

Strengthening the Biological Weapons Convention

Briefing Paper No 10 (Third Series)

Moving Forward Towards Consensus

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MOVING FORWARD TOWARDS CONSENSUS

by **Graham S. Pearson**^{*} & **Nicholas A. Sims**[†]

Introduction

1. At the Seventh Review Conference in 2011 and in the subsequent Intersessional Process in 2012 and 2013 it has been evident that **all** States Parties are keen to find ways in which they can move collectively towards greater confidence that States Parties are effectively implementing the Biological and Toxin Weapons Convention.

2. In our reports on the Seventh Review Conference¹ as well as on the Meetings of States Parties in 2012² and 2013³, we have paid particular attention to the statements made by the States Parties both collectively and individually in the General Debates. In our reflections in the report on MSP/2013, we noted that:

The Final Report is remarkable in the way in which the subject of compliance is treated. It is worth noting that at the Meeting of Experts in August 2013 there were four Working Papers that specifically addressed compliance:

- a. BWC/MSP/2013/MX/WP.1 *We need to talk about compliance: A response to BWC/MSP/2012/WP.11* – Submitted by the United Kingdom of Great Britain and Northern Ireland
- b. BWC/MSP/2013/MX/WP.2 *BWC compliance – a conceptual discussion: preliminary views by Australia* – Submitted by Australia
- c. BWC/MSP/2013/MX/WP.12 *Compliance with the BWC: preliminary considerations by Switzerland* - Submitted by Switzerland
- d. BWC/MSP/2013/MX/WP.18 *Preliminary views on the paper entitled “We need to talk about compliance”* – Submitted by Japan

This led to the recording of 38 items relating to compliance by 11 States Parties in Annex I *Considerations, lessons, perspectives, recommendations, conclusions and proposals drawn from the presentations, statements, working papers and interventions on the topics under discussion at the Meeting* to the report of the Meeting of Experts (BWC/MSP/2013/MX/3).

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¹ Graham S. Pearson and Nicholas A. Sims, *The BTWC Seventh Review Conference: A Modest Outcome*, Bradford Review Conference Paper No. 31, University of Bradford, March 2012.

² Graham S. Pearson in conjunction with Nicholas A. Sims, *Report from Geneva: The Biological Weapons Convention Meeting of States Parties December 2012*, Review No. 37, March 2013. Available at <http://www.sussex.ac.uk/Units/spru/hsp/Reports%20from%20Geneva/HSP%20Reports%20from%20Geneva%20No.%2037.pdf>

³ Graham S. Pearson in association with Nicholas A. Sims, *Report from Geneva: The Biological Weapons Convention Meeting of States Parties December 2013* Review No. 39, March 2014. Available at <http://www.sussex.ac.uk/Units/spru/hsp/Reports%20from%20Geneva/HSP%20Reports%20from%20Geneva%20No.%2037.pdf>

The subsequent Synthesis document compiled by the Chair – BWC/MSP/2013/L.1 – contained only three mentions of compliance – all of these were in a single paragraph 19, 19(d) and 19 (h) of sub item *D. Any potential further measures, as appropriate, relevant for implementation of the Convention* of the Standing Agenda Item on Strengthening national implementation. This in turn led to three mentions of compliance in the Chair’s first draft of the substantive paragraphs for the report of MSP/2013 – in paragraphs 47, 47 (d) and 50 (a). This was reduced to a single mention – in paragraph 47 – of the Chair’s second draft which led to no mention at all in the final draft of the substantive paragraphs for the report of MSP/2013.

This failure to have any language relating to *compliance* in the report of MSP/2013 is in sharp contrast to the four Working Papers on compliance submitted to MX/2013 and the 38 mentions of compliance in Annex I to the report of MX/2013. It is also in marked contrast to the inclusion of two Working Papers relating to compliance submitted to MSP/2013:

- a. BWC/MSP/2013/WP.8 *Exercice pilote de revue par les pairs Paris, 4-6 décembre 2013*. Submitted by France
- b. BWC/MSP/2013/WP.11. *Compliance*. Submitted by Australia, Canada, Costa Rica, Finland, Japan, Lithuania, New Zealand, Spain and Switzerland.

