States party to the Biological and Toxin Weapons Convention (BTWC) will face a number of challenges related to biological disarmament at the Seventh Review Conference in 2011. Although the Convention is neither in danger of imminent collapse nor facing an exodus of parties, enduring problems continue to pose challenges to the Convention, its states parties, and, most important of all, its implementation at the national and international levels. This has been the case at past reviews conducted since the BTWC’s entry into force in 1975, as any review of the literature reveals.¹ And the Convention’s states parties have proven to be pragmatically adept in developing initiatives to help address these challenges, for example the confidence-building measures agreed in 1986 and 1991, the Ad Hoc Group of Governmental Experts on verification between 1992 and 1993, and the intersessional work programmes since 2003. None of these incremental mechanisms have, however, delivered reforms or solutions that have holistically addressed most of the substantive challenges the Convention continually faces: the fast pace of developments in science and technology; the proliferation risks stemming from the trade in dual-use materials; effective national implementation of the Convention; how to address compliance and non-compliance; and facilitating the exchange of materials and information among states parties for peaceful cooperation. The one attempt at a holistic approach—the negotiations on the BTWC Protocol between 1995 and 2001—ended in failure.² The outcome of that failure was the return to incrementalism: the Fifth (2002) and Sixth (2006) Review Conferences adopted intersessional work programmes, where states parties met annually to “discuss and promote common understanding” on a number of specific topics, and where conclusions were agreed by consensus.³

Incrementalism in the form of an intersessional work programme has, however, reached the end of its useful life. Discussion on a discrete topic that seeks only to establish common understandings and promote effective action at the national level is no longer sufficient; something more substantive will be required for the BTWC after 2011. The intersessional work programme should expand its mandate to include the development of mechanisms that permit an assessment of implementation at the national level. This takes states parties into the realm of compliance. The balancing act in 2011 will be how to take the Convention forward in a substantive manner without overreaching; ambition cannot outrun political acceptability, and a decision on verification risks being too ambitious for states parties.

Although it is easy to slip into hyperbole about the threat biological weapons pose, the Convention and, more important, the norm against biological weapons, has weathered and withstood a number of challenges. Contemporary debates are eerily reminiscent of the conclusions drawn by one observer in 1993: even though the challenges in the biological
Weapons area have grown in the preceding two decades, those challenges should not be over dramatized. Neither should they be ignored.4

Biological weapons remain, essentially, outside the arsenals and war plans of most states and violent non-state actors. To recognize this is not to be sanguine about the risks biological weapons pose to security. Biological weapons are not at the forefront of most states’ security priorities and, for many, the occasional high-level statement signalling commitment to the existing biological disarmament and anti-biological weapons norm is sufficient and maintains a “business as usual” approach to strengthening the BTWC. Bold approaches are no longer on the agenda.

This political inattention is viewed as detrimental in some quarters. Some states parties and civil society groups hope to revive the ambitious effort of negotiating legally binding verification provisions for the BTWC. Why is verification important? A series of formal declarations, visits or inspections of declared facilities, and provision for investigation of alleged or suspected non-compliance are viewed as benchmarks of legally binding international disarmament obligations. Those in favour of verification consider such provisions as the best way to guarantee biological disarmament and non-proliferation. Parties that object agree with the principle of demonstrating compliance, but disagree with the envisaged processes of verification because of the complexity of verifying effectively the accuracy of declarations related to dual-use facilities.

The verification debate will happen. Even if the formal agenda of the 2011 Review Conference emasculates any discussion of verification in a way that was attempted at the 2006 Review Conference, only a politically inept or disingenuous state party would try to prohibit putting a word on an agenda: synonyms and euphemisms will circumvent any such efforts just as they did in 2006.5 The political climate in 2006 was such that most parties recognized the need to avoid open dispute and saw that including verification formally on the agenda would have resulted in a difficult and fractious discussion, potentially damaging to the outcome of the Conference. The contemporary political climate is different, not least because the United States government is more supportive of multilateral efforts to address disarmament and proliferation issues. Statements made at the December 2009 Meeting of States Parties indicate that a potentially interesting change is afoot in the verification debate. This may encourage some states parties to request a formal discussion of the verification question in 2011, which may not play out in the way it is has at previous conferences or intersessional meetings.

