

EU Non-PROLIFERATION CONSORTIUM

The European network of independent non-proliferation think tanks

Enhancing compliance of the BTWC through national implementation and other means

JEAN PASCAL ZANDERS

(Senior Research Associate, Fondation pour la recherche stratégique)

Workshop Report

Brussels, 24 April 2014

The EU Non-Proliferation Consortium is a network of independent non-proliferation think tanks to encourage discussion of measures to combat the proliferation of weapons of mass destruction and their delivery systems within civil society, particularly among experts, researchers and academics. Any opinions expressed in this document are the sole responsibility of the author and do not necessarily reflect the views of the EU Non-Proliferation Consortium or any of its individual institutes.

FONDATION
pour la **RECHERCHE**
STRATÉGIQUE

PRIF

Peace Research
Institute Frankfurt



HSFK

Hessische Stiftung
Friedens- und Konfliktforschung

IISS

sipri

June 2014

With the support of the European Union



1. Participation

The workshop, organised by the EU Non-Proliferation Consortium in cooperation with the European External Action Service (EEAS), was held in Brussels on 24 April 2014. Its purpose was to have an in-depth brainstorming session on the future of the Biological and Toxin Weapons Convention (BTWC) with officials from EU Member States.

The event was the 1st Ad Hoc Seminar to be organised under the new Council Decision 014/129/CFSP of 10 March 2014 supporting the continued activities of the EU Non-Proliferation Consortium.

Representatives, mostly delegates attending the CODUN working party, participated from Belgium, Cyprus, the Czech Republic, Denmark, France, Hungary, Ireland, Latvia, Lithuania, The Netherlands, Poland, Portugal, Romania, Slovakia, Spain, and the United Kingdom, as well as the EEAS.

Invited non-governmental expert speakers were nationals from Belgium, France, Ireland, Italy and the United Kingdom.

2. Meeting presentations

Dr Jean Pascal Zanders (Owner, The Trench and Senior Research Associate, Fondation pour la recherche stratégique) welcomed the participants on behalf of the EU Non-Proliferation Consortium and briefly outlined the purpose of the workshop.

Ambassador Jacek Bylica (Special Envoy on Non-proliferation and Disarmament, EEAS) thanked the EU Non-Proliferation Consortium and the Fondation pour la recherche stratégique for organising the event. He noted its timeliness as the EU Members and the EEAS start reflecting on the 8th Review Conference of the BTWC in 2016 and must consider the renewal of the EU's support to the BTWC with the possible negotiation and adoption of a new Council Decision before the end of 2014. In the EU Common Position adopted ahead of the 7th Review Conference (2011), the EU Member States identified three guiding priorities to further strengthen the BTWC: (i) supporting national implementation, (ii) building confidence in compliance, and (iii) promoting universality. Assessment of the 7th Review Conference two and a half years later yields sobering conclusions. Despite its reaffirmation of important prohibitions and obligations, deep divisions among states parties touch upon basic notions beyond the BTWC. These include fundamental ideas on governance, sovereignty and justice. The divisions overshadow the common interests that might, or should, exist in preventing biological warfare. Moreover, since the failure of a legally binding protocol to the BTWC in 2001, the topic of compliance has been highly contentious within the regime. These disputes have imposed limitations on the current intersessional process, which in turn affect chances for progress prior to 2016.

To contribute to a successful outcome of the 8th Review Conference, the EU should continue to support the BTWC both politically and financially. Four Council Decisions (in 2006, 2008, and 2012 in direct support of the BTWC-ISU activities and in 2008 in support of WHO activities in the areas of bio-safety and bio-security) have enabled the EU to contribute to the reinforcement of the BTWC. Through the BioWeapons Prevention



3 EU NON-PROLIFERATION CONSORTIUM

Project (BWPP) and the BTWC Implementation Support Unit (ISU) it has convened regional universalisation seminars and assisted countries with their drafting and national implementation of legislation or preparation of their national submissions under the agreed confidence-building measures (CBMs). A sponsorship programme has enabled developing countries to attend BTWC meetings and workshops. Since the commencement of activities in 2006, 14 states have joined the convention, annual CBM submissions have increased from 51 to 69 states, including 19 states that have submitted their first CBM return. Despite the EU's contribution to these achievements, questions nevertheless remain about what else the EU could do to strengthen compliance. In particular, how can the EU build alliances with non-EU countries, and members of the Non-Aligned Movement (NAM) in particular, to further the goal of a more effective compliance system for the BTWC and to enhance actual compliance?