This difficulty in regard to *compliance* reflects the failure of the States Parties to recognize that they all actually have a **shared** goal of building confidence in the implementation of the Convention and in enhancing its effectiveness. There is one group of States Parties, typified by the Non-Aligned Movement, who at every Meeting reiterate *that multilateral negotiations aimed at concluding a non-discriminatory legally binding agreement dealing with all Articles of the Convention, in a balanced and comprehensive manner, would sustainably strengthen the Convention*. There is also another group of States Parties, typified by the JACKSNNZ States Parties, who recognize that *Strengthening implementation at the national, regional, and international levels remains the best way available to States Parties to ensure their compliance with their obligations under Article I and thereby embracing the Convention’s security norm. JACKSNNZ members have been developing options to further improve national implementation and assurances in compliance*. A further group of States Parties, typified by the EU, has *engaged constructively in the inter-sessional process by actively promoting universality, national implementation and full compliance with the Convention*.

It is evident that all three groups are actually seeking to build confidence in the full implementation of all Articles of the Convention thereby achieving an effective strengthening of the Convention. It needs to be recognized, however, that the shared goal would be more widely appreciated if States Parties in their statements were to use language that showed that there is much discussion and negotiation to be carried out prior to reaching a situation in which detailed procedures and processes can be elaborated and agreed internationally. Whilst such an internationally agreed situation is the eventual outcome sought by all States Parties, it is unhelpful to presuppose at this stage what form the final agreement will take. There is much to be said for all States Parties to recognize that they need to start consideration of how best to move forward, such as by engaging in an open-ended conceptual discussion of compliance without preconditions, to build confidence in the full implementation

of all Articles of the Convention thereby achieving an effective strengthening of the Convention.

3. In this Briefing Paper we give further examination to the positions being expressed by the groups of States Parties and consider how States Parties might move forwards towards consensus as we look forward to the Eighth Review Conference in 2016. We note that, States Parties are **all** essentially in agreement that the Convention needs to be strengthened and that the way forward requires the sharing of *best practices and experiences* and of ideas so that they can be considered further by other States Parties. We make some proposals that might with advantage be addressed by States Parties in considering how they might best move forward **collectively** to the more effective implementation of all Articles of the Convention.

Recent statements

4. At the Meeting of States Parties in December 2013, Iran made a statement on behalf of the Non Aligned Movement and other States Parties in which they said that the Group would like to reiterate its position as reflected in the final document of the Tehran NAM Summit held on 26 to 31 August 2012 in which:

The Heads of State or Government of the NAM States Parties to the Biological and Toxin Weapons Convention (BTWC) reaffirmed that the possibility of any use of bacteriological (biological) agents and toxins as weapons should be completely excluded, and the conviction that such use would be repugnant to the conscience of mankind. They recognized the particular importance of strengthening the Convention through multilateral negotiations for a legally binding Protocol and universal adherence to the Convention. They reiterated their call to promote international cooperation for peaceful purposes, including scientific exchange. They ... highlighted that the Convention on Biological and Toxin Weapons forms a whole and that, although it is possible to consider certain aspects separately, it is critical to deal with all of the issues interrelated to this Convention in a balanced and comprehensive manner.

The statement went on to say that *The Group re-emphasizes that multilateral negotiations aimed at concluding a non-discriminatory legally binding agreement dealing with all Articles of the Convention, in a balanced and comprehensive manner, would sustainably strengthen the Convention. In this context, we believe that the respective mandates of this Convention and other international organisations should be respected, while utilising the experiences of the relevant multilateral organizations dealing with human and animal health on issues that are of direct relevance to the Convention. In this regard, no actions should be taken to undermine the convention and/or interfere with its mandate.*

5. The statement then went on to express views about other approaches that had recently been put forward as possible ways towards enhancing the effective implementation of the Convention by saying that *The Group attaches due importance to the standing agenda items on national implementation and review of S & T developments. In that regard, the Group notes that proposals on “voluntary peer review processes” or “compliance assessments” were raised and evaluated at the Seventh Review Conference and there was no consensus on such proposals. The Group believes that such proposals should not distract the attention of States Parties away from strengthening the Convention in all its aspects including the need for a verification mechanism. Effective international action against biological threats needs to be universal, legally binding, and non-discriminatory.*

