

Tuesday 5th December 2023

Compliance and verification - setting the scene

The topic for the middle three days of the Third Session of the Working Group (WG) on the strengthening of the 1972 Biological and Toxin Weapons Convention (BWC/BTWC) is ‘Measures on compliance and verification’. This is topic (d) of those allocated to the Working Group.

The WG is scheduled to convene in Geneva for its Third Session from 4 to 8 December 2023 and will be followed the week after by the annual BWC Meeting of States Parties (MSP). The First Session of the WG met during March 2023 to discuss organizational issues and the Second Session met during 2006 to discuss some of the substantive topics, as scheduled by the First Session. The WG was established by a decision of the Ninth BWC Review Conference held at the end of 2022. Reports in this series from those meetings, together with reports from BWC meetings since 2006, are available from the links provided overleaf.

The Chair of the Working Group is Ambassador Flávio Damico (Brazil) with Ambassador Camille Petit (France) and Irakli Jgenti (Georgia) as Vice-Chairs. To assist with discussions on the issues of compliance and verification, Alonso Martínez (Mexico) and Ambassador Robert Bosch (Netherlands) have been appointed as facilitators/Friends of the Chair (FoCs).

A number of working papers have been submitted to this WG session on the subject of compliance and verification. The official webpage that hosts statements and documents for this session can be found at <https://meetings.unoda.org/meeting/67453>. Official BWC documents (those with document symbols that start ‘BWC/’) are also available via <https://documents.un.org>.

Compliance and verification issues in context

While there is broad agreement that measures for verification and compliance of the BWC would strengthen the Convention, there is far less common ground on what specific measures should be adopted. While the focus for many states parties is on the security aspects of the BWC, there are others which press for measures to ensure compliance with all aspects of the Convention, including international cooperation and assistance issues under Article X. The verification and compliance issues had been the area in which there was the greatest divergence of views between states parties over the last two decades and there are many delegates who have clearly expressed a desire to make the most of the possibilities enabled by the evolution of the debate in this issue .

One of the challenges within the BWC is to be able to draw on lessons from the past without being drawn into hindrances from the political baggage from the history of the Convention.

When the BWC Group of Verification Experts (VEREX) examined verification measures to enhance the Convention in the early 1990s, the experts concluded that there was no single measure for effective verification and that an appropriate collection of measures would be needed. In the eyes of most analysts in the field, this conclusion remains valid.

During the VEREX process, there was no common definition of the terms ‘verification’ or ‘compliance’, a situation that remains today. This was not much of a hindrance as even if there was no common understanding of the term verification, there were many activities that could be identified as verification measures and which contributed to compliance, however it might be defined. In some ways it is like the challenge of putting a large number of people in a room and asking them to define what poetry is. Most participants would be able to produce examples of what they regard as poems but it would be unlikely that an overarching definition of poetry would encompass every example. This illustrates that it may be possible to agree on a collection of verification measures that receives common support, even if there is no precise common definition of verification.

The conclusion of the VEREX process led to agreement in 1994 on a mandate for what became known as the ‘Ad Hoc Group’ (AHG) tasked with negotiating a protocol to strengthen the BWC. Participants at the time described the negotiations as challenging. There is a current perception held by many that the negotiations for such a protocol were close to completion in 2001 but this does not tally with the historical record. There were two draft texts in circulation at the time when the USA effectively brought proceedings to a halt by declaring it could not support any conclusions from the AHG. These were the ‘rolling text’ BWC/AD HOC GROUP/56-I and the ‘composite text’ put together by the AHG Chair BWC/AD HOC GROUP/CRP.8. In the rolling text there were more than 1200 pairs of square brackets indicating text that was yet to be agreed. By rejecting the work of the AHG, the USA implicitly rejected both of these texts. The process for putting together the composite text had been rejected by a number of non-aligned states parties in their statement in BWC/AD HOC GROUP/WP.451 which noted that ‘wide differences continue to exist among delegations on several issues’ and called for the negotiation process to return to the rolling text. Both of the AHG texts embodied compromises made at the time in efforts to move towards consensus, but it seems unlikely that the logic of some of these compromises would be replicated in current circumstances.

Many delegations continued to press for verification, some vocally. Others desired some form of verification, but sensed political difficulties and so were not sure what to do next. This often led to examination of other options to build confidence in compliance and provide experience of exchanges of relevant information.

The debate on compliance moved forward with working paper BWC/CONF.VII/WP.11 submitted by Australia, Japan and New Zealand to the Seventh BWC Review Conference (2011) which contained a proposal for a working group to address compliance issues. This was followed by working paper BWC/MSP2012/WP.11 presented to the BWC Meeting of States Parties (MSP) the following year entitled ‘We need to talk about compliance’ submitted by Australia, Canada, Japan, New Zealand and Switzerland. Both papers focused on two key questions: ‘what constitutes compliance?’ and ‘how can states parties demonstrate compliance?’ These questions remain at the core of the contemporary debate on these issues.

A key turning point in the contemporary debate was the Jenkins statement given on the opening day of the 2020 Meeting of States Parties (MSP) – held in 2021 owing to the COVID-19 pandemic. Bonnie Jenkins, US Under Secretary of State for Arms Control and International Security, travelled to Geneva to give the US general debate statement in which she described the efforts to strengthen the Convention as ‘treading water’ for two decades and that new measures should be explored to include those which could ‘enhance assurance of compliance’. The process started by the Jenkins statement is what led to establishment of the current Working Group.

These reports have been produced by the BioWeapons Prevention Project (BWPP) for all BWC meetings with NGO registration since the Sixth Review Conference (2006). They are available from <https://www.bwpp.org/reports.html> and <https://www.cbw-events.org.uk/bwc-rep.html>. A subscription link is available on each webpage. Financial support for reporting for the Third Session of the Working Group has been gratefully received from Global Affairs Canada. The reports are written by Richard Guthrie, CBW Events, who is solely responsible for their contents <richard@cbw-events.org.uk>.