
**Meeting of the States Parties to the Convention
on the Prohibition of the Development,
Production and Stockpiling of Bacteriological
(Biological) and Toxin Weapons and on Their
Destruction**

29 July 2013

English only

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Meeting of Experts

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Item 7 of the provisional agenda

**Standing agenda item: strengthening
national implementation**

**BWC compliance – a conceptual discussion: preliminary
views by Australia**

Submitted by Australia

I. Introduction

1. At the Meeting of States Parties to the Biological Weapons Convention (BWC) convened in December 2012, Australia, Canada, Japan, New Zealand and Switzerland submitted a working paper¹ on discussing compliance. The working paper proposes that the 2013 Meeting of Experts undertake, under the standing agenda item on strengthening national implementation, to discuss and develop common understandings on issues relevant to enhancing assurance of compliance with the BWC.
2. The working paper proposed that the *conceptual discussion on compliance* could be based around the following two broad questions:
 - (a) What constitutes compliance with the BWC?
 - (b) How can States Parties better demonstrate their compliance with the BWC and thereby enhance assurance for other States Parties?
3. In order to facilitate and focus this discussion, the working paper also invited States Parties to provide views on the questions posed in paragraph 2 above to the Implementation Support Unit by 30 June 2013. This paper contains some preliminary views by Australia.

¹ BWC/MSP/2012/WP.11.

II. Why is a conceptual discussion of BWC compliance important in 2013?

4. Compliance with treaties, particularly those relating to weapons of mass destruction, is in the interests of the whole international community. The BWC contains strong prohibitions which continue to serve the international community as a vitally important normative barrier against biological weapons. Nevertheless, the BWC is widely recognised as lacking effective measures for providing assurance of States Parties' compliance. This is an issue which Australia believes needs to be addressed to enhance the BWC's future effectiveness and sustainability.

5. It is also one means to a broader end. Effective implementation of the BWC could include effective national legislation, domestic biosecurity regulations and capabilities and export controls on sensitive materials (in some cases developed through bilateral and regional cooperative efforts). These effective and practical BWC implementation measures can all work in a complementary manner to enhance biological security globally, reduce the possibility of BW proliferation, raise barriers to bioterrorism, and improve detection and response capabilities for natural or deliberate disease outbreaks and facilitating exchange in the life sciences for peaceful purposes.

6. It is important for States Parties to consider what compliance with the BWC means in the contemporary context. By considering what compliance with the BWC means *now*, we may be able to improve national implementation efforts and to collectively undertake effective multilateral action on compliance at the Eighth Review Conference in 2016.

7. Australia views national implementation of the BWC and discussion on compliance as a key issue for the BWC. States Parties have the opportunity to work *together* in order to obtain a better common understanding of what BWC compliance means, and how States Parties can work cooperatively to achieve enhanced compliance, including with national implementation obligations. And the discussion should include how States Parties *achieve* compliance and how they can most effectively *demonstrate* to other States Parties that they are in full compliance with their obligations under the BWC.

III. What constitutes compliance with the BWC?

8. In Australia's view, the key compliance issues are:

(a) Domestic enactment, effective enforcement and timely review of national implementation measures (Article IV), including domestic legislation to criminalise the prohibitions contained in BWC;

(b) The destruction, or diversion to peaceful purposes, of all agents, toxins, weapons, equipment and means of delivery (Article I and Article II);

(c) Enactment, effective enforcement and timely review domestically of national legislation and/or regulations to prohibit transfers (Article III), including an effective national export control licensing system, and appropriate national biosecurity measures;

(d) Willingness to co-operate with other States Parties in resolving any compliance concern (Article V);

(e) Willingness to co-operate with other States Parties in resolving any issue raised (Article VI);

(f) Willingness to assist other States Parties in situations envisaged (Article VII);
and

(g) Effective domestic arrangements which facilitate the fullest possible exchange of relevant equipment, materials and scientific and technological information for peaceful purposes, notably by industry and academic and research institutions, and for those States Parties in a position to do so, demonstrated contributions to international cooperation activities in the life sciences for peaceful purposes (Article X).

9. A domestic review of relevant national measures would need to take into consideration the relevant developments and advances in the life sciences. Particularly in terms of science and technology, security and the increasingly globalised and non-State-based practice of the life sciences.