6. Also at the Meeting of States Parties in December 2013, Canada made a statement on behalf of

the JACKSNNZ group (Japan, Australia, Canada, Republic of Korea, Switzerland, Norway and New Zealand) in which they said that *It will also be important that we focus on forward leaning goals. Our sights must be set on creating the conditions for progress at the next Review Conference that are in line with, and build upon, the useful, albeit incremental steps agreed at the Seventh Review Conference. Our aim must be to improve implementation of all aspects of the Convention in a manner that takes into account the realities of the XXI century.* The statement then went on to say that *the JACKSNNZ believe that effective national implementation remains the cornerstone of the BWC. Strengthening implementation at the national, regional, and international levels remains the best way available to States Parties to ensure their compliance with their obligations under Article I and thereby embracing the Convention's security norm. JACKSNNZ members have been developing options to further improve national implementation and assurances in compliance. At last year's MSP, Australia, Canada, Japan, New Zealand and Switzerland tabled the paper entitled "We need to talk about compliance" which generated several replies at the MX, in the form of working papers and interventions. At this year's MX, Australia's Working Paper 2 had the aim of promoting broad based BWC compliance in terms of the broader topic of national implementation. Supportive interventions were received from the US, Canada, Germany, Japan, France, Switzerland, UK and Sweden. There was also an emerging view among these States Parties that compliance discussions and proposals such as self-assessment, Peer Review and enhancing CBMs should not be regarded as an alternative to a legally-binding instrument. We also continue to explore novel approaches to improving national implementation and assurance of compliance, through mechanisms such as Compliance Assessment and the French proposal on Peer Review. Canada and Switzerland, with their partner the Czech Republic, intend to further advance efforts on the Compliance Assessment pilot project, including refining the initiative and broadening participation. Canada, Switzerland also attended France's pilot exercise on Peer-Review last week, which provided an excellent opportunity for a fruitful exchange. We are convinced that it will allow the French project to develop further and we thank France for its innovative approaches. We look forward to continued constructive discussions on these subjects this week.*

7. Also at the Meeting of States Parties in December 2013, the European Union made a statement on behalf of its 28 Member States and also a further 10 States Parties: Turkey, the former Yugoslav Republic of Macedonia, Montenegro, Iceland, Serbia, Albania, Bosnia and Herzegovina, Ukraine, the Republic of Moldova and Georgia in which it said: *For us, effective national implementation is an issue of great importance to the integrity of the Convention. We remain committed to identifying ways and means to achieve this goal – we are in this for the long haul. Sustained efforts are needed here. The current intersessional process offers an opportunity to identify innovative approaches, to enhance national implementation through voluntary exchanges of information, such as the proposed peer-review mechanism. Confidence building measures (CBMs) are an important instrument to promote the purpose of the BTWC”* It is also worth recalling that the statement made by the European Union at the Meeting of States Parties in December 2012 said that *We actively promote the universality, national implementation of and full compliance with the Convention. We remain committed in the long term towards identifying effective ways to strengthen and verify compliance with the Convention.*

8. In addition to the statements made on behalf of groups of States Parties, it is also useful to consider the statements made by the three Co-Depositaries – the Russian Federation, the United Kingdom and the United States. Many States Parties have their positions represented by the NAM, JACKSNNZ or EU statements, but not all do. In particular, two of the Co-Depositaries are members of none of these Groups. Views on the role of the Co-Depositaries vary. All three Co-Depositaries have formal responsibilities under Articles XIV and XV of

the Convention, and have come to fulfill certain other functions such as proposing dates for meetings; they may reasonably be expected to provide leadership more broadly, in helping States Parties to strengthen the Convention, and it is for this reason that the extracts from Group statements noted above are complemented by the following relevant statements by each of the three Co-Depositaries.

9. At the Meeting of States Parties in December 2013, the Russian Federation made a statement saying that: *The Russian delegation considers implementation at the national level not only from the strict observance of the Convention obligations but also as a basis for new opportunities and approaches in the elaboration of a legally binding mechanism of verification. Appropriate and universal implementation of crucial disarmament and non-proliferation requirements of the Convention by the State can eliminate distrust which existed during the development of the Verification Protocol for the BWC in 1995 – 2001 and help find mutual understanding in respect of verification measures acceptable for each State Party. In this context, we welcome the EU National Implementation Guide project which may become a useful instrument for consolidating efforts by States Parties aimed at strengthening the Convention regime.*