Dr Jean Pascal Zanders recalled that in the summer of 2001 the Ad Hoc Group (AHG) suspended negotiations on a legally binding protocol to the BTWC, which would have included compliance and verification measures. At the end of the same year, the 5th Review Conference was suspended after the US sought to terminate the AHG's mandate. After its resumption a year later, the 5th Review Conference adopted a process of annual expert and state party meetings in between review conferences (and renewed the process at the 2006 and 2011 sessions). Although the decisions salvaged the convention, they have contributed to a *de facto* acceptance of the BTWC's 'unverifiability'. Moreover, they resulted in a significant shift of emphasis from the international level to the levels of national and individual responsibilities to prevent biological weapons.

The EU, meanwhile, remains committed to effective mechanisms to build confidence in compliance with the BTWC. It believes that this can be achieved by means of declarations, consultations and on-site activities, representing increasing levels of transparency and scrutiny, as well as by information exchange and review during the intersessional process. While accepting that no international consensus on verification exists, it is prepared to work towards identifying options that could achieve similar goals. The EU also considers national implementation as a cornerstone of the BTWC, and therefore seeks to enhance national legislation, coordination among national stakeholders and regional and sub-regional cooperation; and implementation of appropriate biosafety and biosecurity management standards for life science institutions, among other things.

Emphasis on compliance raises a number of interesting questions. It definitely recognises the responsibilities of states parties, but raises questions whether all obligations—treaty articles and decisions taken at review conferences—are viewed on an equal footing. Demonstration of compliance is a burden that rests entirely on the state, but the intersessional processes have identified and recognised responsibilities by other stakeholders. States have adopted coercive measures via national legislation in order to prevent them from violating the BTWC prohibitions, but also try to coopt them into the BTWC goals.

The combination of a widening range of issue areas that fall under the compliance umbrella and multilevel stakeholdership (sub-national, international and transnational) raise questions as to whether any consensus exists about the 'compliance' concept, who is to comply with what, who is to judge compliance, which tools exist for assessing BTWC compliance, and what the consequences of a judgement of non-compliance would



entail? One of the problems in addressing these issues is that the role of the state in an increasingly multi-layered, polycentric global system is diminishing fast. Notwithstanding, many states reject formal governance responsibilities for non-state actors under BTWC.

Looking forward to the 2016 Review Conference, the EU faces questions about the centrality of core disarmament issues in the future development of the BTWC, the instruments it is willing to consider to achieve those disarmament goals, and its strategies to promote its views among other parties to the convention.

In her comments to Zanders' presentation, *Ms Judit Körömi* (Special Representative of the Foreign Minister for Arms Control, Disarmament and Non-Proliferation, Hungary, and Chair of the 2013 BTWC intersessional programme) noted that during the intersessional process positions have moved little, and as a consequence virtually no room for any consensus exists. Specifically with regard to compliance, verification and CBMs, she observed that the most vocal states hold diametrically opposing views as to whether they should be binding or voluntary. This affects their utility as a tool in building confidence in compliance. She said that unless a strong majority position either way emerges, there may be little chance of making the CBM mechanism more effective or increasing state party participation. At the 7th Review Conference several parties expressed interest in exploring the 'compliance' concept further and wished to have the topic included in the current intersessional meetings. NAM members, however, effectively blocked the option. She therefore wondered whether its consideration should not be moved to informal sessions, but in the absence of US leadership on this issue, which country is willing to take the initiative?

Looking forward to the 8th Review Conference, Körömi believed that deep reflection is required on the state of scientific and technological developments and on how they may affect the BTWC in future. People should similarly reflect on whether the regime is best served by legally-binding measures only or whether certain aspects could be better served by means of alternative approaches. Reflection is also required on the types of relationship states parties are willing to build with stakeholder communities and their implications for the nature of interactions with them. And last, but not least, she raised the question about resources states are willing to make available to prevent the weaponisation of disease.

