

# THE BIOLOGICAL AND TOXIN WEAPONS CONVENTION CONFRONTING FALSE ALLEGATIONS AND DISINFORMATION

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## I. INTRODUCTION

Russia invaded Ukraine on 24 February 2022. Following Russia's occupation of territory in the east, north and south of Ukraine, it took possession of several biological research facilities. Partly based on documents it claimed to have recovered from these facilities, Russia alleged that the United States had been sponsoring biological activities in Ukraine violating the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (Biological and Toxin Weapons Convention, BWC), a disarmament treaty that outlaws the development, acquisition and possession of biological weapons.

During the first few months of the invasion, Russian officials amplified the allegations and, having compiled a dossier that eventually exceeded 300 pages, took them to the United Nations Security Council on three occasions between March and the end of May 2022. Russia requested the Geneva branch of the UN Office for Disarmament Affairs (UNODA) to circulate the dossier there too.<sup>1</sup> Annex 1 in this paper provides a chronology of selected events relating to Russia's allegations of Ukrainian and US BWC violations up until April 2023. As the accusations gained little traction with the international community, Russia requested a formal consultative meeting (FCM) under Article V of the BWC. Having failed to persuade the BWC states parties of its case at the FCM in September

<sup>1</sup> Permanent Mission of the Russian Federation to the United Nations Office and Other International Organizations in Geneva, Note verbale 1090 and annex, 16 Mar. 2022; Permanent Mission of the Russian Federation to the United Nations Office and Other International Organizations in Geneva, Note verbale 1185, 22 Mar. 2022; and Permanent Representative of the Russian Federation to the United Nations, Note 4544/n and annex, 24 Oct. 2022.

## SUMMARY

Russia invaded Ukraine on 24 February 2022. Shortly afterwards, it escalated a decade-old, low-level disinformation campaign about biological activities in Ukraine funded by the United States that Russia claims violate the 1972 Biological and Toxin Weapons Convention (BWC). Using documents supposedly recovered from captured Ukrainian laboratories, Russia presented its case to the public and several times to the United Nations Security Council. It then triggered BWC provisions to convene a formal consultative meeting (FCM) of states parties and to lodge a complaint with the Security Council.

This paper describes how Russia sustained its low-level information warfare strategy against Ukraine before taking its accusations to the Security Council for the first time in 2022. It analyses how BWC states parties addressed the allegations in the FCM and how Security Council members blocked Russia's attempt to set up an international investigation. It considers several implications for the BWC of Russia's manoeuvres and the international community's responses. The paper ends with recommendations for the European Union (EU) aimed at helping the EU in its efforts to maintain BWC-related disarmament and non-proliferation standards and in countering disinformation.

## ABOUT THE AUTHOR

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2022, Russia subsequently invoked Article VI, thereby taking its complaint to the UN Security Council. In November 2022 the Security Council rejected a Russian draft resolution calling for the council to set up a commission of inquiry to investigate the allegations. Two of the five permanent members voted in favour, three voted against and all non-permanent members abstained.

These manoeuvres ultimately negatively affected the ninth review conference of the BWC at the end of 2022 as Russia blocked the inclusion in the conference's final document of language mentioning the FCM and the Security Council meeting and their respective outcomes. Consequently, the treaty received no formal review of its operation, and states parties barely managed to agree on the work programme for the period until the 10th review conference in 2027.

The sequence of events in 2022 has severe implications for the BWC. It has exposed serious inadequacies in the convention's complaints procedures under Article V. This was only the second time in the BWC's history that an FCM had been convened under the article. The procedures did not meaningfully contribute to resolving compliance concerns or the accusations against Ukraine and the USA. Russia's invocation of Article VI was unprecedented. While the outcome before the Security Council was indisputable, the use of Article VI and how the council members voted produced some legal uncertainties. Perhaps the most significant challenges arising from the events in 2022 are how the BWC, and by extension other disarmament and arms control treaties, must deal with manifestly false allegations and disinformation. The process was made more complicated because Russia continued to raise new allegations and concerns, meaning that Ukraine and the USA could never adequately address the accusations against them.

This paper reviews Russia's information warfare campaign surrounding biological weapon research in Ukraine since the late 2000s and how Russia escalated the accusations after its invasion of Ukraine in 2022. It traces how Russia, having presented its allegations several times to the Security Council, manoeuvred to bring the USA-funded biological research in Ukraine within the ambit of the BWC, leading to the triggering of Articles V and VI. The paper then analyses why Russia failed in its objectives. It reflects on how the BWC has stood up against disinformation and sustained false allegations and concludes with some recommendations for the European Union (EU) given

its long-standing commitments to strengthening the norm against biological weapons and major financial support for treaty implementation worldwide.

## II. BIOLOGICAL WARFARE IN THE NEW ECOSYSTEM OF INFORMATION MANIPULATION

In a tweet on 6 March 2022, a week and a half into the war, Russia accused Ukraine of foreign-funded military biological research on its territory:

@mod\_russia: During the course of the special military operation evidence of an emergency clean-up performed by the Kiev regime was found - aimed at eradicating traces of the military-biological programme, in Ukraine, financed by @DeptofDefense.<sup>2</sup>

While it was not the first or the last such accusation, the tweet heralded a severe escalation of Russia's two-decade, relatively low-level narrative aimed at discrediting US and Western foreign scientific and technological assistance and cooperation after the fall of the Iron Curtain in 1989 and the Soviet Union's dissolution into 15 sovereign states in 1991.

### International collaborative biological research programmes as a target for disinformation

During the cold war the Soviet Union developed and produced large biological, chemical and nuclear arsenals in a sprawling military-industrial complex. After the break-up of the Soviet Union, the weapon depots, training sites and research, development and production installations became scattered across many fledgling states. Moreover, the centralized command-and-control system overseeing infrastructure and activities fell apart. In a bid to mitigate the potential risk of proliferation of biological, chemical or nuclear weapons, the USA initiated the Comprehensive Threat Reduction (CTR) programme in 1991.<sup>3</sup>

The CTR programme sought to secure weapons and weapon production and storage sites in the former Soviet Union. Initially, it focused primarily on nuclear weapons but soon covered chemical and biological weapons and related infrastructure too. It also took account of the people involved in the development and production of biological, chemical or nuclear weapons.

<sup>2</sup> Russian Ministry of Foreign Affairs (@mfa\_russia), Twitter, 6 Mar. 2022, <[https://twitter.com/mfa\\_russia/status/1500539810418671626](https://twitter.com/mfa_russia/status/1500539810418671626)>.

<sup>3</sup> Walker, P. F., 'Cooperative Threat Reduction in the former Soviet states: Legislative history, implementation, and lessons learned', *Nonproliferation Review*, vol. 23, no. 1-2 (Sep. 2016), pp. 115-29.

There was growing concern that as these highly educated and trained personnel were losing their social status, privileges and income, they might look to sell their knowledge, skills and expertise to other countries. For these reasons, the CTR programme would become an integral part of US non-proliferation policies.

The CTR activities had their antecedents in the fight against infectious diseases. Some programmes went as far back as World War II. US naval and army medical research units ran cooperative training and research programmes in Africa, South America and South East Asia. They helped to build up laboratory capacity and local cadres of experts capable of addressing disease outbreaks. US and local scientists at these laboratories contributed to the development of preventive and therapeutic drugs as well as vaccines, diagnostics and scientific knowledge. Most of all, such joint collaboration helped to build trust among the researchers that could weather geopolitical storms during which diplomatic relations between the USA and the host country were downgraded or disrupted.<sup>4</sup>

After a slow start, the CTR programme's impact grew after the creation in 1997 of the Defense Threat Reduction Agency (DTRA) within the US Department of Defense (US DOD). The DTRA took over the disbursement of CTR funds and eventually established necessary high-level mandates for implementing the targeted non-proliferation policies.<sup>5</sup>

Other countries allied with the USA (and the EU) supported the CTR non-proliferation goals by setting up joint multinational programmes in the former Soviet Union. In 1994, for example, the EU, Japan, Russia and the USA established the International Science and Technology Center (ISTC) in Moscow. Armenia, Georgia, Kazakhstan, Kyrgyzstan and Tajikistan later joined the initiative. Meanwhile, Azerbaijan, Georgia, Moldova, Ukraine and Uzbekistan joined a parallel initiative based in Kyiv—the Science and Technology Center in Ukraine (STCU). Both science centres provide, among other things, financial assistance and

<sup>4</sup> National Academies of Sciences, Engineering and Medicine, *A Strategic Vision for Biological Threat Reduction: The US Department of Defense and Beyond* (National Academies Press: Washington, DC, 2020), pp. 21–22.