10. The United Kingdom has submitted Working Papers to the Intersessional Process that are relevant. The Working Paper (BWC/MSP/2013/MX/WP.1 *We need to talk about compliance: A response to BWC/MSP/2012/WP.11*) submitted to the Meeting of Experts in August 2013 stated that: *Despite the setbacks in strengthening the Convention over the years, the UK believes it is important to continue to sustain the most pragmatic ways of keeping the Convention relevant to the security challenges it faces in a changing world. A key element in UK thinking on the long term future of the BTWC involves making incremental progress across a range of issues, such as those being addressed in the current intersessional process. We believe this will help move us towards a position where more ambitious and synergistic approaches to compliance can be contemplated and realised with practical effect.* The reference in this Working Paper to ‘setbacks in strengthening the Convention over the years’ evokes the UK statement made at the Seventh Review Conference in 2011 when their statement said that: *A word about verification. The UK was a leading player during the Protocol negotiations that took place in this building and worked hard with other States Parties to secure a successful outcome. As we all know, that was not to be. We should of course discuss issues which many States Parties care about. But let us keep this in proportion and focus on the achievable.* The statement concluded by urging *all delegations to focus on the pragmatic and achievable and avoid fighting old battles. We believe firmly there is much common ground amongst the delegations from all regions – the opportunity is there for an outcome that goes beyond what we achieved in 2002 and 2006. Let us be bold and seize that opportunity.*

11. The United States at the Meeting of States Parties in December 2013 made a statement saying that: *We are assembled here this week for an important purpose: to seek common understanding and effective action to strengthen the implementation of the Biological Weapons Convention. ... It is a broad ranging effort, and progress is sometimes slow and incremental. This means that it is also sometimes frustrating – but it is vitally important work that needs doing....* Although the statement in December 2013 did not explicitly address national implementation, the statement made at the Meeting of States Parties in December 2012 said: *We need to deepen and clarify our shared understandings of what is required for full and effective implementation of the BTWC. We also need to improve our understanding of the status of implementation across States Parties, so that we can assess*

the situation, provide encouragement and assistance, and measure progress. The ideas of our French, Canadian, and Swiss colleagues for peer review and assessment processes may be very relevant here.

Analysis of the situation in 2014

12. As most of the States Parties are now represented by delegates who were **not** involved in the negotiations towards a legally binding Protocol in 1995 to 2001, it is worth recalling the way in which the situation developed from 1991 to 2001 including the actual mandates of the successive Ad Hoc Groups. At the Third Review Conference in 1991 the Final Declaration for Article V included the following:

The Conference, determined to strengthen the effectiveness and improve the implementation of the Convention and recognizing that effective verification could reinforce the Convention, decides to establish an Ad Hoc Group of Governmental Experts open to all States parties to identify and examine potential verification measures from a scientific and technical standpoint.

The Group shall meet in Geneva for the period 30 March to 10 April 1992. The Group will hold additional meetings as appropriate to complete its work as soon as possible, preferably before the end of 1993. In accordance with the agreement reached in the Preparatory Committee, the Group shall be chaired by Ambassador Tibor Tóth (Hungary), who shall be assisted by two Vice-Chairmen to be elected by the States Parties participating in the first meeting.

The Group shall seek to identify measures which could determine:

- Whether a State party is developing, producing, stockpiling, acquiring or retaining microbial or other biological agents or toxins, of types and in quantities that have no justification for prophylactic, protective or peaceful purposes;*
- Whether a State party is developing, producing, stockpiling, acquiring or retaining weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.*

Such measures could be addressed singly or in combination. Specifically, the Group shall seek to evaluate potential verification measures, taking into account the broad range of types and quantities of microbial and other biological agents and toxins, whether naturally occurring or altered, which are capable of being used as means of warfare.

To these ends the Group could examine potential verification measures in terms of the following main criteria:

- Their strengths and weaknesses based on, but not limited to, the amount and quality of information they provide, and fail to provide;*
- Their ability to differentiate between prohibited and permitted activities;*

- *Their ability to resolve ambiguities about compliance;*
- *Their technology, material, manpower and equipment requirements;*
- *Their financial, legal, safety and other organizational implications;*
- *Their impact on scientific research, scientific cooperation, industrial development and other permitted activities, and their implication for the confidentiality of commercial proprietary information.*

In examining potential verification measures, the Group should take into account data and other information relevant to the Convention provided by the States parties.

The Group shall adopt by consensus a report taking into account views expressed in the course of its work. The report of the Group shall be a description of its work on the identification and examination of potential verification measures from a scientific and technical standpoint, according to this mandate.

The report of the Group shall be circulated to all States Parties for their consideration. If a majority of States Parties ask for the convening of a conference to examine the report, by submitting a proposal to this effect to the Depositary Governments, such a conference will be convened. In such a case the conference shall decide on any further action. The conference shall be preceded by a preparatory committee.