The 2009 statements indicate a softening in stance, which could provide an opportunity for a more nuanced and useful discussion about verification and compliance with the BTWC. Any discussion on verification at a three-week review conference will not be able to resolve the differences of opinion, but it should be viewed as a fresh starting-point for a debate and exchange of views. A reasonable outcome for 2011 would be an agreement to continue this discussion while recognizing the significant differences between states parties regarding what
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verification is, what verification mechanisms entail, and how, or even if, some sort of verification mechanism can be added to the BTWC.

The discussion will likely see states parties diverge in discourse and terminology: while verification will be mentioned, compliance will be the key question. Indeed, the most fertile ground for future strengthening of the Convention lies in widening the debate from verification to compliance, and considering how states parties can demonstrate their own compliance, how they can assess the compliance claims of other states parties, and how they should address the lack of compliance information reported by a majority of states parties. Of these three questions, only that of assessing compliance encroaches on the traditional territory of verification, and the other questions are more important to the 2011 Review Conference for two reasons. First, demonstrating compliance is within the control of each individual state party and offers a spectrum of activities that might be explored. Second, addressing the lack of compliance information submitted under existing mechanisms—reports to the review conferences, confidence-building measures, and (indirectly) reports to the United Nations Security Council Committee on resolution 1540—is fundamental to maintaining confidence in the BTWC in the next decade. This article explores the parameters of the emerging discussion as it pertains to 2011.

Verification discussions in the BTWC: past as prologue?

The disarmament, non-proliferation and national implementation obligations within the Convention are unambiguous and in an ideal world the BTWC would not require verification. All states parties would implement their legally binding obligations to destroy any stockpiles of biological weapons and ensure proliferation does not occur, and would have in place effective procedures to prohibit and prevent the development, production and stockpiling of biological and toxin weapons.

The ideal world, however, does not exist. Over the 35-year life of the BTWC problems have arisen with disarmament, alleged use, suspected development, production and stockpiling, failure to implement the basic national mechanisms required to give effect to the Convention, and ambiguity and dispute over the meaning and implementation of provisions related to non-proliferation, assistance and cooperation.

Moreover, the global context has altered. The Cold War ended and the “new world order” did not materialize in the peaceful manner hoped for. Over the last two decades non-state actors—violent and non-violent, illegitimate and legitimate—have taken a more significant role in national and international environments. Against this political backdrop, scientific and technological developments in a globalized world have made the challenges of biological disarmament and non-proliferation ever more complex. A number of states parties and civil society organizations have hewn closely to the idea of verification of the BTWC as the most effective method of ensuring biological disarmament in this dynamic and complex environment.
Arms control verification

Past debates in the BTWC

The verification question in the BTWC has a long history. As Sims and others have demonstrated, the problem of how to verify the disarmament obligations of the Convention featured in the original negotiation of the Convention. The verification problem has aggravated relations among BTWC states parties since the Convention entered into force, and the fairly narrow understanding of verification relating to disarmament in the 1970s and 1980s has expanded to encompass all of the Convention’s substantive articles. This includes non-proliferation (Article III) and international cooperation obligations (Article X).

At the risk of oversimplification, verification of the BTWC was not deemed necessary by the Soviet Union and the United States when they presented identical drafts of the Biological and Toxin Weapons Convention to the Conference of the Committee on Disarmament (CCD). Other states in the CCD disagreed, but the take-it-or-leave-it nature of the identical drafts presented by the superpowers left other states with few options. The deal was accepted and the BTWC entered into force in 1975.

