



Enhancing confidence in compliance with the BWC

5th Consultative Meeting of the EU Non-Proliferation Consortium
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Thanks

Outline



- Past as Prologue
- Compliance & Verification
- Incremental, balanced steps
 - Revisit science and technology of relevance
 - Development, analysis & use of indicators
 - Explore voluntary visits
 - Revisit the clarification and consultation
 - Explore Peer Review
 - The UNSG Investigative Mechanism
 - ‘Remedying the Institutional deficit’
- Reflections

- Compliance is a topic that remains sensitive for some states for several reasons.
- Nevertheless it is an important topic.
- For this presentation I want to focus my remarks on what I mean by compliance and present some possible food for thought in term of steps towards this.

Past as Prologue



“A hard fought three weeks”

Anonymous

- Before this a couple of comments on the Seventh Review Conference. Looking through notes and papers a number of things stand out:
- Clear there was a sense that States Parties felt “very well prepared for the Review Conference”
- However it turned out to be “a hard fought three weeks” with a collective of states using blocking tactics and raising divisive proposals in the late stages.
- I don’t think the situation will be significantly different this year. One can reasonably envisage a coordinated blocking strategy, last minute submission of proposals and division around article X and compliance

Source: *Deconstructing the Seventh BTWC review conference, HSP workshop Summary.*

Compliance



... the observation of the obligations, both negative and positive, that the States Parties have agreed to in the process of signing and ratifying the BWC