13. This Ad Hoc Group of Governmental Experts open to all States Parties, which became known as VEREX, met in 1992 and 1993 producing a report which was considered by a Special Conference of States Parties in 1994. The Special Conference decided to establish an Ad Hoc Group to negotiate a legally binding instrument to strengthen the effectiveness and improve the implementation of the Convention. The Final Declaration of the Special Conference stated that:

35. The Conference also recognized that the complex nature of the issues pertaining to the strengthening of the Biological Weapons Convention underlined the need for a gradual approach towards the establishment of a coherent regime to enhance the effectiveness of and improve compliance with the Convention. This regime would include, inter alia, potential verification measures, as well as agreed procedures and mechanisms for their efficient implementation and measures for the investigation of alleged use.

It then went on to say:

Strengthening the Convention

36. In pursuance of the second part of its mandate under Item 9, the Conference, determined to strengthen the effectiveness and improve the implementation of the Convention and recognizing that effective verification could reinforce the Convention, decides to establish an Ad Hoc Group, open to all States Parties. The objective of this

Ad Hoc Group shall be to consider appropriate measures, including possible verification measures, and draft proposals to strengthen the convention, to be included, as appropriate, in a legally binding instrument, to be submitted for the consideration of the States Parties. In this context, the Ad Hoc Group shall, inter alia consider:

- Definitions of terms and objective criteria, such as lists of bacteriological (biological) agents and toxins, their threshold quantities, as well as equipment and types of activities, where relevant for specific measures designed to strengthen the Convention;*
- The incorporation of existing and further enhanced confidence building and transparency measures, as appropriate, into the regime;*
- A system of measures to promote compliance with the Convention, including, as appropriate, measures identified, examined and evaluated in the VEREX Report. Such measures should apply to all relevant facilities and activities, be reliable, cost effective, non-discriminatory and as non-intrusive as possible, consistent with the effective implementation of the system and should not lead to abuse;*
- Specific measures designed to ensure effective and full implementation of Article X, which also avoid any restrictions incompatible with the obligations undertaken under the Convention, noting that the provisions of the Convention should not be used to impose restrictions and/or limitations on the transfer for purposes consistent with the objectives and the provisions of the Convention of scientific knowledge, technology, equipment and materials.*

Measures should be formulated and implemented in a manner designed to protect sensitive commercial proprietary information and legitimate national security needs.

Measures shall be formulated and implemented in a manner designed to avoid any negative impact on scientific research, international cooperation and industrial development.

14. The Ad Hoc Group to negotiate a legally binding instrument to strengthen the effectiveness and improve the implementation of the Convention met twenty-four times from January 1995 to August 2001. By the time of its twenty-fourth meeting in August 2001, a 221 page document comprising the draft Protocol had been issued as Annex B to the Procedural Report BWC/AD HOC GROUP/56-1 dated 18 May 2001⁴. In a Bradford Evaluation Paper No. 22⁵ in July 2001 entitled *The Composite Protocol Text: An Evaluation of the Costs and Benefits to States Parties*, we had examined the value of the Protocol by making comparisons, first between the Biological and Toxin Weapons Convention (BTWC) with its Protocol regime and the BTWC alone, and then between the BTWC with its Protocol regime and the Chemical Weapons Convention (CWC) regime, given that both Conventions overlap – and rightly so – in the areas of toxins, bioregulators and peptides. The comparison with the BTWC alone showed that the Protocol brought significant and worthwhile benefits to

⁴ Ad Hoc Group of the States Parties to the Convention on the Prohibition of Biological and Toxin Weapons, *Procedural report of the Ad Hoc Group*, Twenty-third session, Geneva, 23 April – 11 May 2001, BWC/AD HOC GROUP/56-1, 18 May 2011. Available at [http://www.unog.ch/unog/website/disarmament.nsf/\(httpPages\)/F5C615E0217AE11FC12577280032DB46?OpenDocument&unid=FCA0866229E27290C12572BC00327DC2](http://www.unog.ch/unog/website/disarmament.nsf/(httpPages)/F5C615E0217AE11FC12577280032DB46?OpenDocument&unid=FCA0866229E27290C12572BC00327DC2)

⁵ Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims, *The Composite Protocol Text: An Evaluation of the Costs and Benefits to States Parties*, Bradford Evaluation Paper No. 21, July 2001.

all States Parties whilst the comparison with the CWC showed that in respect of the monitoring of dual purpose materials and facilities, the two regimes were very comparable, with the Protocol regime imposing a less onerous but more focussed burden in respect of declarations and visits whilst the international cooperation provisions were much more extensive than those of the CWC. In the final section, a tabular comparison was made first on an Article by Article basis of the costs and benefits of the composite Protocol and then between the costs and benefits of signing the composite Protocol text and rejecting the composite Protocol. This led to the conclusion that signing the Protocol would bring a net benefit to all States Parties. In the event, at the twenty-fourth meeting of the Ad Hoc Group on 23 July to 17 August 2001, it was not possible to proceed further with the Protocol.

