

# 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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English only

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## Fifth Session

Geneva, 2-13 December 2024

### Agenda item 6

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

## Food for Thought on Compliance and Verification\*

### Submitted by Switzerland

1. At the Ninth Review Conference to the Biological and Toxin Weapons Convention (BTWC), States Parties decided to establish a Working Group (WG) to identify, examine and develop specific and effective measures, including possible legally-binding measures, and to make recommendations to strengthen and institutionalize the Convention in all its aspects.<sup>1</sup> On the topic of Compliance and Verification, the successive Chairs of the WG Ambassadors Damico and Meyer have been assisted by Mexico and the Netherlands as Friends of the Chair (FoC).
2. At the Third Session of the WG, held in December 2023, the topic was discussed for the first time. Subsequently, several guiding questions were submitted by the FoC:
  - (a) What are the scope and purpose of the concepts of verification and compliance with regard to the obligations under the Convention?
  - (b) What process is required to identify, examine and develop specific and effective measures related to compliance and verification within the context of the Convention, taking into account the historical context as well as technological advancements?
  - (c) What should the Working Group deliver with regard to the way forward on the topic of Compliance & Verification in its report for States Parties to be considered at the Tenth Review Conference, or earlier at a Special Conference?
3. This Food for Thought Paper provides Switzerland's overall views on the topic of compliance and verification under the BTWC and seeks to address the questions put forward by the FoC. Relying on long-standing positions held by Switzerland as well as new considerations, its intent is to contribute to advancing/promoting discussions on compliance and verification under the BTWC within the mandate of the WG.
4. The discussions around compliance and verification within the framework of the BTWC have a long history. It is important to acknowledge past efforts while constructively engaging with and considering anew discussions that were held more than 20 years ago. It is equally important to recognize that biotechnology has significantly evolved since then and

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\* The present document is being issued without formal editing.

<sup>1</sup> Final Document of the Ninth Review Conference of the Biological Weapons Convention, BWC/CONF.IX/9, p.9f.



that a verification regime today will look different than what was envisaged more than 20 years ago in the context of the Ad Hoc Working Group.

5. For the purpose of this paper, we consider verification as the process of collecting and assessing data to be in a position to make an informed assessment of compliance with treaty obligations set out in Article I of the Convention. Verification is therefore a means to an end and not an end in itself.

6. A verification process should include the collection of data via declarations, combined with visits as a supplemental source of information. The information collected would form the basis of an assessment, which could lead to additional consideration and potential measures in certain situations, that is if they give rise to uncertainties or ambiguities.

7. A BTWC verification regime will struggle to provide the same degree of certainty about compliance achieved under other multilateral instruments addressing WMDs. This is due to a number of factors, including the requirement to protect national security, the dual use nature of biotechnology and the need to protect proprietary information. Thus, we should not be aiming at establishing a full-proof verification regime in the traditional sense. Rather, we should strive for a regime that enhances confidence about compliance, reduces uncertainties and ambiguities through a mandatory mechanism to increase openness and transparency of the parties' activities relevant to the BTWC. This verification regime should also be able to effectively deal with uncertainties and suspicions that may arise therefrom.

## **I. What form could such a regime take?**

8. To contribute to the discussions in the Working Group, we want to share our view on what a verification regime could potentially look like. In the following, we will describe an approach that consists of three pillars. Before going into details, we note that aspects regarding the implementation of this approach would require dedicated work, which could not be managed by the existing resources of the BTWC and its Implementation Support Unit (ISU) as they currently exist:

### **Pillar One: Declarations and visits**

9. This pillar would consist of various measures, including enhanced transparency measures, extended legally-binding confidence-building measures (CBMs) or mandatory declarations, which would be subject to review or evaluation, as well as a program of regular visits to States Parties. In this context, it is important to recall that Verex<sup>2</sup> had the mandate to look at different measures, without discussing what a potential verification regime, could look like. Verex concluded that none of the 21 measures that it identified, taken individually, could be relied upon to determine if a State Party was in violation of the Convention. It indicated, however that a combination of measures could enhance the capabilities and/or overcome limitations of individual measures. In our view, there will be no silver bullet solution and a Swiss army knife approach, which combines different measures, is the best way forward. Thus, the first pillar would be designed in a way to include different measures that can broadly be placed into two categories: a) declarations, b) visits, with the object of collecting information. This pillar would operate on an ongoing basis and consist of the following elements:

#### **(a) Declarations**

Before data can be assessed, it needs to be gathered. To this end, we suggest further enhancing the already existing measures under the BTWC. Existing CBMs could serve as a basis for the collection of information. However, it would be necessary to conduct an analysis in order to define how the existing CBMs could be transformed into declarations, including by broadening existing and also adopting new CBMs, where necessary. Such declarations

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<sup>2</sup> Final Document of the Third Review Conference to the Biological Weapons Convention, BWC/CONF.III/23, p.16-18.

should take a binding form and not simply be considered political commitments.

(b) Visits

We believe that regular visits would be a useful source of supplemental information. These visits would happen on a regular basis and independently of identified inconsistencies in declarations. They would serve several purposes: 1. They would relate to activities and facilities declared under a) and thus help with an assessment of the declaration as well as deterring activities not compatible with the provisions of the Convention. 2. They would enable training of and continuous practice for inspectors. We consider this a necessary requirement for being able to carry out investigations and/or short-notice or challenge inspections. Dedicated work would be necessary to spell out which facilities would be the subject of visits and their frequency.

**Pillar Two: Assessment**

10. During the discussion in the WG, it was repeatedly underlined that the collection of data itself is only one element of a verification regime. In a second step, the data collected would need to be assessed. While the design of such a system would require detailed discussions, we would see value in a process that can undertake a general assessment of the collected data and activities relevant to the Convention that would be able to identify changes and irregularities. This would enable States Parties to define whether activities that are being carried out would merit closer attention, and thus be the subject of a further scrutiny. Expertise would need to be built under the Convention to carry out this assessment, for consideration by States Parties.

**Pillar Three: Measures in case of uncertainties and/or suspicions.**

11. While the first and second pillar would operate on an ongoing basis, the third pillar would only be activated when concerns regarding compliance arise or uncertainties regarding declarations by States Parties would need to be further addressed. Triggered, for instance by suspicions following an assessment of declarations and/or visits, it could include either a short-notice inspection or consultations, similar to what is set out now in Art. V of the Convention. If these would prove inconclusive, a challenge inspection or investigation could follow. In our view, a variety of designs is conceivable and would need further discussions among States Parties to clarify the details of such a process. As we see it, any verification and compliance process should include robust measures that would provide for clarity in suspicious cases and effectively deter the development of biological weapons.

## **II. Conclusion**

12. No politically palatable, technologically feasible, and financially sustainable system is going to be able to provide full-proof guarantees regarding the detection of a possible violation of the BWC. However, there are measures that in combination could generate considerably greater confidence of compliance with obligations under Art. I by BTWC States Parties and provide a route to robust investigation of credible allegations of non-compliance.

13. While a verification and compliance regime could take a variety of forms, the various proposals have in common that they require further discussion and clarifications. The WG should thus recommend the establishment of an expert group that is tasked with assessing how a verification regime could look like nowadays and accordingly make recommendations to States Parties.