Dr James Reville (Research Fellow, Harvard Sussex Program) addressed the question of what verification of the BTWC may mean today. Compliance with the convention is complicated by ambiguities of certain obligations, deficiencies in national capacities to implement those obligations, and fast changing contexts. Verification increases the levels of assurance that states parties are complying with the BTWC prohibitions and obligations. In addition, the exercise of verification would force violators to hide their illicit activities (e.g., by embedding them in licit programmes) and cover up their purposes, neither of which is easy. The violator could thus be forced to give up its BW programme or bury its activities even deeper, which would make certain aspects even more anomalous and therefore more visible.



While accepting that the draft Protocol to the BTWC should be assessed for elements that may still be useful today, Revill rejected positions arguing that the document offers the only way to future verification. Any consideration of options must move beyond current fractious rhetoric. Innovative approaches are necessary, but at present any concrete suggestion meets with opposition from (groups of) states parties resisting any form of enhanced transparency or compliance monitoring, let alone verification. He presented a possible modular approach starting with enhancements to compliance with those articles whose implementation are the least controversial and using these as building blocks to gradually move into other areas of the treaty until all dimensions are covered. Revill also envisaged a gradual expansion of the toolbox, beginning with information exchanges (including CBMs) and moving on to visits, declarations, inspections, and ultimately the creation of an international organisation. His proposed starting point was the theme of science and technology, which easily reaches into the BTWC's core prohibitions as well as the need for international cooperation under Article X.

Identifying and assessing options that may contribute to compliance assessment and verification will be key to prepare for the 2016 Review Conference and devise a plan to move forward. Revill left open whether a concrete, incremental plan of action should be pursued within the consensus-based framework of the BTWC or whether a subgroup of states parties should go ahead irrespective of opposition from certain quarters.

Dr Elisande Nexon (Research Fellow, Fondation pour la recherche stratégique) introduced the French proposal for a peer review mechanism as an example of voluntary exchanges of information among parties to the BTWC. She noted that several states and international organisations already operate various types of peer review mechanisms covering different fields. In international security, peer review activities can contribute to compliance assessment, confidence building, identification of options for improvement, performance assessments, promoting cooperation, quality control, sharing experiences and best practices, and transparency. Similar types of exercises are or have been undertaken by organisations such as the International Atomic Energy Agency (IAEA), the EU with respect to national export control systems for dual use goods and by the UN Office for Disarmament Affairs in the context of UN Security Council Resolution 1540. Nexon, however, noted the need for tailored approaches as each peer review activity serves different goals, covers different scopes, and therefore requires adapted methodologies.

France developed a peer review proposal for the BTWC with a view of strengthening confidence among parties, enhancing national implementation of the convention and fostering the sharing of experiences and best practices. The exercise is voluntary and respects national sovereignty. The state receiving national experts from other countries freely determines the exercise themes. France hosted a pilot exercise in December 2013, which included briefings and two onsite visits. The final report and lessons learned will be presented in the near future. Meanwhile, the general sense is that the proposed peer review mechanism, while not a substitute for verification, can contribute to the enhancement of different areas of BTWC implementation, generate transparency about the national efforts, and create opportunities of international cooperation and assistance.



Dr Mirko Sossai (Rome University 3) analysed the contribution of national implementation approaches to compliance enhancement. Like Reville, he noted that with respect to compliance the BTWC text is ambiguous and that state party compliance can be affected by lack of resources and changes in circumstances. However, he added that lack of compliance can also be the consequence of indifference or a deliberate choice.

He then reviewed the various possible implementation measures and strategies as identified in the final document of the 7th Review Conference (2011).

An interesting angle of the national implementation activities is their broad focus on prevention. To achieve this goal they reach into adjacent areas of biosecurity and -safety, industry standards (e.g., biosafety or transport of dangerous goods), technology transfer controls via national export regulations for dual-use goods, the implementation of UN Security Council resolution 1540, international health regulations and disease surveillance via the World Health Organisation (WHO), or the possible involvement of the World Customs Organisation to achieve common nomenclature on biological dual-use items and a framework of standards.

In the end, important inconsistencies and gaps remain regarding national implementation. This can be the consequence of lacking inter-agency and inter-departmental coordination and cooperation. There is a big need for both national and international oversight or authority.

