

Strengthening the Biological Weapons Convention

Briefing Paper No 3 (Third Series)

How to enable fuller participation in the Confidence Building Measures (CBMs)

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Division of Peace Studies, University of Bradford, Bradford, UK

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HOW TO ENABLE FULLER PARTICIPATION IN THE CONFIDENCE BUILDING MEASURES (CBMS)

by Filippa Lentzos* and Graham S. Pearson†

1. The Seventh Review Conference in December 2011 decided¹ that *the following other items will be discussed during the intersessional programme in the years indicated:*

(a) *How to enable fuller participation in the CBMs (2012 and 2013);*

2. In considering how this topic might be addressed it needs to be recalled that at the Seventh Review Conference, the States Parties agreed with regard to Article V of the Convention that:

22. The Conference emphasises the importance of the exchange of information among States Parties through the confidence-building measures (CBMs) agreed at the Second and Third Review Conferences. The Conference welcomes the exchange of information carried out under these measures and notes that this has contributed to enhancing transparency and building confidence.

23. The Conference recognises the urgent need to increase the number of States Parties participating in CBMs and calls upon all States Parties to participate annually. The Conference notes that since the Sixth Review Conference, there has only been a slight increase in the percentage of State Parties submitting their CBMs. The Conference emphasises the importance of increasing and continuing participation in the CBMs.

24. The Conference recognises the technical difficulties experienced by some States Parties in completing full and timely submissions. The Conference urges those States Parties, in a position to do so, to provide technical assistance and support, through training for instance, to those States Parties requesting it to assist them to complete their annual CBM submissions. The Conference notes the decision to update the CBM forms.

25. The Conference notes the desirability of making the CBMs more user-friendly and stresses the need to ensure that they provide relevant and appropriate information to States Parties.

* Filippa Lentzos is a Senior Research Fellow in the Department of Social Science, Health and Medicine at King's College London, Strand, London WC2R 2LS, UK

† Graham S. Pearson is a Visiting Professor of International Security in the Division of Peace Studies at the University of Bradford, Bradford, West Yorkshire BD7 1DP, UK.

¹ United Nations, The 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, Geneva, 5 - 22 December 2011, *Final Document*, BWC/CONF.VII/7, 13 January 2012. Available at <http://unog.ch/bwc> and at <http://www.opbw.org>

26. *The Conference recalls that the Third Review Conference agreed, “that the exchange of information and data, using the revised forms, be sent to the United Nations Department for Disarmament Affairs no later than 15 April on an annual basis”. The Conference reaffirms that the data submitted in the framework of the annual exchange of information should be provided to the Implementation Support Unit within the United Nations Office for Disarmament Affairs and promptly made available electronically by it to all States Parties according to the updated modalities and forms in Annex I. The Conference recalls that information supplied by a State Party must not be further circulated or made available without the express permission of that State Party. The Conference notes the fact that certain States Parties made the information they provide publicly available.*

3. The Seventh Review Conference also agreed – as noted in paragraph 26 above – *updated modalities and forms in Annex I.* It is worth noting that whilst a number of carefully considered proposals for modifying the CBM regime were submitted in a working paper² (BWC/CONF.VII/WP.9 dated 14 October 2011) by Germany, Norway and Switzerland only some of these proposals were accepted and others were not. This was disappointing as the proposals submitted in Working Paper No. 9 had been developed from ideas arising from three workshops organized by the governments of Switzerland, Norway and Germany together with the Geneva Forum in collaboration with the BIOS Centre of the London School of Economics. These workshops had brought together key experts from a number of States Parties across the Regional Groups and the proposals presented were a best judgment of where their consensus was, and as such might have been expected to gain wider support at the Review Conference. Their failure to do so probably reflects the shortage of time during the Review Conference itself to give consideration in depth to the proposals that had been submitted.