15. Now, some thirteen years later, there have been considerable international developments and, realistically, there is **no** option of simply returning to the draft Protocol and continuing negotiations. It is, however, true that the draft Protocol is available as a resource that shows what had been considered between 1995 and 2001 and could be drawn upon as appropriate especially in those of its draft provisions which represented widespread agreement and in view of the wealth of detailed work over ten years of which it was the culmination.

16. What needs to be done **in 2014** is to consider how the international scene has developed. For example, United Nations Security Council Resolution 1540 placed obligations on **all** States and developed reporting requirements:

1. Decides that all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery;

2. Decides also that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them;

3. Decides also that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall:

(a) Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport;

(b) Develop and maintain appropriate effective physical protection measures;

(c) Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law;

(d) Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and

enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations;

Subsequently, 1540 Committee-approved matrices⁶ have been issued for individual States that provide information that is of particular relevance to the prohibition of biological weapons. For example, *Matrix OP2 Biological Weapons* requires provision of information on the following:

Does national legislation exist which prohibits persons or entitles to engage in one of the following activities? Can violators be penalized?	National legal framework	Enforcement: civil/criminal and others
1. manufacture/produce		
2. acquire		
3. possess		
4. stockpile/store		
5. develop		
6. transport		
7. transfer		

In addition, States have submitted National Reports⁷ and also National Action Plans⁸ which provide information relevant to their national activities to prohibit biological weapons.

17. It is also recalled that the Final Declaration of the Seventh Review Conference in 2011 in its language on Article IV included the following:

17. The Conference recalls United Nations Security Council Resolution 1540 (2004) that places obligations on all states and is consistent with the provisions of the Convention. The Conference notes that Resolution 1540 affirms support for the multilateral treaties whose aim is to eliminate or prevent proliferation of nuclear, chemical or biological weapons and the importance for all States Parties to these treaties to implement them fully in order to promote international stability. The Conference also notes that information provided to the United Nations by states in accordance with Resolution 1540 may provide a useful resource for States Parties in fulfilling their obligations under this Article.

18. In addition, many States Parties to the BTWC submit annual Confidence Building Measures returns⁹ and about a third of these States Parties have made their annual CBM returns publicly available on the Implementation Support Unit website.

⁶ 1540 Committee Approved Matrices are available at <http://www.un.org/en/sc/1540/national-implementation/1540-matrix/committee-approved-matrices.shtml>

⁷ National Reports submitted under 1540 are available at <http://www.un.org/en/sc/1540/national-implementation/national-reports.shtml>

⁸ National Action Plans submitted under 1540 are available at <http://www.un.org/en/sc/1540/national-implementation/national-action-plans.shtml>

⁹ The CBMs submitted for 2013 are available at [http://www.unog.ch/__80256ee600585943.nsf/\(httpPages\)/4fa4da37a55c7966c12575780055d9e8?OpenDocument&ExpandSection=27#_Section27](http://www.unog.ch/__80256ee600585943.nsf/(httpPages)/4fa4da37a55c7966c12575780055d9e8?OpenDocument&ExpandSection=27#_Section27)

19. In considering the situation in 2014, it is useful to recall the contribution made by Richard Lennane, head of the Implementation Support Unit from 2007 to 2014, in an article¹⁰ entitled *Verification for the BTWC: if not the protocol, then what?* published in UNIDIR's Disarmament Forum issue *Beyond the BTWC RevCon* issued prior to the Seventh Review Conference in 2011. In this he makes the point that:

An approach to avoid is the one tried by the Ad Hoc Group: spending years negotiating an elaborate paper edifice that was never agreed, much less tested or implemented. Much better would be what is sometimes called the "bottom up" approach: developing and implementing individual components on a small scale, refining and improving them in operation, gradually expanding participation and scope, and then—once everyone knows what is involved and is confident the measures work in practice—perhaps bringing them together into a legally binding instrument.