<sup>5</sup> Commission to Assess the Organization of the Federal Government to Combat the Proliferation of Weapons of Mass Destruction, *Combating Proliferation of Weapons of Mass Destruction: Report of the Commission to Assess the Organization of the Federal Government to Combat the Proliferation of Weapons of Mass Destruction* (US Congress: Washington, DC, 14 July 1999), pp. 53, 56.

collaborative civilian technical research and training opportunities to former biological weapon experts and, more recently, new generations of life scientists.<sup>6</sup>

In August 2010 the Russian president, Dmitry Medvedev, announced Russia's withdrawal from the ISTC, which eventually relocated to Astana, Kazakhstan, in June 2014.<sup>7</sup>

The increase in collaborative biological-related activities in the former Soviet republics under the CTR programme led to a rise in the use of disinformation measures by Russia. Although the precise motives for this campaign are uncertain, they may partly relate to Vladimir Putin's nationalist ambitions to restore Russian control over the former Soviet territories, several of which were seeking closer association with the EU and the North Atlantic Treaty Organization (NATO) during the 2000s and 2010s.

Russia's coordinated and sustained biological weapon-related disinformation campaign probably began with the stoking of tensions in Georgia early in 2008. Russia invaded Georgia later in the year, which ended with Russia's diplomatic recognition of Abkhazia and South Ossetia as two independent states. The intensity of the disinformation campaign increased with the establishment of the USA-funded Central Public Health Reference Laboratory outside Tbilisi in 2011, later renamed the Richard G. Lugar Center for Public Health Research (Lugar Research Center) after one of the main CTR programme's sponsors. The laboratory has faced numerous allegations relating to biological weapon research and development since its creation.<sup>8</sup> Georgia's efforts to improve transparency about the Lugar Research Center's activities continue to be the subject of Russian disinformation measures.<sup>9</sup>

<sup>6</sup> 'Cooperative science and non-proliferation: The ISTC/STCU experiment', *Strategic Comments*, vol. 8, no. 6 (Oct. 2002), pp. 1–2.

<sup>7</sup> International Science and Technology Center (ISTC), 'Statement of the 54th Governing Board of the International Science and Technology Center', 9 Dec. 2011; and ISTC, 'The new office of the ISTC was officially opened at Nazarbayev University in Astana, Kazakhstan on 5 June, 2014', 9 June 2014.

<sup>8</sup> See e.g. Simonishvili, J., 'Bio weapons/reference lab in Tbilisi Georgia, Bechtel secret ops!!!', *Geonews*, 27 Mar. 2011; and 'Head of RosPotrebNadzor accuses Georgia of "Sabotaging" Russia with Swine Fever', *Civil.ge*, 9 Apr. 2012.

<sup>9</sup> BWC, Meeting of the States Parties, 'Building confidence through transparency: Peer review transparency visit at the Richard Lugar Center for Public Health Research of the National Center for Disease Control and Public Health in Tbilisi, Georgia', Working Paper submitted by Georgia and Germany, BWC/MSP/2018/WP.5, 3 Dec. 2018.

### Early allegations about biological weapon research in Ukraine

The events in Georgia foreshadowed those leading up to Russia's annexation of Crimea and invasion and occupation of territory in eastern Ukraine in 2014. After the Ukrainian parliament's support to finalize a free trade and association agreement with the EU in February 2013, the subsequent Euromaidan protests, and the impeachment and flight into exile of Ukrainian President Viktor Yanukovich, Russia began deploying various disinformation techniques on a grand scale.<sup>10</sup> The messages became increasingly strident with the 2014 invasion, and especially after the shooting down of a Malaysian passenger aircraft over eastern Ukraine in July that year.

On 29 August 2005 the US DOD and the Ministry of Health of Ukraine signed a bilateral agreement 'Concerning Cooperation in the Area of Prevention of Proliferation of Technology, Pathogens and Expertise that could be Used in the Development of Biological Weapons'.<sup>11</sup> However, Russia's biological weapon-themed disinformation campaign against Ukraine seems to have started only shortly after the accusations against the Lugar Research Center in Georgia began to emerge.

One of the earliest articles appeared online in October 2013. It denounced the construction of a reference laboratory at biosafety level three near Merefa, a city south-west of Kharkiv, and linked it to a global network set up by the US DOD to transfer national pathogen collections to the USA for its biological weapon programme. The author referred to similar laboratories in other former Soviet states, thus feeding into Russia's narrative that it was being encircled by USA-funded biological laboratories. The author also mentioned contracts between the US DOD and biological laboratories across Ukraine.<sup>12</sup>

Another internet article published just over a year later reprised the encirclement theme. It linked the start of the collaboration between the USA and various

Ukrainian laboratories to opportunities created after what it termed the 'first colour revolution' (i.e. the Orange Revolution), which led to the defeat of Yanukovich, the serving prime minister and pro-Russian presidential candidate, in the 2004 presidential election. The article also reinforced the message that the biological activities were targeting Russia by mentioning the closure under alleged US pressure of the Trans-European Centre for the Detection of Biothreat Agents. This was reported to be a partnership between Finland and Russia established in 2010 in Turku, Finland, under the auspices of the Finnish–Russian Joint Biotechnology Laboratory.<sup>13</sup>

Several notable articles on USA-funded biological research programmes in Ukraine were published in the years after the 2014 invasion by a Bulgarian journalist and blogger named Dilyana Gaytandzhieva. Having previously written extensively on the Lugar Research Center in Georgia and similar DTRA-sponsored activities across the world, she had a considerable following in conspiracy-minded circles and among governments sympathetic to Russia's geopolitics. Her pieces written before the 2022 invasion often carried graphs and copies of documents that would later feature in Russia's allegations against Ukraine.<sup>14</sup> It is possible that some of the documents she reproduced originated from the Anti-Plague Station in Simferopol in Crimea. This entity had benefited from EU support through the STCU before the Russian annexation of Crimea.<sup>15</sup>

### Allegations about biological weapon research in Ukraine since the 2022 invasion

Shortly after the invasion in February 2022, Russia asserted in press conferences that Ukraine was conducting military biological research. Moreover, it accused the USA, the EU and EU member states (notably Germany) of funding and directing this research and setting up or running similar laboratories

<sup>10</sup> Rumer, E., *The Primakov (Not Gerasimov) Doctrine in Action* (Carnegie Endowment for International Peace: Washington, DC, 2019), pp. 9–10.

<sup>11</sup> Agreement Between the United States of America and Ukraine, opened for signature and entered into force 29 Aug. 2005, Treaties and Other International Acts Series 05-829, US Department of State.

<sup>12</sup> Mikhaylov, M., 'Thousands people oppose the construction of military biological laboratory of the USA in Merefa', *World and We*, 16 Oct. 2013.

<sup>13</sup> Savin, L., 'On the Pentagon's biological laboratories in Ukraine', Strategic Culture Foundation, 24 Nov. 2014 (last accessed 5 Aug. 2023).

<sup>14</sup> See e.g. Gaytandzhieva, D., 'The Pentagon bio-weapons', *Dilyana.bg*, 29 Apr. 2018; and Gaytandzhieva, D., 'Documents expose US biological experiments on allied soldiers in Ukraine and Georgia', *Dilyana.bg*, 24 Jan. 2022.

<sup>15</sup> Biosafety and Biosecurity Improvement at the Ukrainian Anti-Plague Station (UAPS) in Simferopol, Assistance Support Initiative, Stimson Center, accessed 22 Aug. 2023.

in other former Soviet states, including Georgia and Kazakhstan.<sup>16</sup>

Russia widely circulated documents—many of which it claimed to have captured after taking control of Ukrainian laboratories after the invasion—to support its allegations, asserting that these documents were classified.<sup>17</sup> In reality, many of the documents containing detailed descriptions of projects, their funding and the partners and companies involved have been freely available from websites for many years, including the websites of the US embassy in Kyiv and the STCU. Project funding had also been discussed during open US congressional hearings.<sup>18</sup> Furthermore, the USA refers to its global collaboration projects in its regular reports to the BWC under Article X, which calls for the ‘fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes’.<sup>19</sup> Ukraine had previously detailed and explained its work on highly contagious pathogens in working papers for BWC meetings.<sup>20</sup> In addition, funded researchers have published scientific papers based on their investigations in this area.

<sup>16</sup> ‘Network of 30 biolaboratories was created in Ukraine—Russian military’, TASS, 7 Mar. 2022.

