TRANSPARENCY AND COMPLIANCE

WHERE IS THE BTWC HEADED?

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**Enhancing compliance of the BTWC
through national implementation and other means**

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A disarmament regime arrested

- **2001**
    - Ad Hoc Group (AHG) suspends activities
    - Mail-delivered anthrax spores
    - Suspension of 5th RevCon after US challenges AHG mandate
    - Adoption of Intersessional Process at resumed 5th RevCon in 2002 (and 2006 & 2011)
- *De facto* acceptance of 'unverifiability' of BTWC
- **Significant shift of emphasis to the levels of national and individual responsibilities to prevent BW**

EU Common Position (2011 RevCon)

- working towards identifying and strengthening effective mechanisms to build confidence in compliance within the BTWC

- States Parties should be able to demonstrate compliance by means of information exchange and enhanced transparency about their capabilities and actions for implementation and intentions towards compliance. This can be achieved by means of *declarations, consultations and on-site activities*, representing increasing levels of transparency and scrutiny, but also by information exchange and review during the intersessional process. While recognising that there is currently *no consensus on verification*, which remains a central element of a complete and effective disarmament and non-proliferation regime, the Union is willing to work towards identifying options that could achieve similar goals

- effective implementation and full compliance with **all obligations** under the BTWC by all States Parties [...] Further action could be considered and decisions taken on ways and means to enhance national implementation. The Union will encourage discussions on possible options in this regard, especially in the area of national legislation, coordination among national stakeholders and regional and sub-regional cooperation; and implementation of appropriate biosafety and biosecurity management standards for life science institutions; [...]

Taking the BTWC forward

- **Recognition of State Party responsibilities**
  - *All* BTWC obligations → *all on equal footing?*
    - Treaty obligations → Do certain articles take precedence over other ones?
    - Decisions and understandings by Review Conferences (e.g., CBMs; ban on use; …)
  - *Demonstrate* compliance
    - Burden placed on the State Party
    - Variety of tools suggested + other options to be identified
- **Recognition of responsibilities by other stakeholders**
  - Coercive: national legislation
  - Co-opting stakeholders in BTWC goals

Impact on 'compliance'

- **Is there a common understanding of 'compliance'**
  - Is there a *positive* standard that States Parties can achieve?
  - Or, is compliance entirely defined in terms of its negative 'non-compliance'?
- **Who judges 'compliance'?**
  - Collective of BTWC States Parties?
    - EU C.P.: 'information exchange and review during intersessional process'
    - How to frame compliance / non-compliance conclusions under a system of consensus decision-making?
    - How specific can States Parties be in RevCon reports?
  - An individual State Party?
- **Which are the tools for assessing BTWC compliance?**
  - Many suggestions for present and future tools
  - Can a consensus on tools be reached?
  - Can a consensus be reached on bi- or plurilateral processes of demonstrating and reporting on compliance?
    - If affirmative, how are indicators of anomalies to be addressed?
- **What are the consequences of a judgment of 'non-compliance'?**

A multi-layered & multi-sectorial governance model against BW?

- **Weapon control**
  - Multilateral agreements (Geneva protocol, BTWC, CWC)
  - Proliferation prevention arrangements (Australia Group, PSI, Global Partnership, etc.)
  - UN agencies: UNSC, UNODA, 1540 Committee, UNEP, UNDA, etc.
  - National laws and regulations (criminal, penal, trade, safety, etc.)
- **Disease prevention**
  - WHO, FAO, OIE + their regional organisations/initiatives
- **Crime and terrorism**
  - UNSC Resolutions (1540, terrorism resolutions, etc.)
  - Interpol, Europol, etc.
- **International transfers**
  - WTO, WCO, etc.
- **Economic actors**
  - Companies (national, multinational, transnational)
  - Research institutions
  - Individuals
- **Instruments of collective & individual governance**
  - Codes of conduct; Professional codes; Ethics
  - Awareness-raising & education
  - Whistle-blower protection schemes

Who must prove compliance with what and to whom?

