
Seventh Review Conference 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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Follow-up to the recommendations and decisions of the Sixth Review Conference and the question of future review of the Convention

Confidence Building Measures

Submitted by Norway, Switzerland and New Zealand

I. Introduction

1. The Seventh Review Conference is less than six months away. Norway, Switzerland and New Zealand find it important to stimulate informal and concrete discussion among States Parties through the presentation of working papers that are oriented toward the preparation for the Review Conference.
2. This paper, which was authored by Dr. Filippa Lentzos of the London School of Economics, focuses on the confidence building measures (CBMs) and how they are utilized in practice by States Parties, and it contains a range of ideas and proposals for moving forward. It aims to complement the process of updating and revising the CBM forms that it is generally expected will take place at the Seventh Review Conference.
3. The CBMs were agreed at the Second Review Conference in 1986, and enhanced and expanded at the Third Review Conference in 1991. They were not touched at the Fourth Review Conference, for the good reason of not risking interference with the work of the Ad Hoc Group on a strengthening Protocol which might conceivably include CBMs; nor at the Fifth Review Conference, because no final declaration was issued and the only decision reached was to hold intersessional meetings on specific topics in 2003-2005, which did not include CBMs. All that could be agreed at the Sixth Review Conference in 2006 was to entrust certain CBM-related functions to the newly-established Implementation Support Unit. Very little of substance could be agreed. Instead a commitment emerged to do at the Seventh Review Conference what could not be done at the Sixth: to give CBMs the “further and comprehensive attention” that they merit. This will involve not only updating and revising the CBMs, but also a consideration of their current use and purpose.

II. The Purpose of CBMs

4. Central to the current compliance structure of the Biological Weapons Convention (BWC) are the confidence building measures. Their primary aim is to enhance transparency

about national biodefence programmes to prevent concerns that these might be in breach of the Convention.

5. Much of the preparatory work for the Review Conference has focused on ensuring that the CBMs remain relevant and provide the appropriate information to States Parties. Revisiting the content of the information exchanged through the CBMs was, for instance, the aim of a series of three workshops convened by the Geneva Forum in collaboration with the LSE, and together with the Governments of Switzerland, Germany and Norway, that took place in 2009-2010. A comprehensive report of the workshops was put together and distributed at the 2010 Meeting of Experts, a presentation of the e-platform discussions that followed the workshop series was given at the 2010 Meeting of States Parties, and a Working Paper with proposed revisions is being prepared for submission by Germany, Norway and Switzerland to the Review Conference in 2011.

6. Transparency, however, is about something more than just the availability of relevant information. It is also about usefulness. It is about taking note, reflecting, analyzing and assessing the information exchanged, and ensuring that any outstanding and emerging questions are answered. There is currently little knowledge of how States Parties use the completed CBM returns submitted by other States. There is likewise little knowledge about the extent to which States Parties feel the CBMs provide the necessary level of transparency and whether they actually build confidence.

III. Assessing CBM returns

7. The annual report of the Implementation Support Unit (ISU) provides aggregate statistics on the number of States Parties that have accessed the restricted area of the BWC website. This area is currently the only place States Parties can access CBM submissions, and although it also provides some other information,¹ the statistics provide a good proxy for the number of States Parties accessing CBM returns.

8. In 2008, when these statistics were first made available, forty-four States Parties had used the restricted area. In 2009, forty-five States Parties had used it; in 2010, thirty-seven States Parties had used it. Table 1 illustrates how these figures compare with the numbers of States Parties to the Convention and the numbers of States Parties submitting CBMs.

Table 1

The number of States Parties submitting and accessing CBMs

| | <i>SP to the BWC</i> | <i>SP submitting CBMs</i> | <i>SP accessing restricted area</i> |
|------|----------------------|---------------------------|-------------------------------------|
| 2008 | 162 | 62 | 44 |
| 2009 | 163 | 64 | 45 |
| 2010 | 163 | 72 | 37 |

9. The number of States Parties accessing the restricted area, and by extension CBM returns, is remarkably low, compared with the number of States Parties to the Convention, as well as with the number of States Parties submitting CBMs. Less than one third of States Parties to the BWC and an equivalent number of roughly two thirds of States submitting

¹ The restricted area also provides details of national points of contact, details for obtaining or providing assistance, and information on the results of efforts to promote universalization.