<sup>17</sup> Russia circulated the documents from the press briefings by Lt. Gen. Igor Kirillov in two notes verbales to the BWC states parties in Mar. 2022. Note verbale 1090 and annex; and Note verbale 1185 (note 1).

<sup>18</sup> Izvekova, A., ‘International assistance for anti-plague facilities in the former Soviet Union to prevent proliferation of biological weapons’, Nuclear Threat Initiative, 31 May 2005.

<sup>19</sup> E.g. BWC, Meeting of the States Parties, ‘Article X cooperation and laboratory support: The example of the Biological Threat Reduction Program’, Working Paper submitted by the United States, BWC/MSP/2020/WP.11, 22 Nov. 2021; and BWC, Ninth Review Conference, ‘Report on implementation of Article X of the Biological and Toxin Weapons Convention’, Working Paper submitted by the United States, BWC/CONF.IX/WP.24, 17 Nov. 2022.

<sup>20</sup> In July 2004 Ukraine submitted four working papers to the Meeting of Experts detailing its sanitary–epidemiological surveillance, infectious disease incidence, response mechanisms to infectious disease and outbreak monitoring. BWC, Meeting of the States Parties, ‘National system of epidemiological surveillance in Ukraine’, BWC/MSP/2004/MX/WP.47, 22 July 2004; BWC, Meeting of the States Parties, ‘System of delivering information on infectious disease incidence and outbreaks of infectious diseases in Ukraine’, BWC/MSP/2004/MX/WP.48, 22 July 2004; BWC, Meeting of the States Parties, ‘Responding to and mitigating the effects of suspicious outbreaks of disease: System of organization of specific indication of bacterial (biological) means’, BWC/MSP/2004/MX/WP.49, 22 July 2004; and BWC, Meeting of the States Parties, ‘Prevention of occurrence of infectious diseases due to epizootic and microbiological environmental monitoring’, BWC/MSP/2004/MX/WP.50, 22 July 2004.

In the early days of the invasion, Russia claimed that Ukraine was destroying pathogens in its laboratories and presented this as evidence of Ukraine hiding illicit biological activities. However, Ukrainian scientists were actually acting on World Health Organization (WHO) advice to avoid a significant biological incident that might have resulted from attacks on the facilities or improper handling of biological materials by untrained military personnel.<sup>21</sup> Russia also asserted that the biological activities at Ukrainian laboratories posed a real threat to Russia. On 13 May the Russian Permanent Representative advanced this assertion before the UN Security Council as a justification for Russia’s ‘special military operation’ in Ukraine.<sup>22</sup>

### III. INVOKING ARTICLE V OF THE BIOLOGICAL AND TOXIN WEAPONS CONVENTION

Under Article V of the BWC, states parties:

undertake to consult one another and to cooperate in solving any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention. Consultation and cooperation pursuant to this article may also be undertaken through appropriate international procedures within the framework of the United Nations and in accordance with its Charter.

The first review conference (in 1980) agreed on the concept of a consultative meeting at the expert level. The second and third review conferences (in 1986 and 1991, respectively) developed and consolidated procedures to concretely implement Article V. Under them, a state party can also request clarification about an issue of concern regarding the objective or application of one or more treaty provisions. A state party should address such a request to at least one of the three BWC co-depositaries, namely Russia (as successor to the Soviet Union), the United Kingdom and the USA. Furthermore, states parties have repeatedly reaffirmed at review conferences—most recently at the eighth review conference in 2016—that any allegation of a breach of a BWC obligation should

<sup>21</sup> Zanders, J. P., ‘Biological weapons are banned; biological research is not’, EUvsDisinfo, 8 Apr. 2022. For updates on Russian allegations see also ‘Combatting disinformation’, Pandora Report.

<sup>22</sup> United Nations, Security Council, 9033rd meeting, New York, Statement by Nebenzia, V., Russian Permanent Representative to the United Nations, S/PV.9033, 13 May 2022, p. 2.

receive a specific and timely response from the state concerned.<sup>23</sup>

In this context, it is important to note that Article V—in contrast to Articles VI (complaints procedure) and VII (emergency assistance)—does not expressly mention the UN Security Council. As with some other parts of the treaty, the provision took its inspiration from another agreement, in this case Article III of the 1971 Seabed Treaty.<sup>24</sup> However, while the BWC negotiators adopted some of the phrasing of Article III, they ignored its verification elements. Article III(5) of the Seabed Treaty stipulates that:

Verification pursuant to this article may be undertaken by any State Party using its own means, or with the full or partial assistance of any other State Party, or through appropriate international procedures within the framework of the United Nations and in accordance with its Charter.

Article V of the BWC differs from this in that it places consultation and cooperation in a wider context than verification of treaty implementation, as it explicitly refers to ‘solving any problems’ that may arise. States parties may raise matters among themselves without necessarily implying a breach of a provision.<sup>25</sup>

However, as the international legal expert Jozef Goldblat already observed in 1972, a direct consultation is ‘redundant when a problem arises between friendly nations; it is inoperative when allegations of breaches are made by countries at war, or when for other reasons there is lack of co-operation between the states concerned’. He concluded that, in the context of Article V of the BWC, ‘appropriate international procedures within the framework of the United Nations’ does not refer to the Security Council. First, the procedure would be unnecessary because any UN member can bring a matter endangering peace and security before the council; and second, in the case of a serious violation, the BWC assigns responsibilities to the Security Council via Articles VI and VII. Goldblat added that possible roles of other parts of the UN,

<sup>23</sup> BWC, Ninth Review Conference, Preparatory Committee, ‘Additional understandings and agreements reached by previous review conferences relating to each article of the Convention’, BWC/CONF.IX/PC/5, 10 Jan. 2022, pp. 10–11.

<sup>24</sup> Treaty on the Prohibition of the Emplacement of Nuclear Weapons and other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof, opened for signature 11 Feb. 1971, entered into force 18 May 1972.

<sup>25</sup> Sims, N. A., *The Diplomacy of Biological Disarmament: Vicissitudes of a Treaty in Force, 1975–85* (Macmillan: Basingstoke, 1988), p. 22.

including the Secretary-General, are uncertain without specific mandates and authority for action.<sup>26</sup>

Through the review conferences, BWC states parties devised the FCM as the centrepiece for resolving compliance concerns—although states parties still have other options open to them before calling for an FCM. These options include consultations, which can be bilateral or involve by agreement all parties concerned by the problems raised. The wording adopted in the final reports of the review conferences does not explicitly refer to ‘clarification’ or an obligation to ‘clarify’. Therefore, such consultations are informal and may be discreet without a requirement to report back to other states parties. A US working paper for the BWC Meeting of Experts in 2019 illustrated the diverse possibilities for resolving conflicting or inconsistent information under Article V, including bilateral discussions, démarches and diplomatic notes.<sup>27</sup>

In the absence of internationally agreed verification tools, BWC Article V has also served to set up a system of confidence-building measures (CBMs). States parties are invited to submit a national CBM report each year. While there is no legal requirement to submit such a report, many states parties view participation in the process as a political obligation.<sup>28</sup> Involvement has generally been low but the number of returns has grown steadily over the past decade, with 99 out of 184 states parties submitting a report in 2022 (53.8 per cent).<sup>29</sup> Under the BWC, no collective mechanism exists to analyse and draw common conclusions from the individual reports. States parties can seek clarification or express their concerns via, for example, bilateral consultations in accordance with Article V. It is perhaps worth noting, however, that scrutiny by academics or civil society is hampered by the confidentiality of the CBM contents, unless a submitting state party explicitly authorizes public release of its national report.

<sup>26</sup> Goldblat, J., ‘Chemical and biological disarmament’, *World Armaments and Disarmament, SIPRI Yearbook 1972* (Almqvist & Wiksell: Stockholm, 1972), pp. 505–506.

<sup>27</sup> BWC, Meeting of the States Parties, Meeting of Experts on Institutional Strengthening of the Convention, ‘Utilizing the convention’s tools to strengthen its institutional functions’, Working Paper submitted by the United States, BWC/MSP/2019/MX.5/WP.2, 18 July 2019, p. 2.

<sup>28</sup> Hunger, I. and Zmorzynska, A., ‘Verifying and demonstrating compliance with the BTWC’, *EU Non-proliferation Papers* no. 5, Dec. 2011, pp. 6–9.

<sup>29</sup> BWC Implementation Support Unit, ‘Overall rate of CBM report submissions’, CBMs Portal, accessed 10 Aug. 2023.