IV. How can States Parties better demonstrate their compliance with the BWC and thereby enhance assurance for other States Parties?

10. At the present time, annual submission by States Parties of Confidence Building Measure returns (CBMs), as agreed at the Third Review Conference in 1991 and revised at the Seventh Review Conference in 2011, is the primary tool by which States Parties can demonstrate some aspects of their compliance with the provisions of the BWC. It is positive that 69 States Parties submitted CBMs in 2012 and we look forward to this number increasing.

11. In addition, prior to each Review Conference, all States Parties are invited to provide information which forms the basis of the BWC Compliance Report. The Compliance Report prepared for the Seventh Review Conference in 2011 contained information provided by 36 States Parties.² Reports by States Parties on their implementation of Article X are also anticipated in the outcome of the Seventh Review Conference and have been made by many States Parties during meetings of the current intersessional process.³

12. These submissions and reports are important. Participation by a larger number of States Parties in the CBMs, the Compliance Report and Article X reporting enable more States Parties to demonstrate their commitment and their compliance with the provisions of the BWC. This enhances assurance for other States Parties.

13. While these measures provide some measure of assurance, they could be further enhanced in their scope. A number of recent proposals provide States Parties with the opportunity to better demonstrate their compliance with the BWC and thereby enhance assurance for other States Parties. The proposals include, *inter alia*:

- (a) Additional information included in CBMs;⁴
- (b) A compliance assessment process;⁵
- (c) A Peer review mechanism;⁶ and
- (d) A Bio-transparency and Openness Initiative.⁷

² BWC/CONF.VII/INF.2 (and Add.1)

³ For example, Australia's 2012 report contained in document BWC/MSP/2012/MX/INF.8.

⁴ Next steps on the CBMs: some key questions for 2013 – Submitted by the United Kingdom, BWC/MSP/2012/WP.1

⁵ National implementation of the BWC: compliance assessment: update – Submitted by Canada, Czech Republic and Switzerland, BWC/MSP/2012/WP.6

⁶ A Peer-Review Mechanism for the Biological and Toxin Weapons Convention – Submitted by France, BWC/MSP/2012/WP.12

14. This is not an exhaustive list. However, in Australia's view, these types of proposals deserve to be considered.

V. Australia's responses to the additional questions posed in BWC/MSP/2012/WP.11.

15. In Australia's view, these four additional questions should be considered during the conceptual discussion on compliance:

1. Whether there is a role for CBMs or declarations in demonstrating compliance, and if so, whether additional information to that which is already requested in the current CBMs would enhance assurance of compliance

16. Australia is of the view that additional information to the CBMs would enhance assurance of compliance. The content of the current confidence-building measures (CBMs) was developed in the late 1980s and early 1990s. In light of the rapid developments in biological sciences and the biotechnology sector in the past 20 years, a key objective in this discussion would be to identify other types of information not in the current CBMs that would enhance assurance of compliance with the BWC. The focus should be on the type of information required in the current setting.

2. Whether the consultation and cooperation mechanisms under Article V require further development, including, for example, consideration of mutually agreed visits to sites of compliance concern

17. The development of the consultation and cooperation mechanisms under Article V, including consideration of mutually agreed visits to sites of compliance concern, may assist in enhancing confidence in compliance.

3. Whether mechanisms for the investigation of alleged use of biological weapons (Article VI) require further attention, including the role of the UN Secretary-General's Investigation Mechanism;

18. Additional resources and preparations for investigation of alleged use, including training of experts and realistic field exercises, would provide the UN Secretary-General's investigation mechanism greater credibility.

4. The potential impact of advances in the life sciences on demonstrating compliance and enhancing assurance of compliance, including, for example, the impact of rapid advances in bio-forensics.

19. A discussion on enhanced assurance of compliance should take into account the potential impact of rapid advances in S&T in achieving this objective.

⁷ The United States Government's Bio-transparency and Openness Initiative – Submitted by the United States of America, BWC/MSP/2012/WP.3

20. In Australia's view, the rapid scientific and technological developments in the life sciences, increasing globalisation of capacity and activity in the life sciences and increasing devolution of that capacity and activity from state-based institutions to private actors underline a need for States Parties to address these questions in a fresh, critical and creative manner and to develop *concrete* responses which reflect *contemporary* scientific and technological reality. It is in all States Parties' interest to do so.