- Negative obligations – things not to do
- Positive obligations – things to do



Clarity

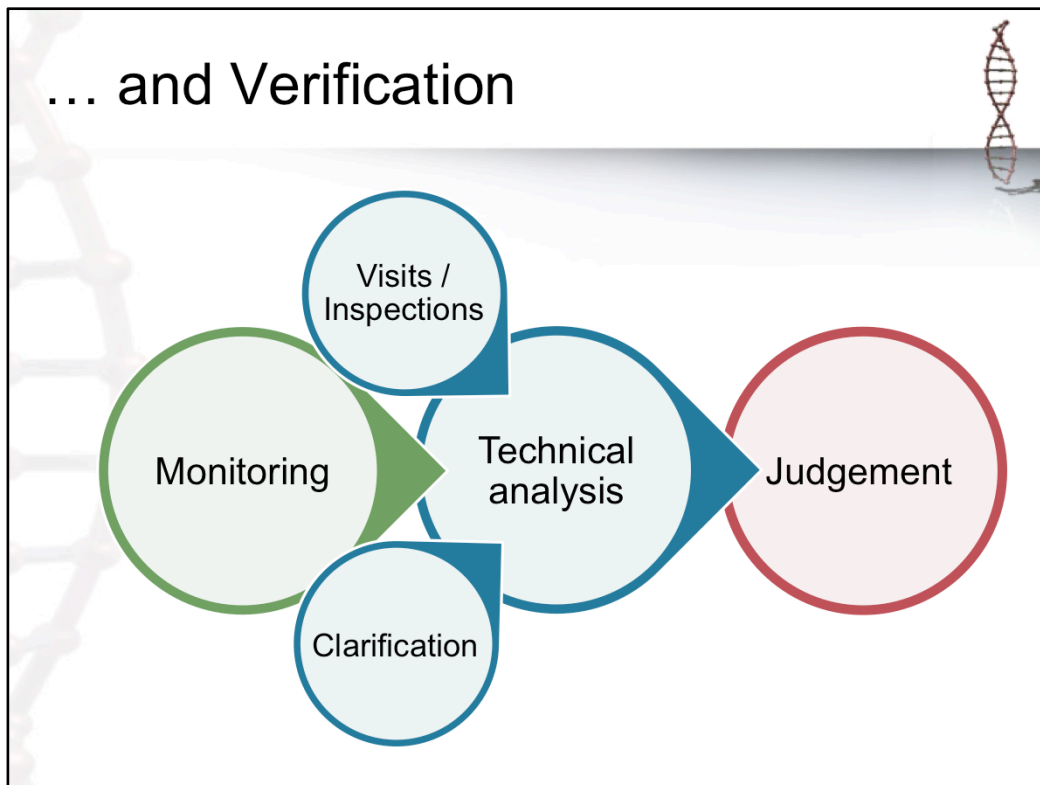


Change



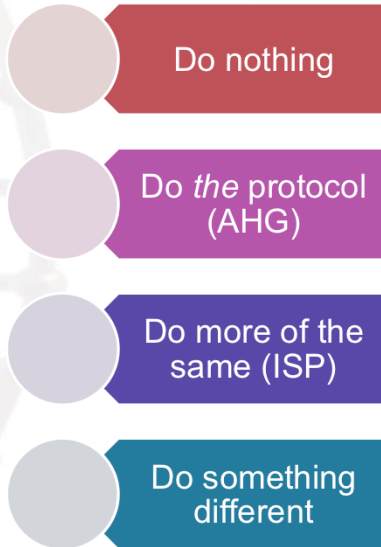
Capacity

- By compliance I mean ... the observation of the obligations, both negative and positive, that the States Parties have agreed to in the process of signing and ratifying the BWC
 - Negative obligations – things not to do such as develop or produce biological weapons, or hinder international cooperation.
 - But also Positive obligations – things that states parties have agreed to do, such as measure to prohibit and prevent BW and provide assistance in the event of a violation of the BWC.
- These obligations are not always clear under the BWC face three issues:
 - First issue is Clarity – the BWC fits on 3 sides of A4, it is a short document that was arguably rushed and gutted in its negotiation, leaving some articles somewhat ambiguous. What is expected of states to fulfil the obligation to “prevent” BW under Article IV; what are the limits of permitted research under article I.
 - Second issue is Change – change in the expectations over time as security, science and perceptions of development evolve.
 - Capacity issues with compliance, such as article IV can be a heavy burden for some.
- As such compliance is complicated and rarely black and white but rather perhaps best to see this as shades of grey.



- this has repercussions for efforts to build greater confidence in compliance through a process of evaluation or ‘verification’.
- A concept that entails three complementary processes: monitoring, assessment and evaluation.
 - Firstly, monitoring and collecting the relevant indicators pertaining to measures and activities that appear to either reinforce or undermine the convention; no one indicators alone will demonstrate noncompliance but collectively they build a vague picture of compliance.
 - Second is a process of compiling and collating monitoring data, along with technical – rather than political –analysis. This is augmented by Discussion and clarification on the one hand and Visits and inspections capacity on the other .
 - Finally, based on the data collected and the technical assessment, there will need to be a process of reaching a judgement. This is a political process that can be undertaken by states individually or collectively.
- The amount of information required to reach a judgement is essentially enough to make it worthwhile being part of a verification mechanism rather than being outside.

A balanced, increment approach



- **Balanced**

“balanced”, in that it attends to the different interests of States Parties

- **Incremental**

A number of small steps in a number of different areas over time.

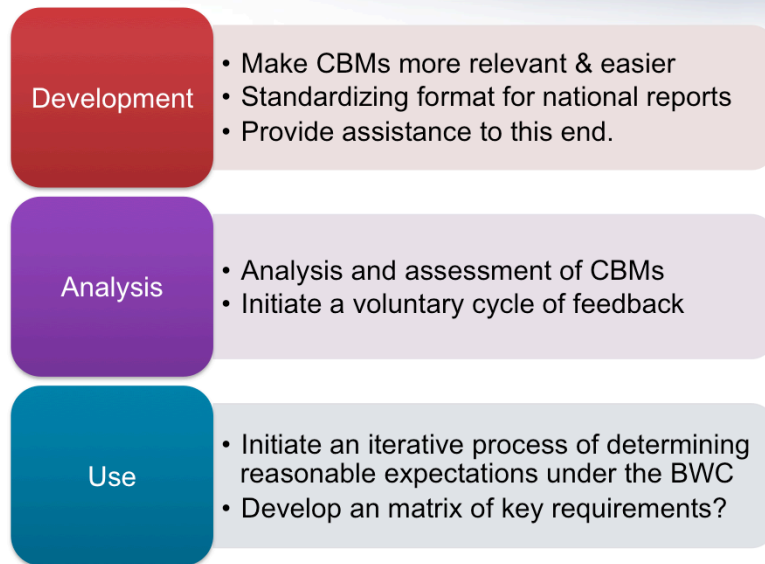
- Many of these components already exist in some form or other. However they are underdeveloped. So some options
- First is Do nothing – the BWC is not in crisis. However it might be at a cross roads. compliance is only going to get more complicated over the biotech century.
- Many states have long insisted that the only sustainable method to strengthen the convention is through a multilaterally negotiated legally binding verification protocol ... Perhaps they are right.... However, any realistic evaluation would suggest that that particular route is closed off.
- Perhaps the intersessional process could help here, however much of the intersessional work has been tinkering around the edges and looking increasingly past its best before date.
- So perhaps a need to do something different. If that is the case there is a need for it to be:
 - **Balanced** in that it attends to the different interests of States Parties
 - **Incremental** A number of small steps in a number of different areas over time.

