



FONDATION
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Initiative by the Russian Federation to strengthen the BTWC through a legally binding instrument (Protocol)

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1. Mister Chairman, Ladies and Gentlemen, I am honoured to address you today on the Russian suggestion to restart negotiations on a legally binding protocol to the Biological and Toxin Weapons Convention (BTWC).
2. Russia builds its initiative on the still existing mandate of the Ad Hoc Group (AHG) of States Parties, which is based on decisions taken at the at the 1994 Special Conference and 4th Review Conference (1996). As you will be aware, the AHG's efforts to negotiate a legally binding protocol collapsed in July 2001 following the US statement that the draft text would not achieve the AHG's mandate. Later in December, at the end of the final day of the 5th Review Conference the US unexpectedly moved to terminate the AHG mandate. Suspension of the meeting until November 2002 blocked this move, as a consequence of which the mandate is still intact. The resumed session of the 5th Review Conference adopted an annual work programme focussing on specific topics, which has become commonly known as the 'intersessional process'. As a consequence of these sets of activities, the status of AHG mandate has remained on a back burner.
3. So far, Russia has used a three-step approach to launch its initiative, namely a survey sent out to BTWC States Parties last May, the opening statement at the BTWC MX on 4 August, and the informal side event on 5 August. Those steps fit in a plan to keep widespread dissatisfaction with the lack of substantive progress in the intersessional process among Parties to the BTWC above the surface at least until the 8th Review Conference in 2016. It plans to return to issue at the BTWC MSP in December (see plenary statement) and hold 'an inclusive process of informal consultation with all interested States Parties' (Discussion points note, p. 2).
4. The likely permanency of the issue over the next months and years is the reason why the EU should consider the initiative, and possible frame a holistic alternative ahead of the 2016 Review Conference.
5. The present remarks are drawn from more extensive reflections in my blog posting 'Days of Future Past' of 18 August, and a subsequent comments by an official of the Russian Foreign Ministry.¹

Key elements of the Russian proposal

6. The Russian proposal is based on three pillars: foundation in the 1994 AHG mandate; selective adoption of elements once considered by the AHG, including the establishment of an OPBW as implementing agency; and, flexibility about the issues that can be considered under the future 'legally binding protocol' chapeau.
7. Russia has opted to use an open mandate to launch its initiative to strengthen the BTWC and establishing an international body, the Organisation for the Prohibition of Biological Weapons (OPBW). The choice is furthermore motivated on the ground that the existing 'negotiation mandate' contains 'a lot of flexibility

¹ Jean Pascal Zanders, 'Days of Future Past', *The Trench blog*, 18 August 2014, <<http://www.the-trench.org/days-of-future-past>>

and does not presuppose the outcome of negotiations in terms of the shape of the future legally binding instrument'. However, the mandate is not as clear-cut as Moscow seems to suggest. First, the 4th Review Conference (1996) rather than the 1994 Special Conference decided on the negotiation mandate. The Final Report of the Special Conference outlined four important areas of work for the new AHG (but did not limit them to those four only) and curtailed the acceptable impact of measures the AHG might forward to states parties for further consideration. This was the framework for the AHG report to the 4th Review Conference. Second, to grant the negotiation mandate the 4th Review Conference took into consideration the AHG report. The article-by-article review section of the Final Document is speckled with references to the AHG report, indicating expectations and to a certain degree preferences for further development.²