CBMs accessed the restricted area in 2008 and 2009, while only about one fifth of States Parties to the BWC and an equivalent number of about half of the States submitting CBMs accessed it in 2010.

10. It is somewhat surprising that the number of States Parties accessing CBMs decreased in 2010 compared to the previous two years. In 2008 and 2009, the numbers were comparable, but in 2010, when there were more CBM submissions than ever, there were significantly fewer States accessing them.

11. However, while the number of States accessing CBMs fell in 2010, the number of States Parties re-accessing the restricted website increased. Of the forty-four States Parties that used the restricted area in 2008, two accessed it, on average, more than once a day; nine accessed it more than once a week; eighteen accessed it more than once a month; and a further fifteen accessed it at least once. Comparable figures can be seen for 2009: Of the forty-five States Parties that used the restricted area, one accessed it, on average, more than once a day; seven accessed it more than once a week; eighteen accessed it more than once a month; and a further nineteen accessed it at least once. Of the thirty-seven States Parties that used the restricted area in 2010, four accessed it, on average, more than once a day; thirteen accessed it more than once a week; twenty-seven accessed it more than once a month; and a further ten accessed it at least once. These statistics, illustrated in Table 2, may indicate an increased usage of the CBM returns, albeit by a fewer number of States.

Table 2

The number of times States Parties access the restricted area of the BWC website

| | <i>>365 times</i> | <i>>52 times</i> | <i>>12 times</i> | <i>≥1 time</i> |
|------|----------------------|---------------------|---------------------|----------------|
| 2008 | 2 | 9 | 18 | 15 |
| 2009 | 1 | 7 | 18 | 19 |
| 2010 | 4 | 13 | 27 | 10 |

IV. Analyzing CBM's

12. There is very little public information on how individual States Parties use the CBM returns once they have accessed them. There is one significant exception to this: one State Party produces, through statutory requirement, a public compliance report that not only provides an assessment of its own adherence to arms control, nonproliferation and disarmament agreements, but also an assessment of the adherence of other States to their obligations. These reports state that CBMs are central to the compliance assessments made, and they regularly note whether certain States Parties have yet to submit a CBM return, that some only do so intermittently, and that while some States do submit returns these have either not declared past offensive programmes or current biological research and development activities.

13. Other States Parties use CBMs in a less formal – and less public – way, but still in the way they were originally intended: as a component of compliance assessments. For instance, one State Party contacted looks at all CBMs submitted each year for declarations of BSL4 facilities and biodefence programmes, and then compares these with what was declared in previous submissions as well as with available information from other sources. If any questions arise, these are dealt with on a bilateral basis and this has been done on several occasions. Other States Parties use them more on an ad hoc basis, and often narrow their focus to only one or two declarations of interest.

14. The CBMs are, however, also used in different ways than originally envisioned. A couple of States Parties contacted said they use the pooled information in their own CBM returns as a means by which to stay on top of what is going on nationally. With biodefense efforts often supported by a number of different funders, the CBMs are seen as an opportunity for an additional layer of oversight on the full range of biodefense efforts undertaken countrywide. Another State Party focuses primarily on the declarations of legislation, regulations and other measures in CBM E and uses these as one way to identify regional gaps in national implementation that it can help address through workshops and bilateral outreach. Similarly, the BWC Implementation Support Unit uses CBM E submissions to annually update its national implementation database. A State Party, which had recently submitted its first CBM, said it had used the returns of other States Parties as guides for how to complete the forms.

V. Recommendations

15. While there is little knowledge of how States Parties use CBM returns, it is clear from the initial assessment presented here that it is only a subset of States Parties that are actually accessing them. The reasons for this are probably many, ranging from lack of resources and language barriers, through lack of perceived utility,² to low threat assessments of national biodefence programmes.