Dr Cairíona McLeish (Senior Research Fellow, Harvard Sussex Program) looked at the future of the BTWC from the perspective of multi-stakeholder governance. Governance is built on a network system that develops a range of inclusive and multi-layered activities to achieve a particular outcome. It departs from the premise that no single actor has all of the knowledge and information required to solve complex dynamic and diversified issues, possesses sufficient overview to make the application of needed instruments effective, and lacks potential to dominate unilaterally. ‘Multi-stakeholder governance’ therefore refers to the multiplicity of actors within that network, each of whom possesses knowledge or expertise to contribute to the management of a particular issue area. In practice, the shift towards governance with regard to the BTWC is already reflected in new activities and work methodologies that include open meetings, hearing statements, panel discussions, the maintenance of the ‘Think Zone’ by the ISU ahead of and during review conference meetings.

McLeish presented compliance as a process consisting of gathering information, analysing that information, and judgments based on that information and analysis. The first two stages are the ones where stakeholders other than governments can make useful contributions. Such stakeholders can be information providers with regard to work practices, oversight and work direction, not just to their own governments, but also to their peers in other countries or as part of various scientific, commercial or industrial transnational processes. Independent analysts and organisations can also contribute to the analysis of information, and governments may draw on their conclusions when voicing non-compliance concerns. Civil society actors can also express their own concerns about certain developments that may erode the standing of the BTWC or may promote the legitimacy of the disarmament treaty among their constituents. When technical problems arise, non-state stakeholders can draw on their epistemic communities to frame possible solutions, even when the political environment is momentarily not conducive to their



discussion or resolution. This option could be useful to explore the theme of verification and to design and test certain methodologies.

She concluded by stating that states parties should assume that contributions from non-governmental stakeholders will be valuable. They should therefore not only encourage their wider participation in treaty meetings, but also use the opportunity to explore and discuss ideas in the politically neutral space outside of Geneva. They should use the existing networks and draw on the information from those stakeholders for their work and statements. Perhaps parties to the BTWC should consider to create or nurture a study group format in which government representatives and civil society stakeholders can come together to explore a particular theme in their personal capacities, but notwithstanding draw on their technical credentials.

In her closing address, *Ms Clara Ganslandt* (Head of Division Weapons of Mass Destruction, Conventional Weapons and Space, EEAS) thanked all participants and speakers for their contributions to the debate. The EEAS, the EU member states and European civil society all have stakes in the future of the BTWC. She appreciated the exploration of various ways to enhance transparency, and thus to demonstrate compliance. Furthermore, discussions touched upon the many synergies with other international instruments and organisations, such as the WHO and UN Security Council resolution 1540. They point to several alternatives to verification, which may lead to concrete action. The ideas put forward will not only help framing an EU strategic vision for the 8th Review Conference in 2016, but also inform concrete projects for the next Council Decision in support of the BTWC.

Mr Camille Grand (Director, Fondation pour la recherche stratégique and Chairman, EU Non-proliferation Consortium) closed the workshop by thanking all participants for their input into the discussions.

3. Discussion

On the general way ahead for the BTWC

Participants generally agreed that the BTWC is a difficult treaty to make effective. Today a fundamental blockage exists; the core question is how to overcome it? One way of looking at the problem is to assess the cost of doing nothing. Presently that cost is nothing, as a consequence of which all proposed measures will tend to remain voluntary. The wide divergencies in views on how to take the convention forward constrains possible action, in effect leaving national implementation as the sole option.

With regard to compliance, questions exceed answers at present, making the adoption of possible measures all but impossible. Yet, at the same time it is important to frame the goals in order to engage other countries. The core issues concerning monitoring and transparency have not changed over the past few decades, but the nature of the threats have. Hence, transparency becomes a critical ingredient for any future compliance model. While the emergence or banalisation of some technologies and processes have enhanced perceptions of threats, similar developments in monitoring technologies, information sharing and awareness of risks have actually created opportunities for transparency that



did not exist one or two decades ago. Ultimately, compliance is about a process and never an end stage. Critical is how the international community could move from identifying some indicators of compliance to concrete measures to demonstrate and assess compliance. Equally important is to identify those useful measures that may enjoy cross-regional consensus.

The majority of states parties are silent in the meetings, raising the question how they may become more involved in the BTWC process. One participant expressed the concern that progress is often incident-driven. While this may increase activity, it is also true that a major event may push development of the treaty into a particular direction to the detriment of other, equally important issues.