8. Compared to the original mandates from 1994 and 1996, the Russian proposal is selective. It excludes one of the most contentious topics from consideration: verification, and its associated concepts of routine and challenge inspections. This leaves two domains in the 1994 AHG mandate for future consideration: enhancement of confidence building and transparency (if viewed in the context of confidence-building measures (CBMs) and national implementation), and implementation of Article X of the BTWC. The two broad issue areas that Moscow proposes for the future protocol discussions unsurprisingly also feature among the intersessional themes selected over the past 10 years.
9. In addition, the discussion note repeatedly reminds the reader of the AHG draft protocol. It is not just the sprinkling of certain terminology, but also the references to the OPBW. One concrete element drawn from the draft protocol is the Cooperation Committee, which was an organ envisaged to focus on Article X implementation. Other roles proposed for the OPBW are investigations of alleged BW use, the maintenance of capacity to assist with investigations of suspicious disease outbreaks, and the administration of assistance and protection against BW. It would also assume administrative responsibilities of the current Implementation Support Unit (ISU). As in the 1990s, the OPCW still serves as an example. A Conference of States Parties and an Executive Council would make up the key decision making bodies, while an equivalent of the OPCW's Scientific Advisory Board would monitor and report on science and technology developments.
10. During his presentation, the Russian delegate insisted several times that generation of the broadest possible appeal was a key consideration in the crafting of the note. Conscious of political pitfalls, the note omits those elements, such as verification, that would have run into an unreserved American no. At the same time it lists a set of issues important to the West under discussion in the intersessional meetings. And it caters to the desire of developing countries to enhance international cooperation for peaceful purposes. Here too, however, Moscow inserted elements the West is happy to promote, such as preventing, detecting and responding to disease outbreaks, or building capacity in biorisk management. The proposed package can be changed and other elements added to it.

² The text of both decisions are included in Appendix 1.

Assessment of the Russian proposal

11. Russia's strategic goal with this initiative remains murky. The proposal has been developed for a while. Some elements in the documents and presentation suggest that the Foreign Ministry sought approval from various Russian departments and agencies. In turn, this may explain why certain issue areas, including the various verification elements, are very explicitly excluded from consideration. In view of these preparations, I do not believe the initiative is connected with the current escalation of tensions between the West and Moscow.
12. In contrast, dissatisfaction with the intersessional process has been deepening. Such views were also expressed at the workshop for EU Member States on the future of the BTWC organised by the *Fondation pour la recherche stratégique*, on behalf of the EU Non-Proliferation Consortium on 24 April.³ While some members of the Non-Aligned Movement (NAM) block any opportunity for consensus decision-making at the Meetings of States Parties (MSP) or inclusion of MSP conclusions in the final report of Review Conferences, US intransigence on certain topics is also a major source of discontentment. Therefore, one cannot ignore the real possibility that Moscow crafted the initiative to pressure the United States on modifying its stance towards the BTWC or to leave it isolated, thereby banking on the unlikelihood of other states rejecting its ideas outright.
13. The proposal as such appears disjointed. For instance, the proposed OPBW resembles an enhanced and enlarged ISU, weighted towards international cooperation and assistance (which makes up a single division within the OPCW) and supplemented with networks of certified laboratories and qualified national experts to be called upon for investigations.
14. Investigations of alleged use or suspicious outbreaks of disease are initiated by the affected state party and conducted on its territory only. The proposal not only seems a considerably weaker version of the UN Secretary-General's mechanism to investigate alleged use of chemical and biological weapons, it also risks undermining it. Indeed, under the latter tool, any state can request an investigation of alleged use within the borders of another state. However, the Russian discussion points do not clarify the relationship between both. In a comment to my blog posting, a Russian official wrote: 'The OPBW's investigation mechanism would not supplant or change the UNSG's, or the BWC's Article VI provisions'.⁴ Which leaves the question why the new investigative mechanism takes up such a prominent place in the proposal, particularly as it does not seem to add new options or capabilities.
15. By presenting adherence to the protocol as a voluntary choice and omitting a desire to universality, Moscow describes a problematic relationship between the disarmament treaty and the instrument that is supposed to strengthen it. From replies to my blog posting, Russia clearly views the OPBW as separate from the ISU and independent from the UN Office for Disarmament Affairs (UNODA). It

³ 'Enhancing compliance of the BTWC through national implementation and other means', Report of the Workshop organised on 24 April 2014, available from <<http://bit.ly/1nO2M4L>>.

⁴ Jean Pascal Zanders, 'Days of Future Past', *The Trench blog*, 18 August 2014, comments at <<http://www.the-trench.org/days-of-future-past/#comments>>

emphasised that the ‘supplementary and additional Protocol would not supplant or amend the Convention.’ ‘Voluntary’, the Russian official has clarified as a state’s sovereign right to sign up to an international agreement (which begs the question why term has been emphasised). Whatever benefits the Protocol may offer, they will be available only to those states that become a member of the OPBW. This construction will create a two-tiered system of rights and obligations.