4. The consideration of the topic *How to enable fuller participation in the CBMs* in the Intersessional Programme in both 2012 and 2013 provides a welcome opportunity to give further consideration to the CBMs and how these may be improved so as to enable fuller participation and to inspire the greatest amount of transparency and confidence.

Towards Fuller Participation

5. The value of the Confidence-Building Measures process which was agreed at the Second Review Conference in 1986 and extended at the Third Review Conference in 1991 has long been recognised. The Seventh Review Conference in 2011 was the first time that the Confidence-Building Measures regime had been considered further – some 20 years after its previous consideration. It is important to recognise that the agreement of the CBM regime at the Second and Third Review Conferences and its updating at the Seventh Review Conference means that the CBM process is a **politically-binding** requirement. It is **not** in any sense voluntary.

² Germany, Norway and Switzerland, *Review and update of the Confidence-Building Measures*, Working Paper, BWC/CONF.VII/WP.9, 14 October 2011. Available at <http://unog.ch/bwc> and at <http://www.opbw.org>

6. In considering how to achieve fuller participation, the first step is to consider **what** information should be exchanged in the Confidence-Building Measures regime in order to build confidence, and secondly, to ask whether the provision of the information annually to the Implementation Support Unit in Geneva for circulation to the other States Parties is **sufficient** to build confidence – or whether confidence would be increased if a mechanism were established whereby States Parties could seek clarification regarding any uncertainties or possibly even discuss the information submitted – prompted perhaps by an annual ISU analysis of the substance of the CBM returns. As a Norway, Switzerland and New Zealand Working Paper³ submitted to the Seventh Review Conference (BWC/CONF.VII/WP.21) made clear:

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.

After all, States Parties are more likely to submit their annual CBMs if it is evident that they are important to the international community and are not simply the provision of information that is filed with nothing being observed other than whether or not a particular CBM has been submitted. A third step is to examine whether the mechanism whereby the information is collected nationally and then submitted to the Implementation Support Unit can be streamlined and made more efficient.

7. This Briefing Paper sets out to examine these three aspects.

What information is required to build confidence?

8. As noted in the Final Declaration of the Seventh Review Conference the CBMs have *contributed to enhancing transparency and building confidence*. In considering what information is required to build confidence, there are two aspects – first, what information is required and second, is the required information clearly and unambiguously stated. The updated CBMs as detailed in Annex I are considered below from this point of view:

Declaration form on Nothing to Declare or Nothing New to Declare for use in the information exchange

CBM A Part 1 **Exchange of data on research centres and laboratories**

Part 2 **Exchange of information on national biological defence**

³ Norway, Switzerland and New Zealand, *Confidence Building Measures*, Working Paper, BWC/CONF.VII/WP.21, 1 November 2011. Available at <http://unog.ch/bwc> and at <http://www.opbw.org>

	research and development programmes
CBM B	Exchange of information on outbreaks of infectious diseases and similar occurrences caused by toxins
CBM C	Encouragement of publication of results and promotion of use of knowledge
CBM D	Deleted at Seventh Review Conference
CBM E	Declaration of legislation, regulations and other measures
CBM F	Declaration of past activities in offensive and/or defensive biological research and development programmes
CBM G	Declaration of vaccine production facilities

9. Declaration form on Nothing to Declare or Nothing New to Declare for use in the information exchange. This is primarily a tool that provides a useful summary of how a particular CBM submission has changed from that previously submitted. The addition of the new column headed “Year of last declaration if nothing new to declare” provides a gentle encouragement to States Parties to submit their CBMs annually.

10. CBM A Part 1 **Exchange of data on research centres and laboratories.** This requires information in Form A, part 1 (i) on any maximum containment facilities (ie BL4 or equivalent) in the State Party. If the State has no BL4 or equivalent facility then information is requested in Form A, part 1 (it) on what is the highest biosafety level of facilities in the State Party. This information provides a basic understanding of the capability of the State Party to handle biological materials that are potentially hazardous and require containment facilities.

