

Working Group on the Strengthening of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction

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Identifying, examining and developing specific and effective measures, including possible legally-binding measures, and making recommendations to strengthen and institutionalize the Convention in all its aspects within the mandate of the Working Group

Strengthening Compliance with the Biological Weapons Convention through a Legally Binding Instrument

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I. Introduction

1. The Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons (BTWC) has established a legal norm against biological weapons. Given the vital importance of full implementation by all States Parties of all the provisions of the Convention and the need to enhance confidence in the implementation of the Convention, the Third Review Conference of States Parties to the BTWC recognized that effective verification could reinforce the Convention.

2. Subsequently, useful work and intensive negotiations were carried out on the development of an appropriate multilateral verification arrangement for the BTWC. Due to the unilateral opposition of a member state against a legally binding protocol countering verification provisions, efforts to conclude such a protocol were suspended in 2001. Since then, discussions have continued on how to strengthen the convention, but there is no consensus on their alternatives.

3. The continued lack of an effective mechanism to promote compliance with the provisions of the Convention and verify compliance would undermine confidence in the Convention. Recognizing the imperative to address this deficiency, the Ninth Review Conference mandated the Working Group on the Strengthening of the Convention to identify, examine, and develop specific and effective measures, including possible legally binding measures, inter alia, on compliance and verification, and to make recommendations to strengthen and institutionalize the Convention in all its aspects.

II. Discussions

4. In the face of contemporary challenges, it is evident that a robust verification mechanism for ensuring compliance with all provisions of the convention is crucial for instilling confidence among member states and fostering international cooperation for peaceful activities while safeguarding against potential violations of the Biological Weapons Convention. Unilateral measures have taken precedence over multilateral efforts, resulting in continued accusations and fostering an atmosphere of mistrust.



5. In the absence of a verification mechanism for BWC, some State Parties have created different national levels of restrictions, barriers, and limitations for legitimate trade and transfer of biological agents and toxins, equipment, materials, and related technologies for peaceful purposes. The imposition of unilateral coercive measures or sanctions that are exclusive, discriminatory, and politically motivated by any State Party would impede and create serious obstacles to capacity building and effective national implementation of the Convention.

6. There is no mechanism to verify within the convention the compliance of the state parties with their legal obligations in full conformity with the provisions of the convention, and to address any possible violation committed in this regard.

A. Prioritizing a Legally Binding Instrument

7. While previous discussions and negotiations on the Biological Weapons Convention proposed transparency and confidence-building measures, the evolving landscape of international relations demands a critical reassessment to address challenges. The increasing prevalence of selective measures and unilateral actions over multilateral efforts has contributed to a climate of mistrust and instability. In light of this, it becomes evident that relying solely on non-binding measures and unilateral actions is insufficient for fostering a secure and stable global environment. In response to these challenges, a shift towards a more robust, legally binding instrument is required. Prioritizing a binding framework is essential to replacing unilateral approaches with a cooperative and enforceable mechanism. A legally binding instrument not only addresses the limitations of non-binding measures but also establishes a framework for collective commitment and accountability. Concentrating efforts on a legally binding instrument can effectively mitigate the risks associated with unilateral actions, strengthening international cooperation and ensuring the BWC's efficacy in preventing the development and use of biological weapons.

8. In response to these challenges, a fundamental shift is needed. Voluntary measures and unilateral actions have proven insufficient in fostering a secure and stable global environment. This working paper argues that a more comprehensive and effective verification framework is crucial to instilling confidence among member states and ensuring the BWC's efficacy.

B. Adapting the Biological Weapons Convention to Technological Developments

9. The technological developments witnessed in this timeframe underscore the urgency of adopting a comprehensive verification mechanism consistent with the realities of the 21st century. While national implementation of the Convention is imperative, international cooperation is becoming more and more essential to sustain national capacity. This is all the more important given the rapid technological and scientific developments. Without international cooperation and the transfer of technology, enhancing national implementation of the Convention is almost impossible. Moreover, national measures should be arranged in a manner to promote peaceful cooperation in biological activities, as enshrined in Article X of the Convention. Facilitating the fullest possible exchange of equipment, materials, and scientific and technological information for the use of biological agents and toxins for peaceful purposes and not hampering the economic and technological development of States Parties is the legal obligation of each BWC State Party.