Consequently, a protocol that is neither legally nor politically firmly bolted to the BTWC could quickly move along a different trajectory, cause confusion about obligations and compliance expectations, and undermine existing mechanisms (such as the UN Secretary-General’s investigative tool, or a different status of the CBMs under the respective treaty arrangements). Similarly, the relationship between decision-making in the OPBW and the review conferences is unclear. A real risk therefore exists that an ISU serving only those BTWC parties that have not become a member of the OPBW will become orphaned. Indeed, would budget-conscious governments wish to pay for two different structures serving a single disarmament treaty?

16. In summary, what now appears an attractive proposition may actually become the object of heated debates before any discussion on substance. If it is indeed Russia’s goal is to make a strengthening undercurrent break surface, then the fragmented nature of its proposal is less relevant.

Considerations for EU action

17. Moscow’s initiative will not vanish into thin air. Three scenarios could unfold, two of which are fraught with danger: the USA remains inflexible with regard to future options for the BTWC, the Russian text becomes the basis for reflection and future discussions, and the international community starts constructive thinking on options based on current and predictable realities.
18. The EU has always maintained its interest in a holistic approach to strengthening the BTWC, while recognising the political impediments to initiating substantive debates. In 2001 the EU Member States were willing to accept the composite text as a legally binding instrument. However, that willingness was founded on a number of compromises. The exclusion of verification measures from the Russian proposal means that the balance among compromises no longer exists. Ideas such as the Cooperation Committee would therefore most likely become controversial, particularly in the absence of compliance guarantees in line with Article III of the BTWC (a linkage rejected by Russia, in its second reply to my blog posting).
19. Furthermore, biology, biotechnology and their commercial applications have evolved considerably during the two decades since the Special Conference. States Parties would therefore even have to review the VEREX recommendations that served as starting point for the AHG. Expectations from verification have evolved, new stakeholders have emerged on the scene, and novel technologies and processes can be applied to enhance transparency and confidence in compliance.
20. The EU and its Member States can seize the initiative in the debate by presenting an attractive, but holistic package based on the following considerations:
 - a. Development of a rather concrete vision of a future BTWC regime. Based on

- the security expectations from the treaty, and an assessment of the tools and procedures required to meet those expectations, a blueprint for a transparency and compliance machinery can be devised, including an outline for the roles and functions of an international implementation organisation. To start off this exercise, a comparative analysis between the Chemical Weapons Convention (CWC) and the BTWC can be undertaken. Figures 1 and 2 in Appendix 2 offer a schematic overview of the relevant functions and (potential) stakeholder responsibilities under both treaties. (This is not to suggest that the CWC setup should serve as a model.)
- b. During the several intersessional processes, States Parties have spent considerable energy on assessing the impact of science and technology on the BTWC. Similar type of analysis should be undertaken with regard to the purpose of verification in today's international security environment and assess what new technologies (offsite and onsite inspection techniques, data collection and analysis, surveillance, regulation of the workspace, civil society monitoring via internet, etc.) and partnerships with stakeholders (e.g., mobilisation of social networks, or new modes of social control, including the adoption of standards, best practices, codes of conduct and behaviour) are now possible, and what their limits might be. Such an exercise would supplement or upgrade the conclusions of VEREX.
 - c. Analysis of the conclusions of the intersessional meetings to identify additional elements that may contribute to a future regime
21. It is evident that the proposed exercise will not yield a single, optimal solution acceptable to all BTWC States Parties. However, engaging in the various issue areas will help to identify needs and requirements, and thereby contribute to a constructive debate on the future of the BTWC. A decision on negotiations after 2016 may be overly optimistic, but the proposed exercise could yield fresh ideas for the next intersessional process, whose consideration may eventually produce something more tangible. Through the next Action Plan, the EU could even engage partners in different parts of the world on its emerging views in order to have them take those opinions into consideration.
 22. At the April workshop it was evident that the EU Member States were looking for opportunities to discuss the future of the BTWC. Besides the development of fresh ideas in capitals (compliance, peer review, etc.), the EU should also encourage civil society and academia to engage in strategic thinking on the future of the BTWC.
 23. Russia's proposal is rooted in an ill-defined past. Notwithstanding, it has created the opportunity for constructive engagement. The EU and its Member States led the way in preparing for the 6th Review Conference in 2006. They could recapture this moment in 2016, provided it combines new ideas with a sound collective negotiating strategy, consisting of non-negotiables, flexibility and fall-back positions.