Most of the measures I have discussed could be developed and put into operation by interested states parties, or other entities, even without a decision at the Review Conference. While there is widespread expectation, for example, that the Review Conference will revise and improve the CBMs to some degree, there is nothing to stop a group of interested and motivated states parties going further and implementing an expanded CBM or national declaration system among themselves. Similarly, a programme of on-site visits to biodefence facilities could start as soon as interested states parties decide and hash out some basic procedures. Development of standards relevant to BTWC implementation is already underway, and similar efforts could easily be started. Even measures such as the Mechanism for Investigation, which at first glance appear to be securely welded to the rusting multilateral security apparatus, offer some scope for innovation. A group of interested states parties could, for example, declare that they will agree to host on their territory an investigation of any allegation of a violation of Article I of the BTWC (and not just the use of biological weapons).

20. Such a "bottom up" approach of *developing and implementing individual components on a small scale, refining and improving them in operation, gradually expanding participation and scope* has effectively been taken forward by Canada and Switzerland, now joined by the Czech Republic, in their papers on Compliance Assessment and also by France in their initiative on the Peer Review appraisal. These initiatives are greatly welcomed and whilst some States Parties at the Meeting of States Parties in December 2013 made statements in which they suggested that such initiatives distracted the attention of States Parties away from strengthening the Convention through a verification mechanism, it would be really helpful if those who profess this anxiety would explain it and come forward with alternative ideas, as the wider the range of positive contributions that can be drawn on from different sources the better. The proponents of peer review and compliance assessment are not making exclusive claims for those approaches; if other States Parties have found effective ways of strengthening their national implementation so as to demonstrate compliance, these ways should be made available for other States Parties. Pooling of experience is vital for strengthening national implementation.

¹⁰ Richard Lennane, *Verification for the BTWC: if not the protocol, then what?*, in UNIDIR Disarmament Forum, *Beyond the BTWC RevCon*, one, 2011, p. 39. Available at <http://www.unidir.org/files/publications/pdfs/beyond-the-btwc-rev-con-en-313.pdf>

21. This more inclusive approach needs also to be reflected in the Reports of the Meetings of States Parties generated in the current Intersessional Process. It is evident that the present way of proceeding – as demonstrated in the summary included in the second paragraph of this Briefing Paper – is to move towards consensus by deletion as it takes less effort to delete points of apparent contention from a draft text than to find new and acceptable alternative language. There should be stronger efforts to find more inclusive language, rather than taking the easy option of consensus by deletion. Balance can be found through “both...and” formulations just as much as it can be achieved by deleting both alternatives. If necessary, such inclusive language could appear with a caveat that the statement is without prejudice to the ultimate outcome. It is really important that States Parties recognize that they **all** share a **common goal** of effectively strengthening the Convention and they need to work together in sharing of *best practices and experiences* to explore possible approaches to achieve that goal.

The Way Forward

22. There is a general wish amongst States Parties to build confidence in the effective implementation of the Convention but there is less agreement over how such effective implementation is best demonstrated. Some States Parties have made a start in finding ways to demonstrate their own compliance through sharing the details of their national implementation, mostly on an individual basis, occasionally in concert with one another. Whether this is called ‘*compliance assessment*’ or something else, the intention is clear and the effort laudable. But too many States Parties just say they comply with their obligations and leave it at that. States Parties need to be encouraged to make the effort to start demonstrating their compliance, by following the examples of best practice among the small number of pioneers.

23. We recommend that consideration should be given to encouraging States Parties to take the opportunity in the context of the Standing Agenda Item on Strengthening National Implementation to submit Working Papers in which they set out what actions they have taken **nationally** to ensure that the implementation of the Convention is indeed effective. It should be recalled that the mandate agreed at the Seventh Review Conference for this Standing Agenda Item specifically includes the following subparagraph:

(b) ways and means to enhance national implementation, sharing best practices and experiences, including the voluntary exchange of information among States Parties on their national implementation, enforcement of national legislation, strengthening of national institutions and coordination among national law enforcement institutions;

together with:

(e) any potential further measures, as appropriate, relevant for implementation of the Convention.

24. Consequently, it would be constructive and helpful to other States Parties if States Parties were to compile Working Papers on national implementation which addressed and provided information on their own national experience. This *sharing of best practices and experiences* could usefully be focussed by concentrating on the following specific points:

- What arrangements has the State Party put in place to ensure that the design and conduct of **all** national activities in the life sciences involving biological agents and

toxins are fully consistent with the provisions of Article I?

