

# REVISITING BWC VERIFICATION

## Consultations and Clarifications

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Policy Brief 5 of 7

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### The Protocol

In its work on developing a protocol to the BWC, the Ad Hoc Group developed two interconnected approaches to consultation and clarification. The first appeared in Article 6 of the composite text and made provisions to deal with “ambiguity, uncertainty, anomaly or omission” in relation to the envisaged Declarations. The second manifest in Article 8 of the Composite Text and laid out a series of steps and time frames.<sup>1</sup> Lennane has argued that “there was little to these provisions beyond offering a structure for dialogue, and providing an option to do something short of launching a full investigation”.<sup>2</sup> Moreover, much of the substance of these provisions had already been developed through additional understandings under Article V agreed at earlier Review Conferences.

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### BWC Article V

Article V of the BWC stipulates:

The States Parties to this Convention undertake to consult one another and to co-operate in solving any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention. Consultation and co-operation pur-

suant to this Article may also be undertaken through appropriate international procedures within the framework of the United Nations and in accordance with its Charter.

Article V is broad in its scope and can be used to address compliance-related concerns, but also other problems that may arise. As Sims has noted, the scope of Article V “appears to be as wide as the Convention itself”.<sup>3</sup>

The Article has advanced over the course of the evolution of the BWC, with additional understandings, particularly from the Second and Third Review Conferences, fleshing out the expectations under this Article. Certainly, language from the Second Review Conference in 1986 advanced the Article in a number of ways, including by:

- affirming the broad scope of the Article as applicable in addressing “any problems that may arise”;<sup>4</sup>
- adding “clarification” to the Article V toolkit;<sup>5</sup>
- making provision for States Parties to request “specialised assistance”, thereby permitting “any State Party to at least initiate an investigation process through the specialised assistance provision ... without the threat of a formal veto”;<sup>6</sup> and
- establishing ‘an expectation’ that States Parties would cooperate in the event of a consultative meeting.<sup>7</sup>

Although the Second Review Conference further encouraged the prompt convening of a consultative meeting, it was unable to

develop detailed timelines or procedures for requesting such a meeting.<sup>8</sup> This was, to some extent, rectified at the Third Review Conference in 1991. This meeting made ‘important steps forward’ with regard to Article V,<sup>9</sup> and States Parties agreed, amongst other things, that:

- formal consultative meetings “could be preceded by bilateral or other consultations”;
- requests for such a meeting would be addressed to the depositaries;
- the depositaries would “convene within 30 days an informal meeting of interested states parties”; and, subsequently, convene a formal consultative meeting “within 60 days of receipt of the request”;
- consultative meetings would operate on the basis of rule 28 of the rules of procedure of the review conference; and
- the costs would be met by states parties in accordance with the UN assessment scale.<sup>10</sup>

At the Fourth Review Conference in 1996, the ongoing work of the Ad Hoc Group meant that Article V was not given significant consideration. Subsequent Review Conferences in 2001/2, 2006, 2011 and 2016 have largely reaffirmed previous agreements.

## The use of Article V

Article V has been used in both bilateral and multilateral modes. The open-source literature reveals several instances of Arti-

cle V being used bilaterally to deal with compliance concerns in the 1980s.<sup>11</sup> Given the sensitivities around publicly invoking Article V, there are likely to be a number of additional cases where the Article has been used bilaterally to discreetly resolve problems. In terms of the use of Article V in multilateral mode, in June 1997, Cuba submitted a request to the Russian Federation, in its capacity as a co-depositary, to convene a consultative meeting to address allegations of “biological aggression” by the US.<sup>12</sup> The formal consultative meeting that followed proved unable to “reach a definitive conclusion with regard to the concerns raised by the Government of Cuba”.<sup>13</sup> Whilst this was perhaps a less than satisfactory outcome, there was general agreement that the requirements under Article V had been fulfilled. In addition, the episode allowed states to have their say, let “honour be served”, and enabled states to move on.