11. CBM A Part 2 **Exchange of information on national biological defence research and development programmes.** This requires information in Form A, part 2 (i) , part 2 (ii) and part 2 (iii) on any national biological defence research and development programmes. This is an area of the CBM regime where the language which was adopted at the Second and Third Review Conferences in 1986 and 1991 is outdated. The information that is required to create transparency and to build confidence is whether the State Party is engaged in programmes to counter outbreaks of disease whether caused naturally, accidentally or deliberately. The use of language including the words “national defence” is misleading as technically there is **no** difference between a programme to counter the outbreak of disease that is carried out in a health department, one concerned with homeland security, or one concerned with national defence – and to seek information on only one element of such a programme that may well be carried out in different government departments in different countries does **not** increase transparency or build confidence. It is strongly recommended that the States Parties in their consideration of the CBM process in 2012 and 2013 address this anomaly and agree

language that is clear and not liable to different interpretation in different States Parties. Such clarity will facilitate not only increased participation in the CBM regime but also increase transparency and build confidence.

12. CBM B Exchange of information on outbreaks of infectious diseases and similar occurrences caused by toxins. This seeks the provision of information on outbreaks of infectious diseases and similar occurrences caused by toxins that seem to deviate from the normal pattern as regards type, development, place, or time of occurrence. Information is required in Form B on *Information on outbreaks of infectious diseases and similar occurrences, that seem to deviate from the normal pattern*. However, as noted at the Seventh Review Conference, no universal standards exist for what might constitute a deviation from the normal pattern. Consequently, it is very much up to the State Party to judge whether an outbreak seems to deviate from the usual pattern. The updated modalities agreed at the Seventh Review Conference do include the helpful paragraph that

3. The declaration of electronic links to national websites or to websites of international, regional or other organizations which provide information on disease outbreaks (notably outbreaks of infectious diseases and similar occurrences caused by toxins that seem to deviate from the normal pattern) may also satisfy the declaration requirement under Form B.

As States Parties around the world are increasingly participating in global networks for the reporting of disease outbreaks whether in humans, animals or plants, the declaration of such electronic links to national websites or the websites of international, regional or other organizations which provide information on disease outbreaks is clearly the way to increase participation in the CBM regime.

13. CBM C Encouragement of publication of results and promotion of use of knowledge. This CBM requires little action by the States Parties as the benefits of making the results of work in the life sciences publicly available is increasingly recognized. The publication of the outcome of ongoing work on the internet and elsewhere contributes to transparency and building confidence.

14. CBM E Declaration of legislation, regulations and other measures. As Article IV of the Convention requires that:

Each State Party to this Convention shall, in accordance with its constitutional processes, take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition, or retention of the agents, toxins, weapons, equipment and means of delivery specified in article I of the Convention, within the territory of such State, under its jurisdiction or under its control anywhere.

the provision of the information in Form E **Declaration of legislation, regulations and other measures** should present no difficulty to any State Party as each State Party will nationally wish to ensure that the Convention is being effectively implemented. Provision of this information to other States Parties under the CBM regime increases

transparency and builds confidence – and will directly contribute to facilitating cooperation and assistance. The latter arises as both parties in any cooperation and assistance activity will want to be assured that the information and materials being provided under the cooperation and assistance cannot be misused.

15. CBM F Declaration of past activities in offensive and/or defensive biological research and development programmes. This CBM is an important element for increasing transparency and building confidence between States Parties as it requires the submission of information on any offensive and/or defensive biological research and development programmes since 1 January 1946. It is recommended that the States Parties in their consideration of the CBM process in 2012 and 2013 give further consideration to this CBM. A particularly important element under CBM F has always been the declaration of any past offensive programme and it is recommended that the States Parties in 2012 and 2013 should address how transparency could be increased and confidence built that any such past offensive programme has ceased. The States Parties need to recognize, as already noted above, that **technically** programmes to counter the outbreak of disease, whether natural, accidental or deliberate, are **identical** regardless of which government department they happen to be carried out within. It is strongly recommended that the States Parties in 2012 and 2013 agree that Form F should be amended to require the provision of information on any past offensive programmes and, importantly to require States Parties who declare any such past offensive programmes to provide information on the current activities of any of the **facilities** that were engaged in such past offensive programmes.