Since 1975 a series of incremental developments has improved the implementation of the BTWC and clarified collective expectations of how the Convention should be implemented. These are the additional understandings reached at successive review conferences in 1980, 1986, 1991, 1996, 2001–2002 and 2006. Reform has not, however, progressed smoothly: it has been subject to stops and starts.

In the period from the entry into force of the BTWC up to the Third Review Conference in 1991, the context of the Cold War set the tone for debate and the limits of what could be realized. States parties agreed upon modest, incremental improvements in consultation and cooperation mechanisms relating to the provisions of the Convention (Article V), and developed the confidence-building measures—annual exchanges of data and information among states parties to address concerns about compliance. In the period between the Third and Fifth Review Conferences, 1991–2001 (a more propitious international environment for arms control, disarmament and verification), a more ambitious approach was undertaken. Between 1992 and 1993, as the Chemical Weapons Convention (1993) was agreed, BTWC states parties carried out a scientific and technical assessment of verification methods for the BTWC. This was followed by a Special Conference in 1994, which agreed to establish an Ad Hoc Group to initiate negotiations on strengthening the Convention, including the development of verification procedures. That work began in 1995, but proceeded slowly until 1998, when negotiations increased in intensity and duration. By the end of 2000, however, significant differences of view remained that could not be fixed by semantic gymnastics or constructive ambiguities. Moreover, the political climate had changed, as illustrated by the failure of the Conference on Disarmament to agree to a work programme and the failure of the 1996 Comprehensive Nuclear-Test-Ban Treaty to enter into force.
Protocol negotiations collapsed in July 2001, at the twenty-fourth session of the Ad Hoc Group. The United States made it clear that it could not accept the emerging text as a basis for a legally binding agreement and withdrew its support from the efforts of the Ad Hoc Group, although it remained at the table to ensure that others could not proceed without its consent.

Stalemate ensued, with some of the United States’ closest allies and partners unable to support (or even understand) the volte-face but equally unable to progress. States parties previously dragging their feet in the negotiations were strangely revitalized by the US rejection and became the greatest champions of verification. At the Fifth Review Conference in late 2001 stalemate descended into collapse, as the United States made any continuation of work on strengthening the Convention conditional on termination of the Ad Hoc Group’s mandate. Just under a year later, with much behind-the-scenes work in a few capitals, states parties agreed at the resumed Fifth Review Conference to continue work in a more circumscribed manner, which effectively put aside the protocol negotiations.

**Verification in the post-protocol period**

The unambitious and limited discussions on specific, discrete issues between 2003 and 2005 proved useful in ways that many had not envisaged in 2002. By the end of 2005 states parties were on the road to recovering some of the ground lost in the 1990s. Verification was not, however, on the agenda and it was essential to keep it off the agenda if progress were to continue. Thus, in 2006, at the Sixth Review Conference, states parties were in the odd position of reflecting on useful work undertaken in the previous years (for example, the 2005 discussion on codes of conduct for scientists, which involved substantive outreach to civil society groups usually kept at arm’s length from diplomatic meetings), and reviewing how to continue the process, while acknowledging that such work was limited, somewhat disjointed and fractured, and that under the surface lay significant divergence on the verification question. Nonetheless, novel approaches were put forward in 2006 to address the full gamut of issues facing the Convention without calling for a formal return to negotiations.

2006 gave birth to a new intersessional work programme that broadened its areas of interest to include peaceful cooperation issues in 2009 and assistance in the event of use of biological weapons in 2010, but retained the ground rules of no binding commitments, no negotiations, and no power for states parties to take decisions even if consensus emerged. Continuing the intersessional process reflected the success and utility of the previous meetings. However, the inability to take decisions even where there is consensus is a stricture that more progressive states parties would wish to see removed in the future.