Science & technology



- First step is S&T, The Verification Experts Group was convened in the early 1990s concluded that “some technologies are limited ... stages of development”.
- A lot has changed since 1994, since the last real comprehensive review of S&T of relevance to compliance
- We have new sources of information, new enabling technologies (that enable some not all) new potentially delivery mechanisms. New footprints for bioweaponing, new methods of disguising, detecting the development and production of BW and attributing their use.
- Suggests review of S&T, including S&T of relevance to detecting non-compliance and understanding the threat, is long overdue. Something outlined in EU Joint Action project 2.
- Less concerned about how this is done. The RF proposal for SAC is something that could address these issues although there would need to be flexibility and an OEWG better.

Development, analysis & use of information



- Development, analysis & use of data on indications of compliance is a second component to consider. We already have a great deal of information in the form of CBMs, national reports and, outside the BWC things like 1540 reports.
- Such materials are by no means a substitute for verification and moreover, Gaps remain in the breadth and depth of material available.
- So we need to enhance materials, specifically CBMs and their coverage Joint Action has covered this. Could we also think to standardize national reports submitted to the BWC, including article X reports.
- Nevertheless we already have significant body of data, so perhaps prudent to ask what is done with the submitted information? Suspect not much
- SO perhaps it is time to undertake some preliminary analysis, perhaps examine CBMs look at a cycle of feedback, modification and reassessment albeit initially in a voluntary manner.
- A Further more ambitious perhaps radical step could be to use such information. Is there scope to initiate an iterative process of working out reasonable expectations under the convention perhaps with a view to working identify a matrix using the OPCW approach?

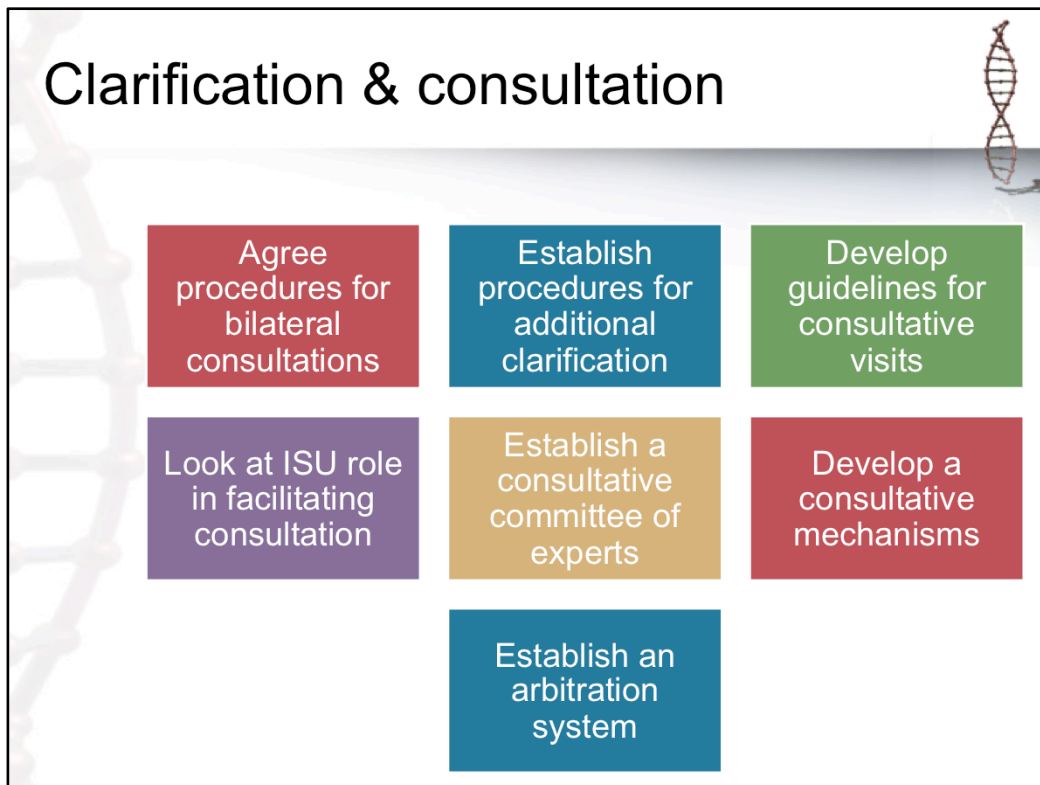
Voluntary Visits



Exploring voluntary visits could help in:

- Generating an understanding of challenges and limits of visits.
- Identifying basic procedures
- Ensuring realistic expectations as to what can and cant be achieved with visits.

