

REVISITING BWC VERIFICATION

A Stepping Stone Approach

By Jez Littlewood

Policy Brief 1 of 7

August 2018

The Verification Protocol

By 2021 it will have been 20 years since the negotiations of the Ad Hoc Group ended in failure. Verification of the Biological and Toxin Weapons Convention (BWC) remains a possibility, but even if states parties were to reach a decision to begin new negotiations on an additional agreement to the Convention in 2021 it would be at least five years before negotiations would be completed, and likely another three to five years before the required ratifications were deposited to allow entry-into-force. A legally-binding compliance architecture for the BWC is, therefore, at least a decade away. However, even that is optimistic because in the political, security, scientific

and technical, legal, and normative realms the world is more complex than it was 20 years ago. A simple return to the mandate of the AHG or the text of the BWC Protocol is not feasible.

That is not to say, however, that the principles, concepts, mechanisms, or procedures developed by the AHG over seven years should be rejected or ignored in their entirety. States parties recognise this given that the mandate for the fifth meeting of experts (MX5) of the current intersessional work programme entails 'Consideration of the full range of approaches and options to further strengthen the Convention and its functioning through possible additional legal measures or other measures in the framework of the Convention.'¹ As MX5 begins its work some central lessons from

the BWC, its evolution over the last 48 years, and the negotiations on the BWC Protocol are worth considering in context.

Historical observations

One of the key historical lesson from the BWC is that incremental evolution to the modalities of implementation is more likely to be agreed, and to deliver tangible improvements to the operation of the Convention, over time. The additional understandings generated by successive review conferences and the series of Meetings of Experts and Meetings of States Parties to tackle both specific and general issues within the BWC demonstrate this, as does the emergence of regional and other meetings focused on the BWC, but formally separate from it. Examples of the former include the Meeting of Experts that de-

vised the Confidence Building Measures in 1987, the Verification Experts Group (VEREX) between 1992 and 1993, and the four intersessional work programmes

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from 2003 onwards. The latter includes the Canada-China workshop of September 2016², the Austrian seminar of 2015³, and the on-going work since 2003 of the Inter-Academy Partnership (IAP) on biosecurity and biotechnology issues.⁴

In considering the evolution of the BWC, and other arms control and disarmament agreements, it is apparent that the submission of information to other states parties is the essential foundation of focused and effective activity. Absent information about implementation of the BWC at the national level, states parties can neither assure themselves that the purposes of the preamble and the provisions of the Convention are being realised, nor ensure that each party is implementing its legal obligations. In addition, without information about



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implementation challenges, states parties cannot develop additional understandings and mechanisms to strengthen the Convention. From the First Review Conference in 1980, there have been calls for further information sharing and more formal submission of information to states parties. Reducing the information deficit is at the heart of many challenges facing the Convention. The information sharing developed under the CBMs recognised this and it was not happenstance that the legally binding declarations envisaged under the BWC Protocol were developed around the CBMs.

Another aspect of note is that states parties have consulted with each other in a variety of different ways. Developing Article V of the BWC has, like the submission of information, been a constant since 1980. A formal consultative meeting in 1997 represents a specific example of this process, but a range of options could be developed for a range of problems. The spectrum of options for consultation and clarification between and among states parties was purposefully broad under Article 8 of the Protocol (consultation, clarification and cooperation) and wide-ranging in Article 6 of the Protocol (follow-up after submission of declarations), including voluntary clarification visits. Since 2001 some states parties have developed a peer-review mechanism and visits to bolster confidence in implementation of the BWC nationally.

An enduring aspect of the evolution of the BWC has been concern about the ability to initiate, conduct, and report on any inves-

tigation of alleged use of biological and toxin weapons. The emergence of the United Nations Secretary General's mechanism to investigate alleged use of chemi-



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cal and biological weapons from 1979 onwards served as one of the supporting elements of the wider anti-biological weapons regime after the Convention entered into force. Upon entry into force of the CWC, toxins were also covered by the investigation provisions of the CWC. The UN General Assembly requested the Secretary General to update the mechanism in 2006 when it adopted the United Nations Counterterrorism Strategy, and investigations of alleged use and assistance and protection in the event of use of biological or toxin weapons have been topics within the intersessional work programmes of the BWC. During the BWC Protocol negotiations the principles and basic provisions for investigations (Article 9) were agreed relatively quickly, denoting the importance of the issue to states parties and that experience and practice in other areas were quickly adopted and adapted for the

Protocol. Seventeen years on from the end of the AHG, the principles and practices of investigations are recognisable although some adaptation and evolution will be necessary for the third decade of the twenty-first century. The urgency of this issue has been highlighted in the Secretary General's Agenda for Disarmament⁵ and the call for action in this area is one that remains ripe for BWC-United Nations cooperation.