### The first formal consultative meeting under Article V

Russia's request for an FCM in June 2022 was only the second time a state party had activated the mechanism. In April 1997 Cuba formally accused the USA of biological warfare in a note verbale addressed to the UN Secretary-General. Several months earlier, the Cuban authorities had noticed the onset of an infestation with *Thrips palmi*, an insect pest. Cuba associated the outbreak with an authorized overflight by a US anti-narcotics fumigation aircraft travelling from Florida to Grand Cayman on 21 October 1996. Unsatisfied with US explanations, at the end of June 1997 Cuba asked Russia to convene an FCM.

Before requesting the FCM, Cuba used various instruments foreseen in Article V and elaborated during review conferences.<sup>30</sup> First, Cuba engaged the USA bilaterally. On 26 December 1996, a few days after having discovered the infestation, Cuba formally requested clarification for an observed smoke cloud released by the fumigation aircraft. It was not satisfied by the US response issued on 2 February 1997.

Second, Cuba used several options within the UN framework. It notified the Food and Agriculture Organization and requested technical and financial assistance to combat the infestation. It also informed the Secretary-General and the UN Centre for Disarmament at the end of March 1997. In its note verbale to the Secretary-General a month later, Cuba described the *Thrips palmi* infestation and the US aircraft's alleged role in the outbreak's origin. This note verbale linked the allegation to the BWC.<sup>31</sup> The US State Department responded on 6 May, dismissing the Cuban accusations as 'deliberate disinformation'. It reiterated its earlier explanations.<sup>32</sup> On 13 May 1997 Cuba addressed the UN Disarmament Commission, which undertook no concrete actions.<sup>33</sup> Cuba sent a

<sup>30</sup> For a detailed overview of the substance of the Cuban allegations, the diplomatic interactions and the FCM outcome see Sims, N. A., *The Evolution of Biological Disarmament* (Oxford University Press: Oxford, 2001), pp. 36–58; and Zanders, J. P., 'Treaties are like roses', *CBRNe World* (Aug. 2022), pp. 61–64b.

<sup>31</sup> United Nations, General Assembly, 'Note verbale dated 28 April 1997 from the Permanent Mission of Cuba to the United Nations addressed to the Secretary-General', A/52/128, 29 Apr. 1997, Annex, paras 5, 6, 13.

<sup>32</sup> US Department of State, 'Cuba: No use of biological weapons', Press Statement by Dinger, J., Acting Spokesman, 6 May 1997.

<sup>33</sup> United Nations, General Assembly, Disarmament Commission, 216th meeting, New York, A/CN.10/PV.216, 13 May 1997, pp. 10–13.

second letter to the Secretary-General on 27 June 1997, rejecting the US clarifications. As Goldblat foresaw 25 years earlier, cooperation and engagement of UN bodies yield little if, as in this case, the states concerned have few incentives to cooperate. On 30 June 1997 Cuba formally invoked Article V.

No detailed procedures or arrangements for organizing an FCM existed at the time. It was to take place in the margins of the Ad Hoc Group, which had just begun negotiating a draft protocol to the BWC. An informal meeting of states parties took place on 31 July, and the FCM was scheduled for 25–27 August 1997. The UK was to chair the gathering, a decision facilitated by the country's presidency of the fourth review conference the previous December.

Of the three allocated days, Cuba and the USA received limited time to argue the contention and rebut the accusations on the first day. Several other participants expressed concerns about the difficulties in reaching conclusions immediately. Consequently, a supplementary procedure was decided whereby states parties could submit observations—including those by national technical experts—on the information provided by Cuba and the USA by 27 September and the chair was to report on these consultations to all states parties by 31 December.

The final report of 29 August lacked procedural and substantive detail. On 15 December the chair sent a letter to all states parties, which included in annex the submissions by 12 states and the responses by Cuba and the USA. Based on these, he reported that 'due *inter alia* to the technical complexity of the subject and to the passage of time, it has not proved possible to reach a definitive conclusion with regard to the concerns raised by the Government of Cuba'. He reiterated the fulfilment of the Article V requirements as stated in the August report and concluded that the experience underscored the importance of having an effective protocol (then under negotiation in the Ad Hoc Group) as soon as possible.<sup>34</sup> The proceedings were confidential; no documents were publicly released except for the final report.<sup>35</sup>

<sup>34</sup> Soutar, S. I., United Kingdom Permanent Representative, Letter to All States Parties to the Biological and Toxin Weapons Convention, 15 Dec. 1997, paras 7–9.

<sup>35</sup> This summary of the proceedings draws on Zanders (note 30), which is currently the only account based on the meeting documents. See also BWC, Formal consultative meeting of the states parties, 'Report of the formal consultative meeting of states parties to the Convention on the Prohibition of the Development, Production and Stockpiling

The second review conference—reaffirmed by the third review conference—enabled an FCM or any state party to request specialized assistance in solving any problems relating to the objective or implementation of the BWC through, among other things, appropriate procedures foreseen in the UN framework and in accordance with the UN Charter. Cuba did request a mechanism to investigate its suspicions, which the USA opposed because of the facts and clarifications it had offered to dispel the Cuban allegations. The FCM undertook no further action and Cuba refrained from pursuing its demand through alternative procedures in the UN framework, which could have included a Secretary-General investigation into alleged biological weapon use under a mechanism approved by the UN General Assembly and the Security Council a decade earlier in response to chemical weapon use during the 1980–88 Iran–Iraq War.<sup>36</sup> For its part, the USA could have sought independent DNA analysis of the insect pests to determine the origins.

Goldblat’s reservations about the Article V procedure expressed shortly after the conclusion of the BWC negotiations in 1971 remain applicable to the more detailed FCM mechanism elaborated in subsequent review conferences. Neither Cuba nor the USA used additional ‘appropriate international procedures within the framework of the United Nations’. Even if more time had been available, technical or scientific input from other states parties would have had no impact on the outcome because resolution of the contention requires a consensus conclusion by all participants, including Cuba and the USA.

### **The second request for a formal consultative meeting under Article V**

Between the start of the invasion of Ukraine and June 2022, Russia held multiple high-profile press conferences, convened the UN Security Council three times, organized an Arria Formula meeting (i.e. an informal meeting of council members) and addressed the matter of the Ukrainian laboratories at the Conference on Disarmament. However, it appears that at no point during this period did Russia engage

Ukraine and the USA in consultations. On 13 June it addressed an aide-memoire under cover of a diplomatic note with questions to the USA and the request for a reply within 10 days. The USA replied 10 days later that the documents attached to the aide-memoire were ‘unreadable or virtually unreadable’ and requested legible copies. It committed itself to respond within 30 days after receipt of those documents. Russia rejected the US request five days later, and the next day, 29 June, triggered the FCM procedure.<sup>37</sup> Notably, Ukraine’s opening statement at the FCM made no reference to consultations in the months before the FCM.<sup>38</sup>

States parties did not elaborate any procedures for future FCMs after the first one in 1997 and many aspects of the FCM process remained unclear. The 2022 FCM therefore created opportunities to confirm precedents and establish new practices. One such instance concerned rules of procedure, which had been vague for the first FCM.<sup>39</sup> An informal preparatory meeting chaired by the UK on 27 July considered the matter. Participants came to an understanding that the rules of procedure of the 2016 eighth review conference should apply to the FCM.<sup>40</sup> The FCM adopted the proposal. This significant update may establish the future use of the rules of procedure of the most recent review conference for any subsequent FCM.

Another politically fraught decision was the designation of the meeting chair. Given the short notice and ad hoc nature of FCMs, no rotation mechanism or practice exists among the BWC’s three regional groups—the Eastern European Group (EEG), the Group

of Bacteriological (Biological) and Toxin Weapons and on Their Destruction’, BWC/CONS/1, 29 Aug. 1997.

<sup>36</sup> United Nations Office for Disarmament Affairs (UNODA), ‘Secretary-General’s mechanism for investigation of alleged use of chemical and biological weapons (UNSGM)’, accessed 24 Sep. 2023.

<sup>37</sup> BWC, Formal consultative meeting of the states parties (FCM 2022), ‘Opening statement to the Article V consultative meeting under the Biological and Toxin Weapons Convention, US Special Representative Kenneth D. Ward, September 6, 2022’, Revised Working Paper submitted by the United States, BWC/CONS/2022/WP.22/Rev.1, 16 Sep. 2022, pp. 2–3.

<sup>38</sup> BWC, FCM 2022, ‘Statement by H. E. Ambassador Yuriy Klymenko, Head of the Delegation of Ukraine at the formal consultative meeting of the states parties to the BTWC’, Working Paper submitted by Ukraine, BWC/CONS/2022/WP.21, 6 Sep. 2022.