## A range of options for a range of problems

Not all “problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention” will necessarily be as significant as an allegation of biological weapons use. Problems can arise in relation to inter alia: par-

ticular cases of dual-use research of concern; gaps or errors in CBM data or con-



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cern resulting from other online (mis)information; suspicious transfers of materials or technology. Comparatively minor problems, such as ambiguities or errors in CBM submissions, do not require a formal multilateral, consultative meeting, but can be – and likely have been – resolved through discreet bilateral diplomacy. Other issues, may benefit from the provision of reasonable timelines and neutral facilitation; yet other more serious problems may need to be publicly discussed in a formal multilateral environment. Accordingly, there is a need for what the EU has described as “a range of options for undertaking Article V consultations” that are “commensurate to the gravity of the issue”.<sup>14</sup>

## The way forward

Developing a range of options does not require revisiting the work of the Ad Hoc Group. As Lennane has stated, the provision for consultation and clarification under the protocol “are easy enough to reproduce independently, and indeed already exist to some extent in the form of the procedures agreed at the Second and Third Review Conferences of the BTWC for consultations under Article V of the convention”.<sup>15</sup> It does, however, require discussion and development of the different options that could be considered both to provide a framework to operationalise consultations and clarifications under Article V and to “increase the interest and willingness of States Parties to engage in such consultative procedures”.<sup>16</sup>

EU<sup>17</sup> and US<sup>18</sup> Working Papers from the Eighth Review Conference have already identified a series of staggered options for consideration. These range from CBM clarification procedures, to procedures for private bilateral consultations, to initiating a Consultative Committee of Experts. In seeking to develop these options further it might be useful to consider:

- The development of suitable **timelines** that allow sufficient time to develop a complete response without allowing for prevarication.
- A role for neutral **facilitators** in the form of the ISU or a neutral third-party state.
- Mechanisms for the provision ‘**financial and technical assistance**’, where appropriate, to

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resolve minor technical issues identified through Article V consultations.<sup>19</sup>

- **Testing** options for Article V consultations through some form of table-top exercise. This could serve to both refine procedures that may emerging in advance and stimulate engagement in consultative procedures.



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## Endnotes

1. BWC/AD HOC GROUP/CRP.8.
2. Lennane, R. "Verification for the BTWC: If Not the Protocol, Then What?" *Disarmament Forum* [UNIDIR], no. 1 (2011).
3. Sims, N. A. (2013). BWC Article V: Under-reviewed but Ripe for Exploration. Harvard Sussex Program Occasional Paper No 3, p. 5.
4. BWC/CONF.II/13/II, p. 5.
5. BWC/CONF.II/13/II, p. 6.
6. Littlewood, J. (2005). *The Biological Weapons Convention: A Failed Revolution*. Aldershot, UK: Ashgate, p. 22.
7. Chevrier, M. I. (1995). Impediment to proliferation? Analysing the Biological Weapons Convention. *Politics and the Life Sciences*, 14(2), p. 85.
8. Sims, N. (2001). *The Evolution of Biological Disarmament*. SIPRI Chemical & Biological Warfare Studies no.19. Oxford: Oxford University Press.
9. UK in BWC/CONF.II/SR.8, p. 4.
10. BWC/CONF.III/23, Part II, pp. 15 & 16.
11. See for example, Canada BWC/CONF.II/SR.4, p3; Venezuela BWC/CONF.II/SR.7, p. 15; The US BWC/CONF.II/3/Add.4 p. 3; and, for the Soviet Response, BWC/CONF.II/SR.3, p. 5.
12. A/52/128, p. 5.
13. As cited in HSP (1998) News Chronology November 1997 through February 1998, *The CBW Conventions Bulletin* 39, March 1998.
14. Marauhn, T. (2014). Article IX: Consultations, Cooperation, and Fact-Finding. In W. Krutzsch, E. Myjer, & R. Trapp (Eds.), *The Chemical Weapons Convention: A Commentary*. Oxford: Oxford University Press, p. 306.
15. Lennane, R. "Verification for the BTWC: If Not the Protocol, Then What?" *Disarmament Forum* [UNIDIR], no. 1 (2011).
16. BWC/CONF.VIII/PC/WP.6, p. 3.
17. BWC/CONF.VIII/WP.16.
18. BWC/CONF.VIII/PC/WP.6.
19. See for example the Compliance Committee of the Cartagena Protocol <https://bch.cbd.int/protocol/>



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