- What arrangements has the State Party put in place to ensure that no transfer, assistance, encouragement or inducement occurs contrary to the provisions of Article III?
- What action has the State Party taken to enact penal legislation in accordance with Article IV and the extended understandings agreed by successive Review Conferences?
- What other legislative and administrative arrangements has the State Party put in place as necessary measures, in accordance with Article IV, to prohibit and prevent breaches of Article I of the Convention within its territory, under its jurisdiction or under its control anywhere?
- What action has the State Party taken to promulgate codes of conduct and promote education and awareness-raising with regard to the provisions of the Convention especially as they bear on the responsibilities of individuals in the life sciences and related professions, as set out in the extended understandings of Article IV agreed by successive Review Conferences?
- What arrangements has the State Party put in place to collate information centrally for the compilation and submission of CBM returns by 15 April each year in accordance with the decisions of successive Review Conferences?
- What other actions has the State Party taken in accordance with the extended understandings of Article V agreed by successive Review Conferences?
- What action has the State Party taken effectively to implement Article X?
- What other actions has the State Party taken which demonstrate its commitment to effective implementation of the Convention?
- Which aspects of the State Party's *best practices and experiences* in effectively implementing the Convention does it consider to be most suitable to being used by other States Parties or adapted to their own circumstances?

25. It is recognized that information relating to these specific points may well already exist – it may be contained in national reports under SCR 1540, in national reports on the implementation of Article X, in CBM returns or in national working papers such as those on compliance assessment. However, in the interests of moving forward towards building confidence internationally in national implementation there is much to be said for each State Party gathering together the information in these categories, organising it systematically, and presenting it in a Working Paper. Such Working Papers, submitted during the Intersessional Process, would serve two purposes. First, they would enrich the remaining stages of consideration of the Standing Agenda Item on Strengthening National Implementation in 2014 and 2015. Second, they would facilitate the collation of national compliance reports for the Eighth Review Conference as it is likely that the Preparatory Committee in 2016 will follow precedent and request ‘*a background information document on compliance by States Parties with all their obligations under the Convention, to be compiled from information submitted by States Parties*’ as stated in paragraph 24(b) of the Report of the Preparatory Committee (BWC/CONF.VII/PC/2) for the Seventh Review Conference.

26. Most of the present States Parties have been subject to the obligations of the Convention for many years now: more than half of them – 87 out of 170 – were already States Parties at the time of the First Review Conference in 1980, 34 years ago. Each of them ought to be in a position by now to demonstrate its own compliance in some detail. Some States Parties indeed have done so, but most have not. It is to be hoped that many more would use the opportunity offered by the Working Papers proposed here to demonstrate their compliance

through the *sharing* of their *best practices and experiences* in national implementation.

Conclusions

27. The approaches put forward in this Briefing Paper should enable States Parties to actually move **forward** towards consensus by sharing their *best practices and experiences* and their understandings and so find common ground. A more inclusive approach to listing proposals and options is recommended, as preferable to consensus by deletion, when seeking agreed language for the Reports of the Meetings of States Parties. There would also be real benefits if States Parties were to submit Working Papers for consideration under the Standing Agenda Item on Strengthening National Implementation in which they gather together information on their own **national** *best practices and experiences*. These Working Papers could usefully be focussed by concentrating on specific points, set out in paragraph 24 above, linked to particular Articles of the Convention.

28. Information relating to these specific points is likely to already exist – it may be contained in national reports under SCR 1540, in national reports on the implementation of Article X, in CBM submissions or in national working papers such as those on compliance assessment. However, in the interests of moving forward towards building confidence internationally in national implementation there is much to be said for each State Party gathering together the information in these categories, organising it systematically, and presenting it in a Working Paper. Every State Party, after – in most cases – many years of adherence to the Convention, should be in a position by now to use this opportunity to demonstrate its own compliance in some detail. And doing this would bring two benefits. Such Working Papers, submitted during the Intersessional Process, would enrich the remaining stages of consideration of the Standing Agenda Item on Strengthening National Implementation in 2014 and 2015, and secondly, they would facilitate the collation of national compliance reports which are likely, as for previous Review Conferences, to be required for the Eighth Review Conference. All of this would be much more constructive than the current situation in which there is an apparent reluctance to admit that there are indeed **shared** goals and a tendency to reiterate the same language time and time again rather than putting forward **practical** proposals that build upon shared *best practices and experiences*, understandings and common ground.