Appendix 1: The Ad Hoc Group mandate

Special Conference (1994)

BWC/SPCONF/1, Part II, Page 10

36. In pursuance of the second part of its mandate under Item 9, the Conference, determined to strengthen the effectiveness and improve the implementation of the Convention and recognizing that effective verification could reinforce the Convention, decides to establish an Ad Hoc Group, open to all States Parties. The objective of this Ad Hoc Group shall be to consider appropriate measures, including possible verification measures, and draft proposals to strengthen the Convention, to be included, as appropriate, in a legally binding instrument, to be submitted for the consideration of the States Parties. In this context, the Ad Hoc Group shall, inter alia consider:

- Definitions of terms and objective criteria, such as lists of bacteriological (biological) agents and toxins, their threshold quantities, as well as equipment and types of activities, where relevant for specific measures designed to strengthen the Convention;
- The incorporation of existing and further enhanced confidence building and transparency measures, as appropriate, into the regime;
- A system of measures to promote compliance with the Convention, including, as appropriate, measures identified, examined and evaluated in the VEREX Report. Such measures should apply to all relevant facilities and activities, be reliable, cost effective, non-discriminatory and as non-intrusive as possible, consistent with the effective implementation of the system and should not lead to abuse;
- Specific measures designed to ensure effective and full implementation of Article X, which also avoid any restrictions incompatible with the obligations undertaken under the Convention, noting that the provisions of the Convention should not be used to impose restrictions and/or limitations on the transfer for purposes consistent with the objectives and the provisions of the Convention of scientific knowledge, technology, equipment and materials.

Measures should be formulated and implemented in a manner designed to protect sensitive commercial proprietary information and legitimate national security needs.

Measures shall be formulated and implemented in a manner designed to avoid any negative impact on scientific research, international cooperation and industrial development.

4th Review Conference (1996)

BWC/CONF.IV/9, Part II, pages 28–29

Consideration of the work of the Ad Hoc Group established by the Special Conference in 1994