16. Key to the upcoming Review Conference's attention to CBMs is updating and revising the current forms. An essential element that goes hand-in-hand with this process is a complementary discussion on how States Parties can best utilise completed CBM returns.

17. Currently, the process of comparing information from several returns in any one year is cumbersome and outdated. Each return must be downloaded, printed out and compared manually. A similar process must be adopted to compare information from returns in different years. States Parties, and especially those lacking resources to devote to CBM analysis, could benefit from a more user-friendly presentation of the information submitted in the forms. It would therefore be useful for the Review Conference to **consider how the format of reporting can be moved away from a series of static PDF files to one in which the data is presented in a more interactive manner.**

18. CBM returns are at present only made available in the language in which they are submitted. Language could therefore form a barrier to CBM use, and to aid States Parties for which this is a concern, it is recommended that the Review Conference **explore the financial feasibility of having CBM returns translated into all UN languages.**

19. In the interest of maximizing transparency, or disseminating the relevant information as widely as possible, many States Parties are now making their CBM returns publicly available or are working toward doing so.³ Making these submissions public can greatly enhance their function. The knowledge, experience and expertise of civil society can contribute to the CBM communication process and to enhancing transparency between States Parties in several ways, including through: assisting States Parties to collect and collate information for the CBMs; monitoring States Parties' biodefense activities; collecting data from open sources; and processing the data submitted to generate accessible information. Restricting access to CBM returns risks building suspicion rather than

² For instance, none of the States Parties contacted that had submitted a CBM for the first time in the last three years said 'use' was an incentive for them to submit.

³ In 2010, 15 States Parties made their CBMs publicly available (Australia, Austria, Czech Republic, Denmark, Finland, Germany, Ireland, Lithuania, Norway, Portugal, Romania, Sweden, Switzerland, the United Kingdom, and the United States), up from 11 in 2009.

confidence among important civil society stakeholders, and misses an opportunity to engage these same stakeholders in processes that might actually enhance the quality and completeness of the information submitted. However, given that most of the CBM returns will continue to be published on the restricted area of the BWC website, the CBMs will only enable limited transparency. They cannot be utilized by the BWC community as a whole. In an effort to remedy this, it is recommended that **the current mandate of the ISU be expanded from “compiles and distributes data on CBMs” to “compiles, analyses and distributes data on CBMs”** to allow for an objective trend analysis that would highlight qualitative and quantitative aspects without making reference to individual countries.

20. The ISU analysis should be presented annually to States Parties. This could be done through the addition of an agenda item at Meetings of States Parties. A bolder proposal would be to establish some kind of ‘CBM review’ session at each of the annual meetings. The ISU analysis would form the basis of the discussions, but these sessions could also be used to share experiences, encourage collaboration and develop good practices in relation to the CBM process. They could also be used to offer constructive feedback to States Parties on individual CBM returns, and if there are questions these could be answered and concerns clarified in an open and cooperative manner. Furthermore, the repeated and collective consideration of CBM declarations in such dedicated sessions could act as a powerful incentive for States Parties to take the reporting seriously, and provide a helpful indication of the extent to which States Parties feel the CBMs provide the necessary level of transparency.

21. The upcoming Review Conference’ attention to CBMs should be both focused and wide-ranging, both near-sighted and far-sighted. It must consider how to review and update the current forms, as well as how the purpose and use of CBMs have and will evolve. To develop a clearer, collective vision for their longer term evolution, **a CBM working group should be established by the Seventh Review Conference.** This working group would conceptually discuss whether the current CBMs provide the necessary level of transparency today and in the future, or whether additional types of information or alternative means would provide additional transparency. The working group could also review the implementation of CBMs, contribute to raising awareness about them and stimulating greater involvement, as well as function as a means of sustaining the political focus on the mechanism during the intersessional years.

22. It is hoped that the recommendations presented here, along with the recommendations presented in the complementary Working Paper on proposed revisions to the current CBM forms, go some way toward initiating that discussion.