- ▣ **State Parties**
    - ▪ Treaty obligations
    - ▪ National implementation provisions
        - ▫ Factual? (i.e., just presence of measures)
        - ▫ Procedural? (i.e., implementation quality & effectiveness)
    - ▪ Question: would absence of *demonstrating* compliance be a case of non-compliance?
        - → return to question of 'what is compliance'?
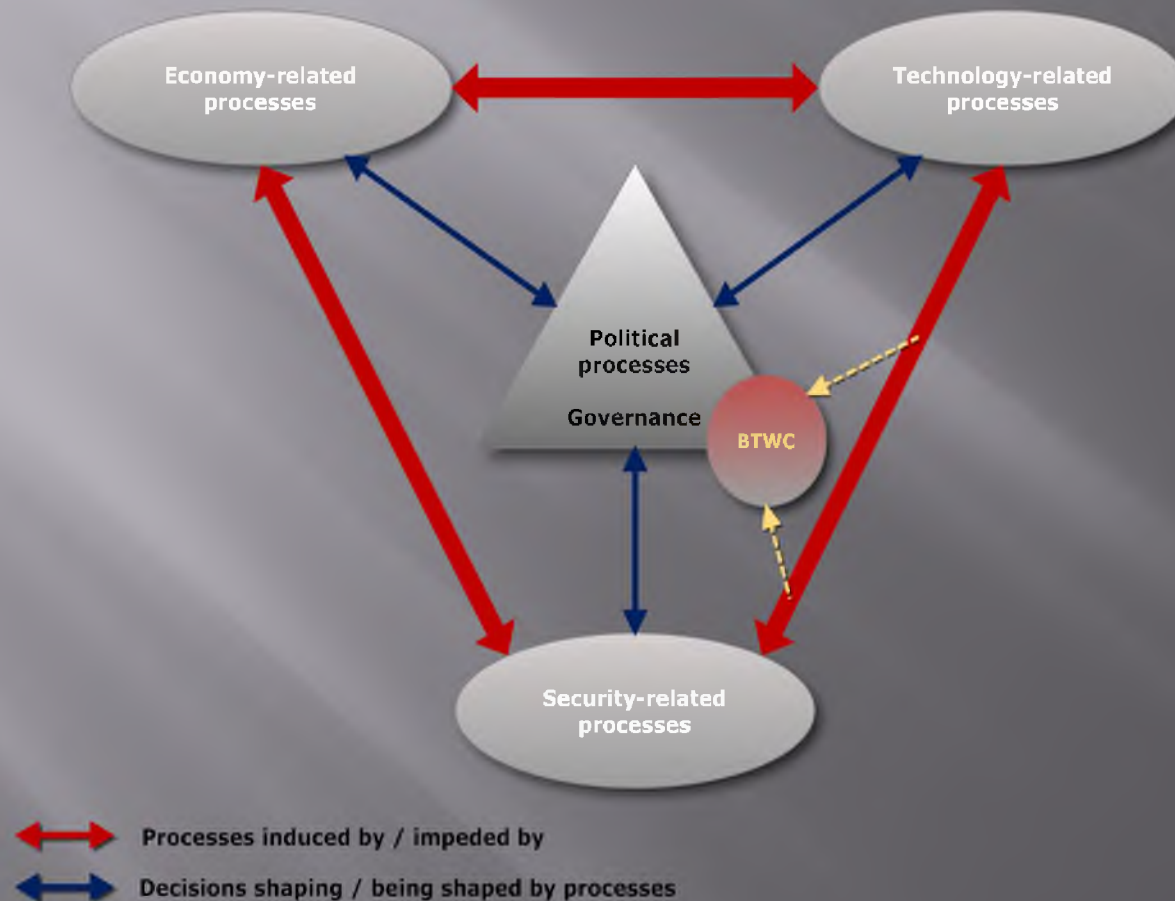   - → *quid* CBMs?
- ▣ **Stakeholders**
    - ▪ Demonstration of compliance with national and international professional, ethical and other regulatory standards
    - ▪ Do these standards coincide with the demands and expectations of BTWC States Parties?
    - ▪ What happens if there is compliance with (all) other standards and conflict with BTWC expectations?
        - ▫ To be resolved at the national level?
        - ▫ What if the issue has transnational implications? Does its resolution set a standard for the community of States Parties? (e.g., gain-of-function research debate)
- ▣ **Governance models**
    - ▪ What happens if stakeholders have opposite interests?
    - ▪ Contradictory principles, e.g., *science-based threat analysis* vs. *gain-of-function research*

The BTWC in a polycentric world

Economy-related processes

Technology-related processes

Political processes

Governance

BTWC

Security-related processes

Processes induced by / impeded by

Decisions shaping / being shaped by processes

- No unified model for governance of weapon control anymore
- New stakeholders and security actors
- Increased role of non-state national & transnational actors
- Shifting relative balances of powers (economy, politics, military) and multiple power centres
- Geographical decentralisation of business and industry activities
- South-south trade patterns and impact on technology diffusion

- *Declining role of states in shaping developments, but many states reject formal governance responsibilities for non-state actors under BTWC*

Questions for forging ahead

- **Centrality of the BTWC**
  - Has the intersessional process shifted attention too much towards particular threats & issues, types of actors and procedures?
  - Can we move out of the post-9/11 phase?
    - Emphasis of certain types of threat scenarios
    - What about state-level threats?
      - How would the BTWC community respond to a scenario of BW use, comparable to CW attacks in Syria?
      - Would the BTWC have any role to play (assuming a State Party is affected or implicated)?
- **How does the EU view the future of the BTWC?**
  - What role should the BTWC play?
  - What tools does the BTWC need to fulfil that role?
    - New ones?
    - Optimisation of existing ones?
  - What outcomes does the EU expect from application of those tools?
  - How does the EU wish to respond if those expectations are not met?
- **How can the EU promote its vision on the future of the BTWC?**
  - Current scattering of Action Plans over various sub-areas
  - Can the next Action Plan in support of the BTWC be designed to promote EU goals for the 2016 Review Conference among target states?
    - Current action plan a bit lost among multitude of similar types of activity by many actors
    - Activities are under UNODA (ISU) banner, with mere recognition of EU financial support
  - Post-Lisbon Treaty:
    - Can the EU return to common working papers?
    - How can the EU promote its common views in meeting working groups and committees?