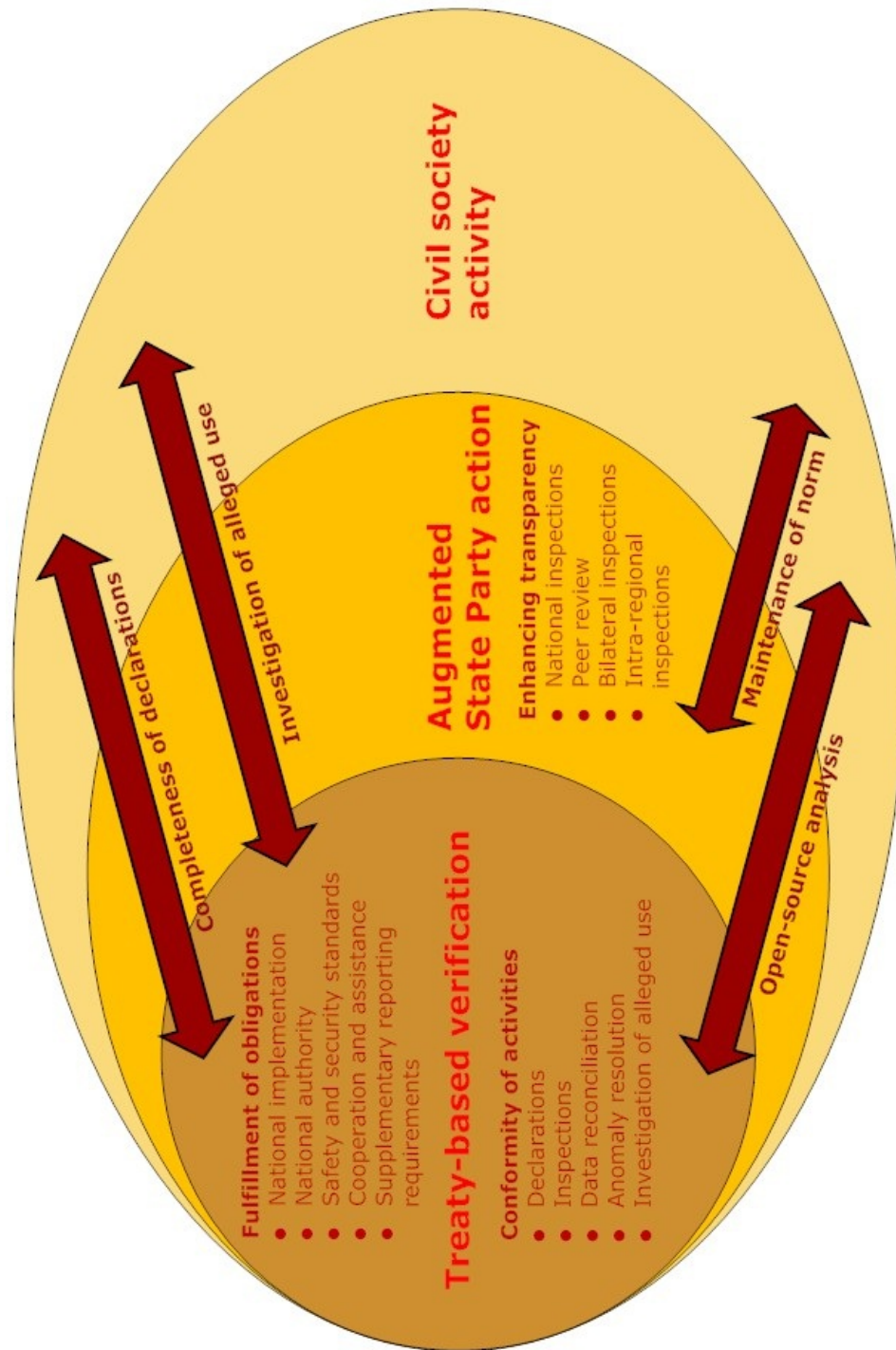
The Conference welcomes the report on the progress of the Ad Hoc Group as contained in BWC/AD HOC GROUP/32 and notes in particular the following:

- The Special Conference of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (September 1994) agreed to establish an Ad Hoc Group open to all States Parties to consider appropriate measures, including possible verification measures, and draft proposals to strengthen the Convention.
- Since its establishment, the Ad Hoc Group has held one short organizational session and four substantive sessions of a duration of two weeks each.
- In accordance with its mandate, as contained in the Final Report of the Special Conference (BBC/SPCONF/1), the Ad Hoc Group has been considering appropriate measures, including possible verification measures, to strengthen the Convention. Where relevant, consideration of issues has sought to build on the considerable body of technical work connected with strengthening the Biological and Toxin Weapons Convention regime undertaken by the Ad Hoc Group of Technical Experts to Identify and Examine Potential Verification Measures from a Scientific and Technical Standpoint (VEREX) in 1992 and 1993.
- The Ad Hoc Group has made significant progress towards fulfilling the mandate given by the Special Conference, including by identifying a preliminary framework and elaborating potential basic elements of a legally-binding instrument to strengthen the Convention.
- Nevertheless, the Ad Hoc Group was not able to complete its work and submit its report including a draft of the future legally-binding instrument to the States Parties for consideration at the Fourth Review Conference. In this context it is noted that the cumulative period allocated to substantive negotiations in the Ad Hoc Group has been eight weeks.

The Conference welcomes the decision of the Ad Hoc Group, in order to fulfil its mandate, to intensify its work with a view to completing it as soon as possible before the commencement of the Fifth Review Conference and submit its report, which shall be adopted by consensus, to the States Parties, to be considered at a Special Conference. The Conference encourages the Ad Hoc Group to review its method of work and to move to a negotiating format in order to fulfil its mandate.

The Conference notes that the Ad Hoc Group is considering, as part of its continuing work, definitions of terms and objective criteria, such as lists of bacteriological (biological) agents and toxins, their threshold quantities, as well as equipment and types of activities, where relevant for specific measures designed to strengthen the Convention.