On generating transparency about intent

The absence of a clear vision on verification goals actually complicates discussion on verification methodologies. The fact that many BTWC-related discussions and activities take place on different levels raise important questions about what verification should address. National implementation, for instance, takes place within a state, whereas compliance monitoring and assessment address inter-state issues. One participant observed in this context that the BTWC is a catalyst for certain types of activities, rather than their focus. Other participants expressed the need for an international organisation, because inter-state control mechanisms could allow states with malevolent intent to seek out and exploit weaknesses in the system.

Participants saw many benefits of the proposed peer review process, noting in particular its flexibility and the opportunities it gives a host state to demonstrate to other invited parties how it implements the BTWC. However, the process cannot prove compliance. Some workshop participants wondered how states such as the USA, Russia or China can be involved. It was also suggested that the CBM returns could become an important input for the peer review process. One of the key problems with the CBM process is that parties submitting returns never receive any feedback. The proposed peer review process could actually address this anomaly, and thereby contribute to widening participation. The French pilot exercise yielded several ideas for further development, it was noted. The BENELUX countries will also organise a peer review exercise similar to the French proposal. Lessons learned ought to be shared.

A central question remains on how to deal with suspected violations of the BTWC. The treaty does not have its own verification machinery and, in contrast to some other arms control agreements, it does not have civil society constituencies that can bring possible instances of breaches to public attention. Is it possible to build capacity within civil society to fulfill such a role? Plenty of open-source information is available, but the questions remain about what to do with it. Before it can be examined there need to be a clear definition of principles and decisions on what should be explored.

A separate issue is whether stakeholders other than governments will not pursue their particular interests, and whether those private interests might not conflict with those from other entities. However, as one participant remarked, responsibility for the treaty resides with the states parties. While non-governmental stakeholders can contribute to the maintenance of the integrity of the treaty regime, they are no substitutes for governments.



Another series of comments reflected on how universal civil society involvement can be. Some countries are very intolerant towards NGOs or allow them only a limited scope of activity. Their sources of funding—whether by national governments or foreign governments or foundations—may seriously impede their ability to undertake certain tasks. The counterargument was offered that such realities should not prevent the development of basic principles and deployment of certain activities in countries where the NGO community enjoys broader latitude. The core point is that presently certain views are not being challenged when they should be.

On current implementation measures

The current discussions on treaty implementation often lack the qualitative dimension. Too often the question is whether a state is undertaking a particular activity, rather than on how it is undertaking that activity. Many measures are proposed and adopted, but few questions are raised about how they are actually being implemented. Export controls are a case in point: while the so-called ‘catch-all’ principle is beyond question in the EU, there is very little reporting on how it is implemented or enforced in practice. For monitoring purposes it is equally important to get the relevant information on transactions, including their nature and volumes. However, as the Chemical Weapons Convention illustrates, there may be important discrepancies regarding transfer data. Methods and processes need to be continuously assessed in order to ameliorate them.

Some participants noted that originally legal clarity existed about the requirements, but this has diminished as a consequence of scientific, technological and geopolitical advances. In particular, the convergence between biology and chemistry raises the question on how to deal with overlapping national and international regulations. This will affect the BTWC regime in the long term.

On next steps for the EU

It is important for the EU to remain focussed on the core goal of the BTWC, namely to live in a world without biological weapons. However, in the pursuit of that goal, it must realise that it, and the West in general, has become but one voice in a world that is increasingly polycentric. This implies that immediate interests may diverge considerably on any given issue. The EU invests a lot of money and resources in promoting the universality and implementation of the treaty, but it may have to develop a clearer vision on its short and mid-term objectives and strategies to promote them among other states parties. It must also be more proactive in terms of publicising the types of contributions it makes in specific areas to counter prejudices that may exist in certain quarters.

Noting the future challenges the BTWC will face and acknowledging that nobody seems prepared to lead the discussions on how to address them, one participant wondered whether the EU could not adopt a leadership position, either within or outside the formal BTWC processes. This will most likely be a longer-term endeavour, as fostering new ideas is an incremental process requiring forward thinking in terms of a decade or more.



Other comments related more to maintaining a coherent EU message at BTWC meetings. Especially since the entry into force of the Lisbon Treaty, it has become more difficult for the EU to present common positions, in particular as a consequence of the reduced role of the Presidency and its position as an observer international organisation that is not party to the convention. Therefore, the EU should consider strategy options to present unified positions to the forums and have its members pursue common positions in unison.

(This workshop was organized by the Fondation pour la Recherche Stratégique, with the support of the European External Action Service).