Throughout these intersessional programmes, a small number of states parties would regularly call for a return to negotiations on verification. For example, at the 2007 Meeting of States Parties, Cuba—on behalf of the Non-Aligned Movement (NAM)—“reiterates that the only sustainable method of strengthening the Convention is through multilateral negotiations...”
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aimed at concluding a non-discriminatory, legally binding agreement, including on verification, dealing with all the Articles of the Convention in a balanced and comprehensive manner, and the Russian Federation noted that it favoured “an early resumption of multilateral negotiations to develop a legally binding BWC verification mechanism”. At the Meeting of States Parties in 2009, the US Under Secretary of State for Arms Control and International Security declared that the United States would “not seek to revive negotiations on a verification protocol to the Convention”. The Russian Federation, in contrast to previous years, made no mention of the review conference and the verification protocol in its 2009 statement. Others, including some of the United States’ closest allies in the European Union, remain bound in principle “to the development of measures to verify compliance with the Convention” or have stated, like Switzerland, that they would “welcome a legally binding compliance framework.” Among the non-aligned states, the formal NAM position notes that strengthening of the Convention “cannot exclude inter alia the verification mechanism for the complete elimination of biological and toxin weapons through adopting a legally binding protocol to comprehensively strengthen the BTWC.” Iran, a more strident NAM advocate of the verification protocol, stated in 2009 that “[w]e hope the negotiations would be resumed on a legally binding instrument to comprehensively strengthen the convention including in the area of international cooperation for peaceful purposes.” Pakistan stated that “[t]he 7th Review Conference must also pick up the unfinished work on the Protocol for effective implementation of the Convention.”

The above is, of course, but a snapshot, but the formal statements at the 2009 Meeting of States Parties indicate that nuances have been introduced into the debate about verification of the Convention and how that issue will be approached at the 2011 Review Conference. The implied flexibility in how and when to achieve the overall objective of many states parties—a legally binding agreement to strengthen the Convention—suggests that disputes over verification may not jeopardize a positive outcome for the 2011 Review Conference. The situation thus far denotes a more reflective mood, which appears to accept that a return to negotiations is unlikely to be agreed at the Seventh Review Conference. Rather than push the issue, states parties that remain in favour of a legally binding approach to strengthen the Convention seem to be opening the door to a process that could lead back to negotiations at some point after 2011. This is perhaps best illustrated by the NAM, which noted in one of its working papers that it hoped for the adoption of a decision recommending negotiations on a legally binding protocol in 2011.

Some civil society observers also appear to be in reflective mood. Sims’ midpoint review of the latest review conference cycle looked to an ambitious outcome at the Seventh Review Conference, but one that was recognizably based on taking up and carrying forward ideas that have been mooted in previous years within a broader coordinating and consolidatory framework. As Sims notes, “small steps are more likely to prove acceptable than drastic changes. The process of reinforcing the strength of the treaty is assumed to be incremental.
and evolutionary. Its success depends on building on what already exists, using the Convention as it stands more creatively and maximizing its value as a working treaty.” Pearson, too, recognizes that “the international situation has developed over the past decade and it is time to start afresh.”

Kelle, Nixdorff and Dando take a different perspective. They suggest that incremental options will still fall short of providing the necessary confidence that some actors, particularly states, are not being driven by scientific and technological developments and the exigencies of the conduct of contemporary warfare to revisit biological weapons and readmit such weapons into their arsenals and war plans. The core business of states party to the BTWC is preventing “state-level offensive bioweapons programs”. The model for Kelle et al. remains the 1993 Chemical Weapons Convention (CWC). However, destruction of declared stockpiles and disarmament is the mainstay of the CWC’s work to date (but by no means all of its work) and the transition from an organization that works on a model of disarmament through verified destruction to one that requires disarmament through non-proliferation and treaty implementation efforts is something the CWC and Organisation for the Prohibition of Chemical Weapons have yet to grapple with fully. Destruction of known stockpiles is not the BTWC’s problem (stockpiles of weapons were destroyed long ago). Rather, ensuring states parties remain disarmed reflects the process of disarmament and non-proliferation efforts in the BTWC more accurately. Thus, there is a good argument that the CWC has more to learn from the BTWC as a model of a post-disarmament treaty than the BTWC does from the CWC as a model for verification of destruction.