<sup>39</sup> No document or report from the first FCM available to the author identifies specific rules of procedure. With regard to running an FCM, the third review conference addressed only decision making in case of a lack of consensus, referring to the review conferences’ rules of procedure (i.e. rule 28). BWC, Third Review Conference, Final Document, BWC/CONF.III/23, 1992, Part II, Final Declaration, Article V, pp. 14–15.

<sup>40</sup> Liddle, A., Permanent Representative to the Conference on Disarmament, Letter to States Parties and States Signatories to the Biological and Toxin Weapons Convention Geneva, 28 July 2022.



of the Non-Aligned Movement (NAM) and Other States, and the Western Group (WG). In 1997 the UK, a WG member, chaired the first FCM. In 2022 Hungary assumed the role. It sits in the EEG but is also an EU member state. In both cases, the selection shared a common feature: the countries had chaired the review conference preceding the FCM, an informal argument that helped to avoid a diplomatic impasse.<sup>41</sup> Whether states parties will preserve this rationale is unclear, especially as the NAM group may attempt to claim the role in a future FCM.

After the informal preparatory meeting on 27 July, the second FCM opened on 26 August and reconvened from 5 to 9 September. Separate intensive consultations with Russia and the USA took place on 8 September despite it being an official UN holiday. Eighty-nine BWC states parties and one signatory state (Syria) participated. As in 1997, the meetings were closed to non-signatory states, international organizations and civil society. However, this time the documents were published as working papers and updated on the UN website as the exchanges progressed.<sup>42</sup> After the questions and replies by the three protagonists, 42 states parties made a national statement, as did Syria, after which Russia, Ukraine and the USA responded. Ultimately, Russia failed to persuade the overwhelming majority of participating BWC states parties of its case.

### **The outcome of the second formal consultative meeting**

After the FCM in 1997 ended without clear conclusions, neither Cuba nor the USA pursued the *Thrips palmis* matter any further. In contrast, the head of the Russian delegation noted at the end of the second FCM that ‘the overwhelming majority of the claims put forward by Russia have gone unanswered’. He saw ‘the need to continue the consultation process within the framework of the BTWC and to consider its results at the Ninth Review Conference’. Because of the lack of consensus, he went on, ‘we consider it necessary to go beyond consultations and exchanges of views. All instruments available under the Convention, including Article VI of the BTWC, should be involved

<sup>41</sup> Officials, Private discussions with the author, BWC, Ninth Review Conference, Geneva, Dec. 2022.

<sup>42</sup> UNODA, ‘Biological Weapons Convention: Formal Consultative Meeting (2022)’, 2022.

to investigate Ukraine’s and the US’ violations of the Convention’.<sup>43</sup>

Russia, however, had exasperated most other participants irrespective of their regional affiliation. Whereas Ukraine and the USA addressed the concerns they had been notified of, the Russian delegation kept raising other issues.<sup>44</sup> Furthermore, on the first day of the reconvened meeting, it was discovered that the Russian delegation was already circulating a draft statement deploring the outcome of the FCM to collect co-sponsors. Belarus, one of the eventual co-sponsors, presented the statement on the final day.<sup>45</sup>

As in 1997, nobody requested the involvement of other UN bodies during the FCM. It is worth pointing out that in this instance the Secretary-General’s investigative mechanism would have had no role to play as Russia did not allege biological weapon use.

## **IV. PROCEDURES UNDER ARTICLE VI OF THE BIOLOGICAL AND TOXIN WEAPONS CONVENTION**

In October 2022 during the First Committee of the UN General Assembly meeting in New York, Russia confirmed its preparation of a formal complaint to the Security Council under Article VI of the BWC and a draft resolution proposing to set up an investigative commission. It submitted the complaint on 24 October. The Security Council met to hear the arguments three days later. At the meeting, UNODA reiterated its lack of evidence that Ukraine was conducting biological activities violating the BWC.<sup>46</sup> Like during the

<sup>43</sup> BWC, FCM 2022, ‘Statement by K. V. Vorontsov, Head of the Delegation of the Russian Federation at the consultative meeting of states parties to the Biological and Toxin Weapons Convention on Article V of the BTWC’, Working Paper submitted by Russia, BWC/CONS/2022/WP.64, 12 Sep. 2022.

<sup>44</sup> One senior diplomat described the proceeding as ugly, with Russia repeatedly interrupting other speakers, especially when they mentioned the war in Ukraine. Another diplomat said Russia had no interest in obtaining answers, its main objectives being to justify the war and put Ukraine and the United States on the defensive. Officials, Private discussions with the author, BWC, Ninth Review Conference, Geneva, Dec. 2022.

<sup>45</sup> BWC, FCM 2022, ‘Joint statement of the results of the consultative meeting of the states parties to the Convention on the Prohibition of Biological and Toxin Weapons (BTWC) under BTWC Article V’, Working Paper submitted by Belarus, China, Cuba, Nicaragua, Russia, Syria, Venezuela and Zimbabwe, BWC/CONS/2022/WP.63, 12 Sep. 2022.

<sup>46</sup> United Nations, Security Council, 9171st meeting, New York, Statement by Ebo, A., S/PV.9171, 27 Oct. 2022, pp. 2–3.

meetings Russia called in the weeks immediately after the invasion, UNODA recognized its lack of mandate or resources to conduct independent investigation into allegations. Seizing upon this point, Russia dismissed the assessments, arguing that UNODA relied on Ukraine's CBM declarations but was not in a position to verify their accuracy.<sup>47</sup> In his right of reply at the end of the Security Council meeting of 27 October, Russia's representative even mocked UNODA's capacity to collect relevant information.<sup>48</sup> In this way, Russia once again rejected information gathered through formal treaty procedures that contradicted its narrative.

### **Article VI of the Biological and Toxin Weapons Convention**

Article VI of the BWC grants states parties the right to take a complaint to the UN Security Council and contains the undertaking by all states parties to cooperate with any investigation initiated by the council. The full text is as follows:

- (1) Any State Party to this convention which finds that any other State Party is acting in breach of obligations deriving from the provisions of the Convention may lodge a complaint with the Security Council of the United Nations. Such a complaint should include all possible evidence confirming its validity, as well as a request for its consideration by the Security Council.
- (2) Each State Party to this Convention undertakes to cooperate in carrying out any investigation which the Security Council may initiate, in accordance with the provisions of the Charter of the United Nations, on the basis of the complaint received by the Council. The Security Council shall inform the States Parties to the Convention of the results of the investigation.

The provision lacks guidance on the type of investigation that the Security Council may initiate, and states parties never elaborated on investigation modalities. There is a striking discrepancy between the certitude ('finds' instead of 'suspects') about a state party's violation ('is acting' instead of 'may be acting') and the hesitancy ('may initiate') concerning Security Council action. As with Article V, the text of Article VI is an inexact reproduction of the corresponding provision in the Seabed Treaty (Article III(4)).<sup>49</sup> At the

outset, the draft BWC was accompanied by a proposed resolution the Security Council would adopt upon entry into force of the BWC. This draft resolution sought to ensure council commitment if the BWC provision were triggered, explained the nature of the council decision (e.g. no veto) and laid out procedures for considering a complaint. As with Article VII, the other BWC provision calling on the Security Council to act in case of a possible breach, the negotiators eventually dropped the idea of declaring the council's readiness to act if called upon.<sup>50</sup>

No country had triggered Article VI until Russia's formal complaint in 2022. Absent precedence, a process to develop both mandate and procedures presumably would have had to precede a Security Council investigation in response to Russia's complaint. Neither the treaty text nor the common understandings reached by review conferences grant a complainant a right to propose the investigation mandate, the investigative team's composition or the time frame within which the team should report back. Russia's draft resolution sought to determine the make-up of the investigative commission (experts from the sitting Security Council members, thus including Russia and the USA but excluding Ukraine) and the deadline for the investigative report (30 November 2022). Taken together, the proposal would have given the so-called investigative team less than one month to lay out its mandate and organize itself internally, carry out the investigation and agree on the report's conclusions in time for the ninth review conference of the BWC (28 November–16 December 2022).

### **The UN Security Council vote**

A generally underappreciated aspect of a state party's right to appeal to the Security Council in case of a serious BWC breach is that the step does not require consultation among the community of states parties. In the case of the 1997 Chemical Weapons Convention (CWC), Article IX foresees roles for the Organisation for the Prohibition of Chemical Weapons (OPCW) and its Director-General.<sup>51</sup> Depending

<sup>47</sup> United Nations, Security Council, 8999th meeting, New York, Statement by Nebenzia, V., S/PV.8999, 18 Mar. 2022, p. 13.