A final observation from the context of the evolution of the Convention is that states parties have consistently recognised that strengthening the BWC requires action across all its substantive articles. Confidence building measures were rooted in both articles V and X of the BWC; the AHG was mandated to consider measures to enhance Article X of the BWC as one of the six identified areas of activity,⁶ and intersessional work programmes have also mandated a focus on international cooperation and assistance.

An incremental, inclusive, practical & forward-looking approach

Disarmament is an on-going task for individual states party and states parties collectively. Implementation of the Convention and achievement of the central objective of states parties for a world free of biological and toxin weapons is both a practice and a process that involves many actors undertaking discrete activities over time. A world free of biological and toxin

weapons is not something tangible that a state, or the community of states, ever achieve in final form. It is an on-going process that requires "tending" as Flowerree noted.⁷ MX5 presents an opportunity for states parties to reframe their understanding of strengthening the Convention that avoids an implicit dichotomy of approaches: incremental and on-going enhancements to strengthening versus the single legally binding agreement model. A legally binding additional agreement or series of agreements over time are not mutually exclusive with incremental adoption of procedures and mechanisms that enhance implementation of the BWC.

As the Convention nears its fifth decade of implementation this political dichotomy needs to be replaced by an approach that is incremental, inclusive, practical and forward-looking. This can be achieved by exploring various mechanisms and approaches for different kinds of challenges facing the BWC. The roots of these mechanisms can be found in the additional understandings reached at previous review conferences, in mechanisms outside the formal Convention but clearly connected to its objectives, in other agreements related to international peace and security, and in previously unsuccessful efforts at strengthening the Convention, i.e. proposals that did not gain consensus support at previous review conferences, procedures and mechanisms within the Protocol to the BWC, and proposals that have not been fully implemented under the intersessional work programmes since 2003. In that regard a modular or a stepping stone approach to strengthening the Convention is reflective of both the historical realities of the BWC and proposals that have emerged since 2001.⁸ In the period up to 2021, states

parties can lay the groundwork for more substantive plans for consideration at the Ninth Review Conference. That groundwork can be developed in five areas: information-sharing under the confidence-building measures; peer review visits; consultation and clarification procedures for a range of issue under Article V of the Convention; responding to suspected use of biological and toxin weapons via an agreed investigation procedure; and, measures to enhance peaceful cooperation and capacity building among states parties.

The Policy Brief Series on Revisiting BWC Verification

The objective of this policy brief series is to revisit the Protocol, and to begin to chart a modular way forward to strengthening the BWC in the near- and medium-term. The series is composed of the following briefs:

- **Policy Brief 1: A stepping stone approach** by Jez Littlewood
- **Policy Brief 2: Changes in science and technology since VEREX** by James Revill
- **Policy Brief 3: Information-sharing** by Filippa Lentzos
- **Policy Brief 4: Visits** by Filippa Lentzos
- **Policy Brief 5: Consultations and clarifications** by James Revill
- **Policy Brief 6: Investigations** by Jez Littlewood
- **Policy Brief 7: Peaceful cooperation** by Jez Littlewood

Endnotes

1. BWC/MSP/2017/6
2. BWC/CONF.VIII/WP.44
3. BWC/MSP/2015/WP.2
4. Ref <http://www.interacademies.org/38357/BiotechnologyandBiosecurity>
5. United Nations. 2018. *Securing Our Common Future: An Agenda for Disarmament* (New York; Office for Disarmament Affairs).
6. The six areas were: definition of terms; confidence building measures; measures to promote compliance; measures designed for implementation of Article X; protection of commercial proprietary and legitimate national security information; and, measures designed to avoid negative effects on scientific research, international cooperation and industrial development.
7. Charles C. Flowerree (1990) On Tending Arms Control Agreements, *The Washington Quarterly*, 13:1, 199-215.
8. See VERTIC 'modular mechanisms' and VERTIC (2006), Russian proposal for 8RC etc.

Policy brief series authors

Dr Jez Littlewood is a freelance researcher with expertise in biological weapons, arms control and national security issues. He previously worked at Carleton University (Ottawa), University of Southampton (UK), served under secondment to the UK Foreign and Commonwealth Office, and at the UN in Geneva.

Email: jlittlewood@gmail.com

Twitter: [@JezLittlewood](https://twitter.com/JezLittlewood)

Dr Filippa Lentzos is a senior research fellow at King's College London with expertise in biological threats, biological arms control and the security and governance of emerging technologies in the life sciences.

Web: www.filippalenzos.com

Email: filippa.lentzos@kcl.ac.uk

Twitter: [@FilippaLentzos](https://twitter.com/FilippaLentzos)

Dr James Revill is a research fellow with the Harvard Sussex Program at the University of Sussex with expertise in biological arms control, and the security and governance of emerging technologies in the life sciences.

Email: j.revill@sussex.ac.uk

Twitter: [@RevillJames](https://twitter.com/RevillJames)

Acknowledgements: The authors are indebted to the Norwegian government for funding the policy brief series and for colleagues who provided helpful comments.