Tucker offers yet other reasons for revisiting the question of strengthening the Convention: while recognizing that the United States’ decision not to return to negotiations on the verification protocol is “understandable”, he observes that rejecting flawed models of traditional verification procedures is “not an excuse for inaction”.

**Moving forward in 2011**

The impression left by these recent statements and opinions is that there is recognition that the clock cannot be turned back. At the demise of the protocol delegations were occasionally reflective, referring to the protocol as not dead, but like Sleeping Beauty awaiting the kiss that would bring it back to life. Now, the apt analogy may be more of a zombie rising from the grave: if unleashed, it would inexorably drag states parties back into a black hole of arguments that were still far from resolution in 2001. Dramatic analogies aside, neither states parties nor civil society should be drawn into believing that the Seventh Review Conference is a make-or-break event for the future of biological disarmament. It is important: a successful outcome is possible and highly desirable but, if states parties fail to agree on an outcome or a way forward, the BTWC and the norm against biological weapons will not collapse.
To succeed at the Review Conference, and to reconcile the opposing approaches to the collective aim of strengthening the Convention, states parties will need to be in thoughtful frames of mind. Pushing aside elements of the past does not, as Tucker notes, entail rejection of all previous ideas, visions or proposals. One of the more interesting aspects of recent debates is the interest in compliance with the Convention. Perhaps one of the best immediate steps forward for any discussion on strengthening the BTWC is to think in terms of compliance assurance rather than verification. This is not simply a semantic trick, nor is the distinction a new one. Canada pushed for a compliance regime in 1991 that would “encompass not only confidence-building measures but also verification measures – with the latter, perhaps, focused on particular situations.”25 Canada’s statement drew attention to an approach that would place the onus on states parties to demonstrate compliance in a regime that combined confidence-building measures, fact-finding provisions in certain circumstances and institutional arrangements to support effective implementation of the BTWC. The idea of a regime of compliance was subsumed into the push for verification 1991–1994, but it has returned of late. Canada again offered a revised approach in its call for an “Accountability Framework” in 2006.26

A gradual, or incremental, approach was, as has been noted before, even within the final declaration of the 1994 Special Conference: “the complex nature of the issues pertaining to the strengthening of the Biological Weapons Convention underlined the need for a gradual approach towards the establishment of a coherent regime to enhance the effectiveness of and improve compliance with the Convention” [emphasis added in cited article].27 Going further back than 1994, Sims’ observations in 1988 are also pertinent. To succeed, a review conference:

must not only take the pulse of the Convention (which must necessarily involve a keen examination of even the most politically delicate questions of compliance) but promote the disarmament process through strengthening the way the Convention works. … This will mean both furthering international cooperation for the eradication of disease and finding the best means to handle suspicious incidents. To coast through on the principle of ‘anything for an easy life’, with disagreements swept under the carpet, or with some essential functions of the review ignored, will not be good enough.28

It remains too early to point to concrete proposals concerning the Seventh Review Conference. At one level it is possible to read the reiterations of European Union member states, Iran, Pakistan, the Russian Federation and Switzerland advocating a legally binding agreement, and the 2009 US National Strategy for Countering Biological Threats29 and its rejection of negotiations on a verification protocol as a failure by all sides to think anew about biological disarmament in the twenty-first century. However, emerging nuances in the discussions should be recognized. States parties, and elements of civil society, appear to be testing ideas and gauging reactions to proposals that will strengthen the BTWC in 2011, but that will not automatically, or by necessity, return states parties to the negotiating table. Such strengthening might take different forms, but even if the US strategy is taken as a base, it will involve, in
some form, collective agreement to act. For example, developing and coordinating activities occurring in different forums will necessitate action by states parties within the Convention, even if it is simply to recognize such activities. While gradual, incremental, and perhaps lacking the formality of negotiations, a road is being mapped out that leads to enhanced compliance mechanisms across all articles of the BTWC.