- The concepts identified under the rubric of 'visits' (in the AHG negotiations were recognised as serving a number of functions,
 - Validating material submitted by states parties;
 - Encouraging transparency and accuracy of submissions;
 - Clarifying issues;
 - Providing an understanding of how (what is now termed) biosecurity and biosafety operate in practice;
 - Building relations between the international and the local, and deterring non-compliance.
 - In addition several states identified a cooperative function of visits.
- More recently visits have been used or are envisaged as being used by several countries, As Germany noted at the prep com visits "can serve as a useful tool until such verification may be achieved."
- If nothing else exploring voluntary visits could help in understanding things like:
- Realistic expectations, Logistical or practical challenges that need to be addressed and Identifying basic procedures for visits
- Preliminarily exploring these questions in advance, in a relatively stable context, could therefore be important to determine how these could be employed in the 21st century.



- Under Article V states agree to consult one another and to cooperate in solving any problems which may arise.
- This can be used to address any problems.... Although not all problems necessarily need to be dealt with at the same level.
- This article remains underdeveloped and under-used.
- However, given the complexity of compliance and the fact that mistakes and omissions are not necessarily indicative of cheating, it could be useful to explore, something touched upon in the EU Joint Action.
- There are a number of models and precedents that could be useful in this regard CWC art 9; CTBTO articles 4; NPT; the CBD, WTO dispute settlement mechanism.
- From these one can discern a number of options for consideration at the Review Conference
- Agree procedures for bilateral consultations, OR additional clarifications
- Develop guidelines for consultative visits, See what role the ISU could play in dealing with non-compliance questions, establish a consultative committee of experts or an arbitration body.
- Some of these are more feasible than others; the latter is unlikely to gain traction other models are currently difficult given the institutional context and organisational capacity.

Peer review



“A structured and systematic means of providing an increased level of assurance that states parties are complying with the ... obligations of the convention”

OECD

- Improved transparency
- Structured mechanism for sharing better practice
- flexible and “scalable” assessment mechanism
- Potential to support outreach and engagement
- Opens states to scrutiny
- Does not require new structures

- Peer Review has been defined by the OECD as “A structured and systematic means of providing an increased level of assurance that states parties are complying with the ... obligations of the convention”
- Not a substitute for verification protocol. Nor a panacea for the BWC.
- But nor is it fair to dismiss peer review as a distraction. It provides a flexible tool that has been employed by France, Benelux states, and in some form or other the US, Germany and the EU.
- Different methods and focus to these peer view. Normally begins with a documentary review process but can also use consultative visits or on site activity. As a concept there could be a number of advantages. The mechanism:
- Improved transparency
- Structured mechanism for sharing better practice
- Flexible and “scalable” assessment mechanism
- Potential to support outreach and engagement
- Perhaps most importantly it opens states to scrutiny something which it is important for become acclimatized to if we want to make progress

The UNSGM

- UNSGM a tool to investigate allegations of the use of CBW.
- Syria illustrates importance and limits in BW.
 - a few dozen laboratories have been designated...
 - little is known about their capabilities.
- First step sharing of information on capabilities.
- Perhaps better left outside BWC forum.