Appendix 2: Comparison CWC - BTWC regimes



Based on a concept by Stian Holen, October 2012

Figure 1 CWC verification and transparency enhancement

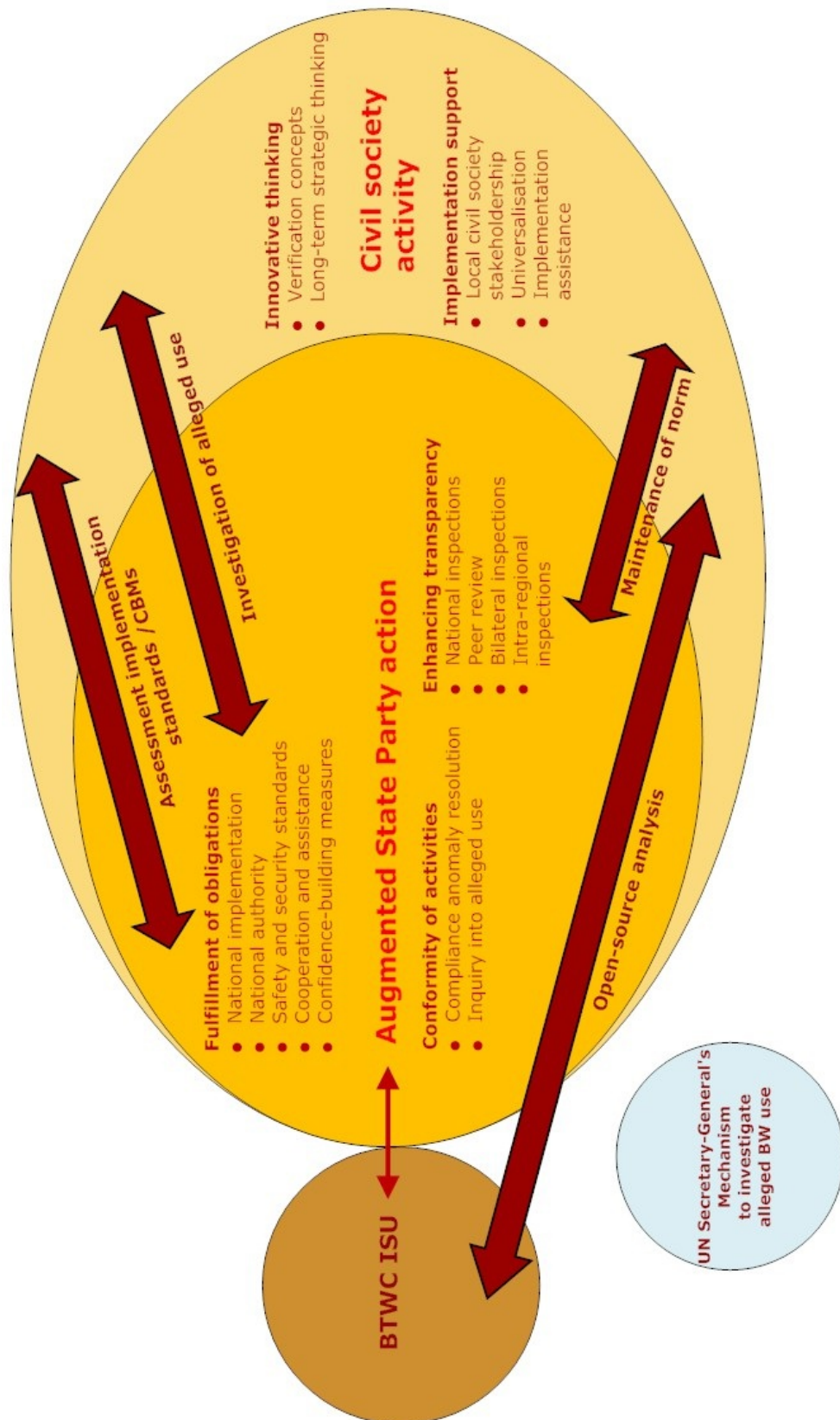


Figure 2 BTWC transparency and compliance tools