**Conclusion**

Biological weapons and the BTWC are, quite simply, not sufficiently high on the agenda to warrant senior leadership by a state party, or group of states parties, who would marshall the discussion and cajole others into new bold steps vis-à-vis verification. Incrementalism is likely to remain the track of development for the BTWC and its states parties because the historical record of the Convention indicates that pragmatism and compromise are likely to win the debate.

Proponents of verification of the BTWC may bemoan this lack of political leadership, but the signals so far suggest that the discussion about verification has moved forward. The topic is no longer one that "enthralls some states-parties, appalls others, [or] … is used adeptly by still others for political gains".30 The United States has continued to soften its stance and rhetoric about verification since 2006 and the 2009 strategy offers an alternative path to reinvigorate the BTWC over the next few years, even though it rules out verification. This suggests that the United States will not rise to the bait if others champion the verification issue in 2011; rather, it will simply restate its position and move on in the expectation that other states parties will join it in continuing to develop the incremental, variegated and multiple venues of activity that enhance the broader anti-biological weapons regime of which the BTWC is a part. Much of this may not be dramatic, such as assistance in developing national mechanisms including export controls, but it remains essential to the reality of disarmament and non-proliferation efforts in the twenty-first century.

There is a risk that potential fall-out over peaceful cooperation issues will overshadow the verification debate. Previously, as debate at the Special Conference and the mandate of the Ad Hoc Group illustrate, collective agreement to consider the development of formal compliance (and verification) provisions required the development and enhancement of mechanisms for peaceful cooperation. With formal, legally binding routes now closed it is becoming clearer that any work on compliance issues, be it exploratory, preliminary or even just aiming to enhance existing provisions, will be resisted—perhaps vetoed—unless equal effort is expended on peaceful cooperation questions. Industrialized states parties, particularly members of the Western Group, are likely to be pressed hard on any compliance-related proposals in 2011 unless their vision includes substantive cooperation provisions.

In undertaking a review of the operation of the Convention in 2011 states parties are likely to realize, as they have in the past, that problems cannot be solved in three weeks. The task
for the Conference is to steer the further development of the Convention over the next five 
years. Compliance, and the enhancement of compliance provisions, will likely replace the 
previous debate on verification. The additional understandings developed in the preceding 
30 years are likely to be built on and further incremental mechanisms appear to be the policy 
of choice. Rather than verification, it is the peaceful cooperation debate that risks derailing the 
conference. Thus, 2011 is likely to witness the development of a further programme of work 
with both compliance and cooperation elements within it. We will have to wait to discover 
how substantive that programme of work is.

Notes

5. Item 11 on the agenda was the “Consideration of issues identified in the review of the operation of the Convention as provided for in its Article XII and any possible consensus follow-up action”, Sixth Review Conference of the Biological and Toxin Weapons Convention, 2006, *Final Document*, op. cit., Annex 1.
8. For more information on what the CBMs entail, visit the United Nations web pages on the BTWC, at <www.unog.ch/bwc/cbms>.
12. Statement by Cuba, on behalf of the Non-Aligned Movement and Other States Parties to the Biological Weapons Convention at the 2007 Meeting of Experts of the states parties to the BWC, 20 August 2007, paragraph 9; Statement by the Russian Federation at the Meeting of Experts of the states parties to the Biological and Toxin Weapons Convention, 20 August 2007, unofficial translation.


15. Statement by Mr Jürg Lauber, Deputy Permanent Representative of Switzerland to the United Nations, 2009 Meeting of States Parties to the Biological Weapons Convention, 7 December 2009 (original in French).


23. Ibid., p. 18.


27. Cited in Richard Lennane, op. cit.