16. CBM G Declaration of vaccine production facilities. This CBM is currently limited to the declaration of *all facilities, both governmental and non-governmental, within its territory or under its jurisdiction or control anywhere, producing vaccines licensed by the State party for the protection of humans.* [Emphasis added]. Transparency would be increased and confidence enhanced if this CBM were to be extended to also include vaccines licensed for the protection of **animals**. In addition, consideration could usefully be given to the ideas originally proposed⁴ in 2001 (BWC/CONF.V/COW/WP.1 dated 16 November 2001) for the declaration of plant inoculant and biocontrol agent facilities.

What should be done with the information submitted annually in the CBMs?

17. At present, the ISU provides an informative tabulation of what CBMs have been submitted each year by the States Parties. There is at present no analysis of the information contained in the CBMs and this is something that the Meetings of Experts and the Meetings of States Parties in 2012 and 2013 could usefully discuss. After all, if States Parties know that what they are submitting is going to be analysed – and, better still, considered in a session of the annual Meeting of States Parties – this provides useful encouragement to all States Parties to submit their CBMs and to ensure that they are

⁴ South Africa, *Strengthening Confidence-Building Measures*, Working Paper, BWC/CONF.V/COW/WP.1, 16 November 2001. Available at <http://unog.ch/bwc> and at <http://www.opbw.org>

comprehensive. It is recommended that the 2012 and 2013 Meetings should agreed to recommend that the ISU provide an objective trend analysis of the annual CBM submissions for consideration at the annual Meeting of States Parties that would highlight qualitative and quantitative aspects without making reference to individual countries. In addition, the 2012 and 2013 Meetings should also consider how best confidence might be increased by establishing a mechanism whereby States Parties could seek clarification regarding any uncertainties or possibly even discuss the information submitted – prompted perhaps by the annual ISU analysis of the substance of the CBM returns.

18. Recognition should be given to the breadth of stake-holders engaged in the life sciences and having a direct interest in building international confidence that their States Parties are submitting full and comprehensive CBMs. Consequently, States Parties should recognize that there are significant benefits to enhanced transparency by making their CBMs publicly available – as an increasing number of States Parties have done over the past decade. Such transparency will actually help States Parties collect the necessary information as the stake-holders will have an interest in ensuring that information is accurately submitted. All of which contributes to achieving fuller participation by States Parties.

How can the submission of CBMs be streamlined and facilitated?

19. It should be noted that the *Decisions and Recommendations* Section of the *Final Document* of the Seventh Review Conference in Section *F Confidence-Building Measures* includes the requirement that *the Implementation Support Unit shall, in cooperation with States Parties, continue to examine and develop options for electronic means of submission of CBMs.* There would be benefits in giving consideration during the meetings in 2012 and 2013 to sharing information on how States Parties that submit annual CBMs obtain and submit such information. States Parties that have submitted CBMs each year should be invited to share their experience so that best practice can be identified and States Parties that have only recently submitted a CBM should also share their experience so that their national difficulties can be appreciated by other States Parties and assistance offered and steps taken to facilitate the process. In addition, consideration should be given to whether the ISU could create an on-line interactive CBM declaration form that encourages States Parties to submit the necessary information.

Conclusions

20. The Meetings of Experts and Meeting of States Parties in 2012 and 2013 in considering *How to enable fuller participation in the CBMs* have a real opportunity to improve transparency and build confidence among the States Parties. The opportunity needs to be taken to ensure that the information required for the individual CBMs is unambiguous and also comprehensive. The submitted CBMs should be analysed and the analysis considered during a session of the annual Meeting of States Parties. And the procedures for submitting the CBMs should be reviewed so as to help all States Parties acquire and submit the required information.