10. Incorporating the latest advancements in technology can enhance the verification process, making it more efficient and less intrusive while maintaining the necessary rigor. A comprehensive review of the BWC to integrate technological advancements is needed. We should not only strengthen the convention's ability to detect and deter potential violations but also foster international confidence in the peaceful use of biology and biotechnology. The COVID-19 pandemic highlights the full benefits of new advances in biological sciences for peaceful purposes and also underlines the potential severity of biological threats. Moreover,

it clarifies the need to work together on measures to facilitate the usage of biological sciences for peaceful purposes and also counter biological threats.

11. This working paper recognizes the necessity of adapting any compliance and verification mechanism to the current biosciences and biotechnology realities. By doing so, we can pave the way for a more secure and stable global environment.

III. Recommendations

12. Experience has proven the fact that selective approaches to strengthening the Convention have not been effective so far, and strengthening the Convention in a balanced manner could only be achieved through a comprehensive approach. Discussions carried out in the last intercessional process showed the insufficiency and inefficiency of the proposals raised, and none of them were fully supported by all States Parties, even though there was no common understanding and agreement on the details, because the State Parties could not be convinced of the reliability and sufficiency of these proposals to ensure completely the implementation of all articles of the Convention and the fulfillment of obligations of the State Parties. The working paper proposes a legally binding instrument as the most appropriate approach to address the evolving challenges of compliance and verification. Here are key reasons supporting this proposal:

13. A legally binding instrument, as proposed in this working paper, carries the weight of enforceability, providing a structured framework to hold states accountable for their commitments. This ensures that member states adhere to the stipulated verification measures, minimizing the risk of non-compliance. In the absence of a legally binding mechanism with verification provisions, any measures cannot be used as a tool to assess compliance and will remain only a voluntary measure and a tool for transparency and building trust among States Parties in the implementation of the Convention.

14. By adopting a legally binding instrument, States make a collective commitment to abide by the rules and regulations set forth in the BWC. This fosters a sense of shared responsibility, reinforcing the cooperative spirit essential for effective verification. Non-discriminatory multilaterally negotiated guidelines within the Convention concerning the transfer of bacteriological (biological) toxins, agents, equipment, materials, and technology for peaceful purposes to States Parties would strengthen the Convention and contribute to the non-discriminatory implementation of its provisions. A legally binding instrument, as proposed in this working paper, should address and develop such guidelines on the transfer of biological agents, materials, and technology for peaceful purposes.

15. There is currently no mechanism to verify compliance with the legal obligations of the State Parties in full conformity with the provisions of the Convention and to address any possible violation committed in this regard. States are more likely to adhere to their obligations when there are tangible consequences for violations, promoting a culture of accountability.

16. It is needed to establish a multilaterally negotiated procedure to settle disputes if a State Party is restricted and/or denied by another State Party or a group of State Parties, inconsistent with Article X of the Convention, to access drugs, medicines, vaccines, diagnostics, and related equipment and materials for peaceful purposes. In the event of disputes or accusations, a legally binding instrument provides a clear and established mechanism for resolution. This minimizes the risk of unilateral actions and accusations, offers a structured process for addressing concerns, and ensures a fair evaluation of compliance.

17. A binding instrument can be designed to adapt to technological developments, incorporating advancements in surveillance, data analytics, and other relevant fields. This adaptability ensures that the verification mechanism remains effective over time.

18. In conclusion, this working paper advocates for the resumption of negotiations to establish a non-discriminatory legally binding instrument, including verification, dealing

with all the articles of the Convention in a balanced and comprehensive manner. Such an instrument would not only address the limitations of past proposals but also create a cooperative and enforceable framework, propelling the BWC into a new era of effectiveness and relevance. The instrument can provide the necessary assurance that all State Parties would fulfill their obligations under the Convention.