<sup>48</sup> United Nations, Security Council, 9171st meeting, New York, Statement by Nebenzia, V., S/PV.9171, 27 Oct. 2022, p. 13.

<sup>49</sup> Sims (note 25), p. 23.

<sup>50</sup> Zanders, J. P., 'The meaning of "emergency assistance": Origins and negotiation of Article VII of the Biological Weapons Convention', Working Paper, The Trench and Fondation pour la recherche stratégique, Aug. 2018, pp. 16–17.

<sup>51</sup> Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction

on the circumstances, the Executive Council or the Conference of the States Parties—both formal decision-making bodies of the OPCW—may refer a particularly grave matter to the UN Security Council.<sup>52</sup> The possibility of direct appeal by a state party to the Security Council under Article VI of the BWC means that an issue acted upon under that article is completely taken out of the hands of the community of BWC states parties. Moreover, there is no provision on how that matter can be returned to the BWC community after action by the Security Council, irrespective of whether the council was able to resolve the matter completely or partially or was unable to resolve it.<sup>53</sup> On top of that, whereas the OPCW bodies must act upon a complaint under the CWC mechanism, there is no certainty the Security Council would agree to do so under the BWC process.

While it is true that Russia first initiated an FCM, nothing in the BWC requires or suggests that an Article V process should precede an action under Article VI. Based on statements made at the end of the FCM, Russian officials seem to have viewed the FCM as an escalatory step.<sup>54</sup> At least, most of the Security Council members appeared to think that to be the case.

When put to the vote on 2 November, the Security Council did not adopt Russia's draft resolution. The abstentions by all 10 non-permanent members were surprising.<sup>55</sup> They comprised countries with outspoken views against Russia's allegations, those that sought to balance their position with other geopolitical or economic interests, and those wishing to avoid setting precedents for Article VI without a majority behind the Russian proposal. Deep diplomatic engagement among the non-permanent members had pre-arranged the joint position to abstain to avoid presenting divisions. By denying the possibility of nine affirmative votes as Article 27 of the UN Charter requires, they ensured the draft resolution's failure irrespective of the permanent

members' actions.<sup>56</sup> The five permanent members split, with China and Russia endorsing the proposal, and France, the UK and the USA rejecting it.

When announcing the outcome, the president of the Security Council (represented by Ghana) stated: 'The draft resolution received 2 votes in favour, 3 against and 10 abstentions. The draft resolution has not been adopted, having failed to obtain the required number of votes.' The phrase 'having failed to obtain the required number of votes' suggests that the negative vote by three permanent members did not amount to a veto. (The alternative phrasing would have been: 'owing to the negative vote of a permanent member of the council'.) The phrasing implies that the council addressed a procedural matter rather than any 'other matter' (as stipulated in Article 27(3) of the UN Charter). The difference is that a procedural matter needs only nine affirmative votes. In contrast, any non-procedural (i.e. substantive) matter requires nine affirmative votes, including the permanent members' concurring votes. A procedural matter may pass despite a negative vote by one or more permanent members; a negative vote by a permanent member would defeat any 'other matter' of substance.<sup>57</sup>

Was the vote procedural and, if so, why? There is a clear need to distinguish between the formal complaint under Article VI and the accompanying draft resolution. With the latter, Russia used its position as a permanent Security Council member to undertake an action not available to any 'ordinary' BWC state party (not seated in the Security Council). Article VI(1) requires a state party to accompany the complaint with all relevant evidentiary materials *and* a request for the complaint's consideration by the Security Council. Russia, however, phrased the request part differently (emphasis added):

In accordance with Article VI of the Convention, the Russian Federation lodges to the Security Council a formal complaint, which includes all possible evidence confirming its validity, and *reiterates its request* to convene on 27 October 2022, in New York, a United Nations Security Council meeting to *consider the attached draft resolution of the Council* (see annex II).<sup>58</sup>

(Chemical Weapons Convention, CWC), opened for signature 13 Jan. 1993, entered into force 29 Apr. 1997.

<sup>52</sup> CWC, Article IX, Consultations, Cooperation and Fact-Finding, accessed 14 Aug. 2023.

<sup>53</sup> For a review of issues as pertaining to Article VII of the BWC see Zanders, J. P., Trapp, R. and Nexon, E., Report of the Tabletop Exercise (TX) on the Implementation of Article VII of the Biological and Toxin Weapons Convention (BTWC), 28–29 May 2019, UN Regional Centre for Peace and Disarmament (UNREC), Lomé, Togo, Fondation pour la recherche stratégique, Aug. 2019, p. 35.

<sup>54</sup> BWC, FCM 2022, BWC/CONS/2022/WP.64 (note 43).

<sup>55</sup> United Nations, Security Council, 9180th meeting, New York, S/PV.9180, 2 Nov. 2022, pp. 2–3.

<sup>56</sup> Charter of the United Nations and Statute of the International Court of Justice, opened for signature 26 June 1945, entered into force 24 Oct. 1945, Article 27.

<sup>57</sup> UN Voting, Voting in the Security Council, Dag Hammarskjöld Library, accessed 30 Apr. 2023.

<sup>58</sup> United Nations, Security Council, Letter dated 24 October 2022 from the Permanent Representative of the Russian Federation to the

Russia did not call for the Security Council's consideration of the formal complaint. Instead, it requested a meeting to adopt the draft resolution. Given that the text called for establishing an investigative commission and designating the current Security Council members as commission members, the proposal was a typical case for a procedural rather than substantive vote. In other words, the council did not take up the matter of substance, namely the Article VI complaint itself. Had this been the case, France, the UK and the USA would have likely seen their opposition described as a 'negative vote'.

In discussions during the ninth review conference in November–December 2022, diplomatic representatives from several non-permanent members agreed with the author's assessment that the Security Council vote had not been on a substantive issue. At least one permanent council member indicated that its legal experts had assessed that the Russian draft resolution raised a substantive matter.<sup>59</sup> The different views suggest that the conditions for a formal complaint under Article VI will require clarification as Russia's manoeuvre has introduced an element of procedural uncertainty.

### Responses to the Russian complaint

After Russia triggered Article VI, the Security Council met on 27 October and 2 November 2022. As already mentioned, UNODA spoke only at the former session, reiterating that it had no information on illicit biological weapon-related activities in Ukraine. On both occasions, Russia was the first member to address the council. It summarized its core allegations and suggested steps before launching the BWC complaints procedure. It also presented the draft resolution. However, on 27 October the Russian representative introduced an element not featured in the letter to the president or the accompanying draft resolution. He said that the draft resolution 'is aimed at establishing and *dispatching* a Security Council commission to investigate into the claims against the United States and Ukraine' (emphasis added).<sup>60</sup> No other Russian official seems to have repeated this phrasing since.

The reference to 'dispatching' is the only hint at on-site visits, possibly at an expert level, in Ukraine. An on-site investigation would have raised the question of access to Ukrainian territory, especially those occupied regions where Russian forces allegedly found the inculcating laboratory documents. Without Ukraine's authorization, a UN-mandated team cannot enter the country's territory as defined by its internationally recognized borders.<sup>61</sup> An on-site visit to laboratories would also have raised serious issues about the forensic value of evidence collected in occupied Ukraine because of the timelapse between Russia's occupation of the laboratories and the investigation. There would not have been any safe chain of custody of evidence handed over by Russia or guarantees that the sites had not been tampered with or otherwise compromised.

The draft resolution immediately became the subject of discussions at the expert level. An unofficial account of the process reported that several Security Council members raised concerns about the investigative commission, especially given the lack of modalities for an Article VI complaint.<sup>62</sup> While those countries reportedly did not reject the idea of an investigation outright, they worried that adopting the resolution might have precedent-setting implications for future Security Council-mandated investigations under Article VI. They, therefore, suggested that the draft include a precise mandate, structure and modalities for the commission. According to an unofficial report of the Security Council session, Russia did not consider the suggestion.<sup>63</sup> Its apparent intransigence may have been one of the reasons persuading certain non-permanent members to join the decision to abstain collectively.

Three other elements also likely influenced their stance. First, UNODA's repeated statements before the Security Council since March 2022 that it is unaware of any biological weapon programmes in Ukraine held strong sway over the representatives. The Russian delegation consequently faced a high barrier to arguing the validity of its allegations. On top of Russia's progressive loss of diplomatic clout over the war in Ukraine, the outcome of the FCM a mere two months

United Nations addressed to the President of the Security Council, S/2022/796, 26 Oct. 2022, p. 4.

