

The modular approach

As will be readily seen, the various mechanisms described above are not mutually exclusive in their domain and functions. For some, the difference simply lies in whether they are established as official bodies by BWC states parties or are set up by supportive states or have some other status. One can envisage several of these initiatives being pursued simultaneously, particularly the enhancing of the UN Secretary-General's fact-finding capability and the provision of some form of implementation support for BWC states parties which currently are bereft of it compared with the nuclear, chemical and landmine areas.

Given the current preoccupation with the threat from non-state actors that the United States and other states have, it might be easiest to achieve movement on modules that together help deal with that threat. The Network of Legal Advisors, the Network of National Authorities and the Technical Implementation Support Unit would all seem to be naturally

complementary as modules in that regard. All help strengthen states' ability to implement their obligations in banning biological weapons and denying access to the relevant materials and technologies to groups such as terrorists as well as rogue individuals. They can also all be established outside the formal BWC treaty framework, with the support of interested states and in some cases NGOs and other stakeholders.

While an Interim BWC Secretariat would be a natural core module from which to build and support all of the other modules, it might be the hardest to launch because it could be seen as embodying the 'threat' of creeping institutionalization. It is not inconceivable, however, that a way could be found to give firm undertakings that such institutionalization would not be implied by the establishment of an interim body. It could, for example, be given a (renewable) sunset clause. While an official interim Secretariat would require the broad agreement of all active states parties to the BWC, and that of the three depositaries, the UN Secretary-General's mechanism could be easily enhanced through a majority vote in the General Assembly or a resolution of the Security Council. Enhancing an existing institution, already authorized by the Assembly and endorsed by the Council is likely to be easier than starting from scratch.

Such is the presumed threat from biological weapons proliferation that it should not be beyond the wit of concerned states to construct elements of a multilateral approach to the problem, one that avoids over-institutionalization while providing much needed implementation support to states parties and some element of verification in case of the nightmare scenario—the actual use of this form of WMD.

¹ Loosely based on a proposal by Nicholas A. Sims for 'Interim Supportive Institutions' for the BWC. See Nicholas A. Sims, 'Nurturing the BWC: agenda for the Fifth Review Conference and beyond', *CBW Conventions Bulletin*, no. 53, September 2001, pp. 3-5.

² UN General Assembly resolutions 37/98D, 13 December 1982 and 30 November 1987; UN Security Council resolution 620, 26 August 1988.

³ 'Enhancing International Capabilities for Responding to, Investigating and Mitigating the Effects of Cases of Alleged Use of Biological or Toxin Weapons or Suspicious Outbreaks of Disease', Working Paper submitted by the United Kingdom to the BWC Experts Meeting, 19-30 July 2004, BWC/MSP/2004/MX/WP.56, 23 July 2004.

⁴ 'Transparency under the BWC: CBMs', *BioWeapons Report 2004* (forthcoming December 2004).

⁵ The Biological and Toxin Weapons Convention Confidence Building Measures: A Guide to Their Completion, DFAIT, Canada, 2004; http://www.opbw.org/cbms/Guide_files/frame.htm.

⁶ See the results of VERTIC's study of BWC states parties' national implementation legislation (*Time to lay down the law: national legislation to enforce the BWC*, VERTIC, London, November 2003).

⁷ 'The Convention on Biological Diversity Around the World', <http://www.biodiv.org/world/map.asp>.

⁸ See <http://www.gichd.ch/mbc/isu/index.htm>.

⁹ See www.gichd.ch.

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