

Strengthening the BWC through a legally binding instrument (Protocol)

Discussion points

In the context of preparing for the Eighth Review Conference in 2016, the Russian delegation proposes to examine opportunities presented by strengthening the Convention and improving its implementation based on the negotiating mandate approved by consensus at the BWC Special Conference in 1994. To that end, a relevant survey of States Parties was launched by the Ministry of Foreign Affairs of Russia in May 2014. Its intermediate findings were shared with States Parties on 4 August 2014 at the BWC meeting of experts. In our view, the findings are encouraging in a sense that States Parties generally support the strengthening of the Convention based on a legally binding instrument (Protocol). However, concerns continue to exist primarily in regard to political feasibility of such a Protocol. Our survey has also reaffirmed that the political issues that emerged in 2001 and led to the suspension of the Ad Hoc Group negotiations continue to exist. This puts into a serious question the feasibility of pursuing in the foreseeable future the legally binding instrument shaped along the lines of 2001. Therefore, it may be argued that the Convention can and should be strengthened in a sustainable and broad manner if the issues that remain strongly divisive are left aside until the international climate improves. This does not mean that our position of principle in favour of a compliance control mechanism has changed, but rather that we should try making progress in areas where if not consensus then broad agreement may be possible.

The 1994 negotiating mandate contains a lot of flexibility and does not presuppose the outcome of negotiations in terms of the shape of the future legally binding instrument. The instrument, supplementary and additional Protocol, would not supplant or amend the Convention. Its purpose is to create added value for

States Parties by setting up enabling mechanisms of co-operation, assistance and protection. In that concept challenge/complaint procedures relevant to Article VI of the BWC and initiated by one State Party against another will continue to be addressed by the mechanism specified therein (lodging a complaint with the UN Security Council).

One of the advantages of such an approach to the Protocol is that it does not require all States Parties to become Parties to it. This Protocol will constitute a pooling of resources for mutually beneficial aims for states that choose to become parties to it. It is believed that to achieve lasting and sustainable results, the Protocol should set up its implementing agency, the Organisation for the Prohibition of Biological Weapons (OPBW) with the professional Technical Secretariat (TS) to deal with the tasks assigned to it, and the policy-making organs (Executive Council and the Conference of States Parties) to supervise the implementation of the Protocol.

The above general idea may be refined through an inclusive process of informal consultations with all interested States Parties leading up to the Eighth Review Conference in 2016. The Review Conference will be expected to encourage the negotiation of a legally binding Protocol to strengthen the Convention and improve its implementation to be submitted for consideration at the Special Conference/Ninth Review Conference in 2021.

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The following thematic areas have been outlined as potential parts of the Protocol that can command broad agreement among States Parties, while some relevant programmatic activities of the future OPBW are also provided under thematic areas. Both thematic areas and especially programmatic activities are listed for illustrative purposes because their specific parameters depend upon States Parties.

1. Investigations of alleged use of biological and toxin weapons (initiated by affected State Party and conducted on its territory)

i. Setting up a ready to use capacity in the TS (inspectors, equipment) and maintaining it in operational readiness.

ii. Setting up a network of States Parties laboratories and certifying them through proficiency tests for off-site analysis of samples.

iii. Setting up a network of qualified experts from States Parties who may be called upon to contribute to investigations thereby complementing in-house capability of the TS.

iv. Concluding co-operation agreements with the OPCW, WHO, OIE, UN, etc – for the purpose of assistance in investigations.

2. Investigations of suspicious outbreaks of disease/or toxin poisoning (initiated by affected State Party and conducted on its territory)

i. Non-accusatory investigations of outbreaks/poisonings causing suspicion that hostile intent may have been involved; may or may not proceed to an investigation of alleged use.

ii. A ready to use capability (the same as for investigations of alleged use) is maintained in the TS.

3. Promoting international co-operation for peaceful purposes (only several illustrative examples of relevant activities are provided)

i. Capacity building in States Parties in the areas of bacteriology and virology, disease control and prevention, and for other peaceful purposes.

ii. Promoting relevant international exchange for peaceful purposes.

iii. Responding upon States Parties request to identifying, containing and mitigating outbreaks of dangerous infectious diseases (this also helps the TS

personnel to maintain and develop their expertise, acquire and refresh field experience required for investigations of alleged use/investigations of suspicious outbreaks/poisonings).

- iv. Capacity building in biosafety and biosecurity
- v. Advising on Good Laboratory Practice and Good Manufacturing Practice.
- vi. Setting up the Co-operation Committee as an organ of the OPBW to promote implementation of Article X.

4. Assistance and protection against biological and toxin weapons

- i. States Parties choose among the three legally binding measures:
 - a) monetary contribution to the voluntary fund administered by the TS;
 - b) concluding an agreement with the OPBW for procurement of assistance;
 - c) selecting the kind of assistance that may be provided in case such a request is triggered.
- ii. The TS operationalises States Parties contributions.
- iii. The TS conducts training with States Parties in the delivery of assistance and builds relevant indigenous capacity in States Parties.
- iv. Setting up the Protection Network made up of assistance and protection experts from States Parties to beef up capability in the TS.

5. Confidence building measures (existing or potentially enhanced formats)

- i. TS collects and distributes data submitted by States Parties.
- ii. TS builds capacity in States Parties for collecting and submitting CBM data.

6. National implementation

i. Promoting adoption of legislative and other normative measures to implement the BWC at the national level and effective action thereupon.

ii. Promoting outreach and awareness raising about the BWC and the OPBW among relevant stakeholders at the national level (academia, industry, etc).

7. Monitoring science and technology developments

i. Setting up the Scientific Advisory Board, geographically representative and made up of States Parties experts serving in their personal capacity, to render specialised advice on matters pertaining to the implementation of the BWC and the Protocol.

ii. Outreach to academia and industry with a view contributing to the aims of the BWC and the Protocol.

Advantages of the proposal

1. Strengthens the BWC and improves its implementation in many areas. Provides a permanent forum for co-operation among States Parties.

2. Creates an institutional, inclusive and non-discriminatory body to look after the BWC; the TS also serves as the keeper of institutional memory and expertise.

3. The OPBW in the proposed form does not require universal membership (identical or even close to the BWC membership). The idea is to pool resources among interested states for agreed and mutually beneficial purposes. States Parties may join if and when they decide to do so.

4. The Technical Secretariat should be small in number (no routine or challenge inspections) making full use of and developing relevant capabilities in States Parties that may be activated in this or that situation. This results in reduced financial implications of creating the OPBW.

5. The OPBW's mandate may be expanded and it may be given additional tasks if and when other additional and supplementary protocols to strengthen the BWC are concluded.

Disadvantages of the proposal (reflective of prevailing political realities)

1. Routine inspections of dual-use facilities are not implemented.
2. Challenge inspections (field and facility investigations) initiated by one state against another may not be implemented. For that purpose, if and when required, BWC Article VI provisions (lodging a complaint with the UN Security Council) may be utilised.