<sup>59</sup> Officials, Private discussions with the author, BWC, Ninth Review Conference, Geneva, Dec. 2022.

<sup>60</sup> Statement by Nebenzia, V., S/PV.9171 (note 48), p. 5.

<sup>61</sup> UN investigators could not travel to the eastern Iraqi city of Halabja in March 1988 after Iraq's chemical attacks there because Iran had control over the city and large swaths of surrounding Iraqi Kurdistan.

<sup>62</sup> Security Council Report, 'Ukraine: Vote on draft resolution', What's in Blue, 2 Nov. 2022.

<sup>63</sup> Security Council Report (note 62).

before the Security Council vote added to its challenges of persuading the meeting. The outright, systematic refusal to accept any of the explanations offered by Ukraine and the USA also raised questions among the non-permanent Security Council members about Russia's motives behind the allegations.

Second, several Security Council members set great store by the quality of evidential materials. While Article VI(1) conditions Security Council action on a complaint being accompanied by 'all possible evidence confirming its validity', BWC states parties have never specified the nature of such proof. After their vote, several non-permanent Security Council members clarified that a complainant cannot simply recycle evidence after failing to convince participants in another formal consultative body.

Russia had not only presented its accusations three times before to the Security Council, but also called for an FCM during which it raised numerous questions that Ukraine and the USA had answered in detail. While the substantive nature of the discussion in the FCM—in the Russian Permanent Representative's words—'confirm[s] the relevance of the problem that we raised', the fact of the matter is that the meeting ended without a unanimous view.<sup>64</sup> Reaching consensus among states when considering an international dispute sets an impossibly high bar. Still, in this instance, as evidenced by the few co-sponsors of the joint statement issued on the final day of the FCM and the Security Council voting result, Russia managed to convince only a small group of satellite or aligned states of its case. In other words, if a BWC state party triggers Article VI after unsuccessfully invoking Article V, Security Council members declared their expectation of substantial *additional* evidence before deciding on follow-on action.

Third, states parties to the BWC had previously heard arguments at the FCM, especially from the USA, that much of the assistance offered to Ukraine falls under Article X of the BWC on assistance and cooperation on non-prohibited and other peaceful activities. Several representatives of countries in the Global South voiced their concern at the time that the accusations and proposed investigation without a proper mandate or procedures might delegitimize Article X projects. Some of these countries were among the non-permanent

members of the Security Council during the Article VI procedure.

Interventions by France, the UK and the USA on 27 October and 2 November did not engage Russia on the substance of its allegations or merits of an investigative commission. Instead, they decried Russia's political motives behind its manoeuvres, suggesting in passing that the country would never under any circumstances accept an evidence-based explanation of the biological research activities.<sup>65</sup> According to them, this also rendered moot the idea of an investigative commission because Russia would reject out of hand any finding not matching its desired 'truth'.

China voted in favour of the Russian draft resolution. It justified its stance by arguing that 'the series of questions raised by Russia at the meeting were not fully answered' during the FCM and therefore it found Russia's complaint to the Security Council and request to initiate an investigation were 'reasonable and legitimate and should not be blocked'. It concluded 'that a fair and transparent investigation by the Council can effectively address compliance concerns and help uphold the authority and effectiveness of the Convention'.<sup>66</sup>

## V. FINAL REFLECTIONS AND RECOMMENDATIONS

Russia accompanied its invasion of Ukraine with a disinformation campaign that included allegations of USA-funded military biological research. When, a week and a half into the invasion, the Russian Ministry of Defence announced the discovery of evidence in Ukrainian laboratories, the allegations took on a magnitude seldom seen in disinformation campaigns. After making national press briefings, Russia took the matter several times to the UN Security Council and

<sup>65</sup> United Nations, S/PV.9180 (note 55).

<sup>66</sup> United Nations, Security Council, 9180th meeting, New York, Statement by Shuang, G., S/PV.9180, 2 Nov. 2022, p. 7. The statement echoed the Chinese–Russian joint statement before the invasion of Ukraine in which China and Russia called 'on the US and its allies to act in an open, transparent, and responsible manner by properly reporting on their military biological activities conducted overseas and on their national territory, and by supporting the resumption of negotiations on a legally binding BWC Protocol with an effective verification mechanism'. Joint Statement of the Russian Federation and the People's Republic of China on the International Relations Entering a New Era and the Global Sustainable Development, President of Russia, 4 Feb. 2022.

<sup>64</sup> Statement by Nebenzia, V., S/PV.9171 (note 48), p. 3.

to the Conference on Disarmament in the first half of 2022, requested an FCM under Article V of the BWC and then triggered Article VI, thereby forcing the Security Council to vote on a Russian draft resolution. At the end of 2022 the ninth review conference of the BWC was unable to issue a final declaration as part of its report because of Russia's refusal to acknowledge the outcomes of the FCM and the Security Council vote and frustration that other countries blocked its proposals for language under Articles V and VI.

The origins of Russia's complaints go back to the break-up of the Soviet Union in 1991 and the CTR programme set up by the USA to prevent former Soviet non-conventional weapons from falling into the hands of criminal elements or states interested in acquiring biological, chemical or nuclear weapons. The initiative also sought to prevent migration of knowledge and expertise by offering former weapon scientists and technicians alternative research and professional occupations. Several other countries and the EU soon joined in partnerships that benefited Russia and the other former Soviet republics. However, by the end of the 2000s, Russia became hostile to the collaborations and stepped away from them. It began to regard continuation of the programmes in its neighbours, especially in the areas of biosecurity and safety, as incompatible with its security interests.

Russia launched a series of disinformation operations about military biological programmes because of the US DOD's large role in CTR coordination and financing. They began with scattered comments by officials and some planted blog pieces and newspaper articles in former Soviet states or Warsaw Pact members, allowing Russia to amplify their contents whenever deemed useful. In that sense, the occupation of parts of Georgia in 2008 and attendant allegations of epidemic pathogen releases and later allegations about the work at the Lugar Research Center foreshadowed the campaigns against Ukraine.

In other words, the actions are part of a well-prepared and continuous disinformation strategy to be intensified whenever or wherever useful. As other research has illustrated, the strategy follows detailed scripts already developed during the Soviet era.<sup>67</sup>

<sup>67</sup> Roffey, R. and Tunemalm, A. K., 'Biological weapons allegations: A Russian propaganda tool to negatively implicate the United States', *Journal of Slavic Military Studies*, vol. 30, no. 4 (2017); and Leitenberg, M., 'False allegations of biological-weapons use from Putin's Russia', *Nonproliferation Review*, vol. 27, nos 4-6 (2020).

However, whereas previous disinformation, as in the case of Georgia, was an irritant stoking political discord in a specific country, the current campaign against Ukraine affects the international community and its institutions. Moreover, there are few indications that Russia will soon relent because the campaign offers ways for it to influence decision making in international organizations and force states to declare their geopolitical allegiances.<sup>68</sup>

### **Implications for the Biological and Toxin Weapons Convention**

The implications of the Russian allegations against Ukraine and the USA are the greatest for the BWC. The convention embeds a strong norm but is institutionally weak. Since the 2022 invasion, Russia has exploited these weaknesses in the full knowledge that the treaty provisions could never resolve the issues raised. Given the consensus requirement for any substantive conclusion under Article V, the fact that the parties to a contention are part of the decision making precludes its resolution. This weakness had been identified already in 1972; Russia exposed it glaringly with consequences for the national security of individual states and the international community.

Russia also triggered Article VI, thereby taking the matter to the UN Security Council and out of the hands of the BWC states parties. In the Security Council, Russia has the advantage of being a permanent member with rights of initiative and veto. It manipulated the process in a way to force an investigation whose conclusions it wanted to present to the BWC review conference less than 30 days later. Again, it probably anticipated a negative outcome given the veto power of France, the UK and the USA. However, the 10 non-permanent members, coming from different continents and having diverse geopolitical allegiances, avoided a fractured international front by abstaining in block. They issued a sharp rebuke that a complainant should not game the international institutions if the matter under consideration does not garner consensus support in one forum and the complainant presents no fresh evidence for consideration in another assembly.

<sup>68</sup> See e.g. Russian Government, 'Government expands the list of unfriendly countries and territories', Directive no. 2018-r of 23 July 2022, 24 July 2022.