UNSGM Designated Laboratories Workshop Report

Spiez, Switzerland
9 – 11 November 2015

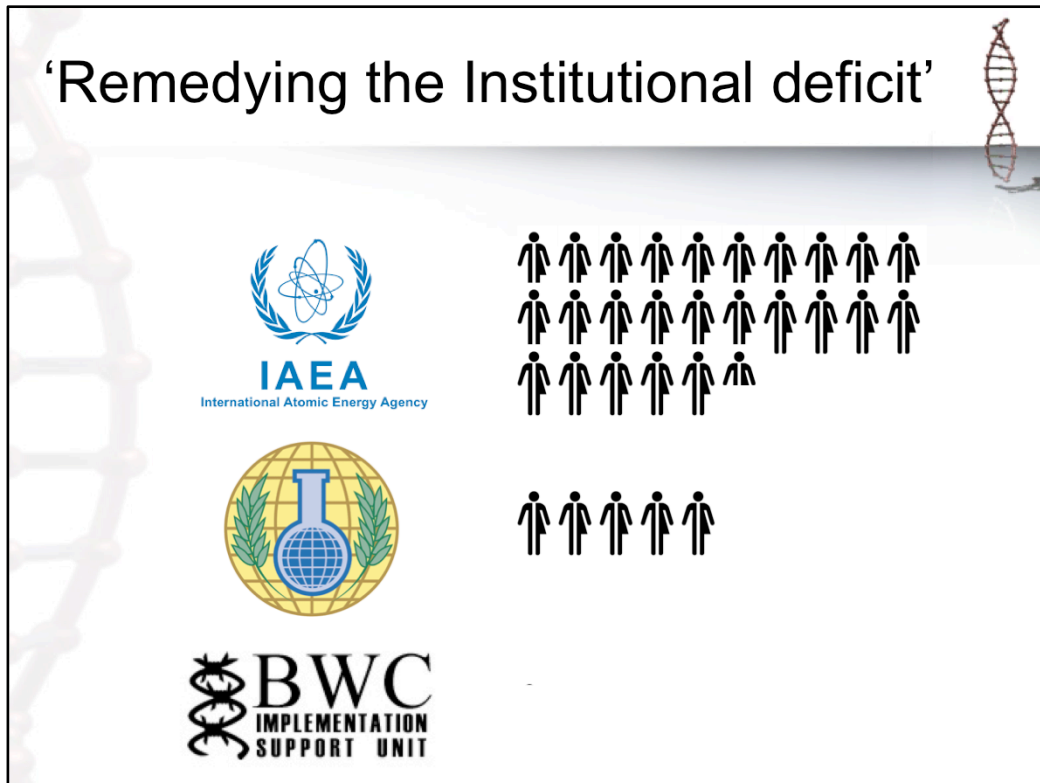


Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Federal Department of Defense,
Civil Protection and Sport DDFS
Federal Office for Civil Protection FOOP
SPEIZ LABORATORY

- I did not intend this list of BWC activities to be exhaustive, but provide some concrete ideas.
- There are other things that could also help build confidence which arguably remain on the peripheries of the BWC such as supporting the UNSGM investigatory mechanism.
- This serves as a tool to investigate allegations of the use of CBW.
- We have seen the value of this in the case of Chemical weapons use.
- Bio capacity is likely to be much less developed and although a few dozen laboratories have been designated, little is known about their capabilities and competence.
- So a first step could be sharing information on laboratory capability with a view to better preparing, in time it would be useful to standardize laboratories and build a network.
- Caution against bringing this into BWC discussions as it could bogged down in process and relationship to BWC, better to leave bubbling away with Swiss, Swedes and others

‘Remedying the Institutional deficit’



- At the time of writing, the IAEA Secretariat consists of a team of “some 2560” and the OPCW Secretariat staff numbers 500 individuals.
- The BWC’s Implementation Support Unit (ISU) consists of 3 people (with some additional support through the European Union funding)
- This is a staffing level incommensurably lower, even considering the significant differences in tasks.
- If there are any additional requirements there will need to be staffing changes estimated cost for a continuation of the ISU would amount to USD 746,365
- A modest increase to the ISU to include a p4 and G5 role would be \$1,142,800
- TO put this in perspective budget for Geneva library services in 2014/2015 was \$16 million.
- Estimated cost of conducting the UK Referendum is £142.4M

Conclusions



- Compliance is complicated.
- A number of steps as part of a balanced incremental process that could get us closer to enhancing confidence in compliance.
- The EU has a key role in moving these forward.
- For progress, the EU will have to speak up to counter a likely coalition of the unwilling...
- ... and ensure issues of expenditure are agreed beforehand.

- Compliance is complicated.
- Number of approaches to enhancing confidence in compliance.
- Not going to get anywhere without “balance” moreover, Rather than all or nothing gamble, perhaps safer to take incremental steps seem a safer course of action.
- Not suggesting this as a moniker , “Balanced incrementalism” is much duller than “ambitious realism” but perhaps reflects a realistic evaluation.
- Several such steps could be considered to get the BWC closer to enhancing confidence in compliance.
- These would get us closer to enhancing confidence in compliance.
- However to do this, the EU has a key role in moving these forward
- European states have long led the project on BW disarmament, historically it has been European countries pushing this forward
- To sustain biological disarmament will also require an EU role, specifically states will have to speak up, raise their flags to counter the possibility of a coordinated blocking strategy from coalition of the unwilling...
- ... and ensure issues of expenditure are agreed beforehand.

Thanks



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