However, in the weeks immediately following the invasion Russia was already instrumentalizing the Security Council as a way of amplifying its accusations. The BWC relies in many important ways on the UN for its functioning and moral authority. Russia belittled the utility of the BWC's CBMs and the UN's capacity for assessing them, thereby reducing the transparency value of the CBMs and their possible contribution to conflict mitigation. These matters emphasize the need for a fully-fledged institutional setup with verification and investigation functions and organs with formal (consensus and majority) decision-making authority. The UK chair of the first FCM had already highlighted this in his final report in 1997.<sup>69</sup>

The current disinformation campaign is far from over and may have longer-term corrosive effects. During the second meeting of the working group on strengthening the BWC (7–18 August 2023), Russia brought up the biological laboratories in Ukraine several times. On the penultimate day of the meeting, it argued that the lack of consensus in the FCM means that its questions remain pending and still require answers. In response to the chair's comment that this matter was not on the agenda of the intersessional meeting, Russia submitted a working paper with questions to Ukraine and the USA, thereby requiring the working group to consider them.<sup>70</sup> The next day, Russia added that no limits exist on the number of times a state party may initiate proceedings under Article V and indicated that it may resume the FCM process at any time if it acquires fresh evidence.<sup>71</sup> The implications for the 10th review conference in 2027 are currently unclear.

### Recommendations for the European Union

The EU has assumed an important stake in the maintenance of disarmament and non-proliferation standards. It also fights disinformation on many fronts.

<sup>69</sup> Soutar (note 34).

<sup>70</sup> BWC, 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 (BWC Working Group), 'Questions to the United States and Ukraine regarding the compliance with their obligations under the BTWC in the context of the activities of biological laboratories in the territory of Ukraine', Working Paper submitted by Russia, BWC/WG/2/WP.25, 18 Aug. 2023; and UN Web TV, Recording of 18th meeting of the BWC Working Group, 17 Aug. 2023, at approximately 1 hour 45 minutes.

<sup>71</sup> UN Web TV, Recording of 19th meeting of the BWC Working Group, 18 Aug. 2023, at approximately 1 hour 25 minutes.

The European External Action Service set up the East StratCom Task Force in 2015 to counter Russian disinformation. One of the core projects, EUvsDisInfo, publishes the weekly internet-based DisInfo Review.<sup>72</sup> The EU therefore has a clear interest in preventing the erosion of the BWC through disinformation.

Disinformation tactics as used in the BWC context will often rely on lengthy, seemingly highly detailed online articles with many links to other resources to leave the reader with the impression of immediate verification of claims.

Concerning BWC-relevant activities and cooperation and assistance in biosecurity and safety, the EU already collects and publicizes a lot of information. The EU could further enhance its impact by implementing the following recommended measures:

1. The EU could prepare a yearly updated report of all EU support for the BWC and associated issue areas, including Article X cooperation and assistance initiatives by its member states. The EU could present the report as a working paper at the annual BWC meetings of states parties and publish it on a dedicated web page for easy public access. This proposal emphasizes enhanced public ownership of the information. It would require little additional effort as the EU already collects detailed information, which it makes available through, among other things, the reports issued by the Global Partnership Against the Spread of Weapons and Materials of Mass Destruction, of which the EU is a member.<sup>73</sup>

2. The dedicated web page proposed above should retain past reports. In this way, a time series of official documents will confirm a consistent process of transparency concerning biological-related activities whose objectives could be misconstrued.

3. The EU should continue to insist that all member states submit their BWC CBMs in time and make them publicly available. It should also encourage member states to prepare and circulate individual annual Article X reports on bilateral activities with other BWC states parties.

<sup>72</sup> European External Action Service, 'Questions and answers about the East StratCom Task Force', 27 Oct. 2021; and EUvsDisInfo, <<https://euvsdisinfo.eu/>>.

<sup>73</sup> BWC, Ninth Review Conference, 'International activities of Global Partnership member countries related to Article X of the Biological and Toxin Weapons Convention (2017-2022)', Working Paper submitted by Canada, BWC/CONF.IX/WP.51, 6 Dec. 2022.

4. At BWC meetings the EU and its member states could invite experts active in the various programmes (rather than programme managers) who could brief states parties with a degree of detail that reassures them of the legitimacy of the assistance and cooperation activities. Similarly, the EU could encourage recipients of such assistance and cooperation activities to report on their nature and results, including through in-person briefings.

As the Russian strategies reveal, disinformation campaigns are waged in multiple information spaces simultaneously. They often start out on a low level by planting seeds in multiple information channels in different countries. Even while specific accusations may be effectively debunked, residual recollections of certain stories may be sufficient to rekindle suspicions about true motives years later or make people susceptible to new disinformation narratives.

To this end, EU counteractions must be proactive rather than responsive, and responses to specific allegations, however weak or far-fetched they may initially appear, must be instantaneous.



**ANNEX 1. KEY EVENTS CONCERNING RUSSIA'S ALLEGATIONS OF VIOLATIONS OF THE 1972 BIOLOGICAL AND TOXIN WEAPONS CONVENTION (BWC) BY UKRAINE AND THE UNITED STATES, FEBRUARY 2022–APRIL 2023**

Date	Event
<b>2022</b>	
24 Feb.	Russia invades Ukraine
6 Mar.	Russia's Ministry of Defence tweets allegation of illicit biological research
10 Mar.	Press briefing by Lt. Gen. I. A. Kirillov in Moscow detailing the allegations
13 Mar.	First United Nations Security Council meeting on Russia's allegations
16 Mar.	Russia's Permanent Mission to the UN in Geneva circulates note verbale to all BWC states parties, which includes briefing slides and documentary evidence presented by Lt. Gen. Kirillov
18 Mar.	Second UN Security Council meeting on Russia's allegations
31 Mar.	Russia addresses the plenary meeting of the Conference on Disarmament in Geneva on military biological activities in Ukraine
	First meeting in the State Duma of the Parliamentary Commission of the Federal Assembly of the Russian Federation investigating the creation of biological laboratories in Ukraine
4–11 Apr.	Preparatory Committee for the ninth review conference of the BWC
6 Apr.	Russia convenes a UN Security Council Arria Formula meeting on military biological activities in Ukraine
13 May	Third UN Security Council meeting on Russia's allegations
29 June	Russia's Permanent Mission to the UN in Geneva sends its counterpart from the United Kingdom a note verbale requesting a formal consultative meeting
26 Aug.; 5–9 Sep.	BWC formal consultative meeting
24 Oct.	Russia triggers Article VI of the BWC
27 Oct.	UN Security Council meets to consider Russia's complaint
2 Nov.	UN Security Council votes on Russia's draft resolution
28 Nov.–16 Dec.	Ninth review conference of the BWC
<b>2023</b>	
11 Apr.	The Parliamentary Commission of the State Duma delivers its report

**ABBREVIATIONS**

BWC	1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction
CBMs	Confidence-building measures
CTR	Comprehensive Threat Reduction
CWC	1997 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction
DOD	Department of Defense
DTRA	Defense Threat Reduction Agency
EEG	Eastern European Group
EU	European Union
FCM	Formal consultative meeting
ISTC	International Science and Technology Center
NAM	Non-Aligned Movement
NATO	North Atlantic Treaty Organization
OPCW	Organisation for the Prohibition of Chemical Weapons
STCU	Science and Technology Center in Ukraine
UNODA	United Nations Office for Disarmament Affairs
WG	Western Group

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## A EUROPEAN NETWORK

In July 2010 the Council of the European Union decided to support the creation of a network bringing together foreign policy institutions and research centers from across the EU to encourage political and security-related dialogue and the long-term discussion of measures to combat the proliferation of weapons of mass destruction (WMD) and their delivery systems. The Council of the European Union entrusted the technical implementation of this Decision to the EU Non-Proliferation Consortium. In 2018, in line with the recommendations formulated by the European Parliament the names and the mandate of the network and the Consortium have been adjusted to include the word 'disarmament'.

## STRUCTURE

The EU Non-Proliferation and Disarmament Consortium is managed jointly by six institutes: La Fondation pour la recherche stratégique (FRS), the Peace Research Institute Frankfurt (HSFK/PRIF), the International Affairs Institute in Rome (IAI), the International Institute for Strategic Studies (IISS-Europe), the Stockholm International Peace Research Institute (SIPRI) and the Vienna Center for Disarmament and Non-Proliferation (VCDNP). The Consortium, originally comprised of four institutes, began its work in January 2011 and forms the core of a wider network of European non-proliferation and disarmament think tanks and research centers which are closely associated with the activities of the Consortium.

## MISSION

The main aim of the network of independent non-proliferation and disarmament think tanks is 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 in the EU and third countries. The scope of activities shall also cover issues related to conventional weapons, including small arms and light weapons (SALW).

[www.nonproliferation.eu](http://www.nonproliferation.eu)

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