

Estimating the Costs of Compliance Options

James Revill & Caitríona McLeish

The Biological Weapons Convention (BWC) is neither in crisis nor at a crossroads, and as no State Party has, to date, sought to withdraw from the Convention, it can be assumed that each continues to see benefits from being within the BWC regime. Indeed, the intersessional process (ISP) has arguably exceeded expectations, and Ambassador Masood Khan recently suggested the BWC “is by far the most successful WMD non-proliferation and disarmament regime”.¹

Most successful or not, over the course of the Third ISP, a significant number of states across all regional groups have expressed an interest in strengthening the Convention. Several states have submitted working papers referring to the “need to talk about compliance”;² the Russian Federation has proposed an “Open-ended Working Group” to “draft proposals to strengthen the Convention”; France and the Benelux states have undertaken Peer Review exercises; and other states maintain the position that the only sustainable means of strengthening the Convention is through a “multilaterally negotiated, legally binding, verification Protocol”.

It appears then that many States Parties ostensibly support doing ‘something’ to strengthen the BWC; but there is no consensus on how, nor necessarily an appreciation of the financial costs associated with different options. Whilst biological disarmament is priceless, in times of austerity, the financial costs of options need to be considered.

Compliance

Compliance with the BWC can be understood as the adherence to the obligations, both positive and negative, that states have agreed to in the process of signing and ratifying the Convention. The term positive obligations refers to those things States Parties have committed to do and are relatively easy to determine by indicators, such as domestic

prohibitions on BW. In contrast, negative obligations are those things that States Parties have committed *not* to do and include activities, such as the development of BW. Compliance assessment for negative obligations can be informed by a number of indicators; however, proving a negative – such as the absence of a BW programme – to the satisfaction of all parties is comparatively more difficult.

Obligations under the BWC are explicitly, if at points ambiguously, laid out in the text of the Convention. However, countries differ in their interpretation and (implicit) prioritisation of these obligations, with understandings changing over time in response to, *inter alia*, evolving perceptions of BW risks and shifting geopolitical interests. Narrowing down differences in interpretations and agreeing a balanced package of measures is a difficult task, but one that may be important in moving forward.

What is the problem?

Compliance indicators can only ever begin to build a partial picture of whether a state is in compliance or not; with additional material required to build a more complete and accurate picture from which states can reach an informed judgment. Caution is needed in using indicators based exclusively on past programmes, if there is adequate available information on such programmes. Future programmes may follow similar pathways to those of the past, but equally they may have different footprints, and exploit different technologies and/or facilities to very different ends. Indeed, strengthening the BWC assumes there is agreement on the nature of the problem to which the BWC is the solution in the 21st century, and this may not be the case. Perhaps wrongly, today’s view is that negotiations on the BWC emerged as a response to concerns over large-scale, overt BW use. However, BW have a number of utilities. How

¹ Khan, M (2015) “The BWC: Issues for the 2016 Review Conference”, The EU Non Proliferation Conference. Provisional transcript.

² See for example BWC/MSP/2012/WP.11. & BWC/MSP/2013/MX/WP.1.

one sees the problem of biological weapons has a considerable bearing on whether strengthening the BWC is worth it and, if so, what a strengthened BWC would look like.

Options for Compliance

The existence of different priorities and visions suggests it may be useful to consider a range of options for strengthening the BWC. What follows is a menu of compliance-related options that could be considered separately - or in combination - either instead of, or additional to, a future ISP.

As with any menu, there are costs associated with each option. In this brief, they are largely presented in the form of an estimate of conference servicing costs, based on those outlined for the third ISP in BWC/CONF.VII/4/Rev.1. Such estimations serve only as an indicator of a fraction of the total costs. Excluded, for example, are costs associated with implementation support, travel and accommodation, and funding for informal meetings. Also excluded are 'invisible' costs such as *time* for preparing and producing working papers, a costs which is unlikely to be evenly shared; *political costs* that may be borne in the pursuit of any specific option; and potential (missed) *opportunity costs* incurred in the selection of any particular option over another.

Option 1: Maintaining the status quo

One option is for States Parties to maintain the *status quo* and agree a fourth ISP devoid of any discussion on compliance. Failure to include compliance would not necessarily undermine the norm against BW, nor collapse the Convention. Neither would it effect the continuation of exogenous activities that could reinforce the BWC, such as ongoing efforts to revitalise the UN Secretary General's Investigatory Mechanism; efforts to improve Global Health Security; explorations of Peer Review; or measures to improve laboratory management, such as ISO 35001 on *Laboratory biorisk management systems*. As such, continuing with the status quo - at an estimated cost of \$610,000 per annum for the conference servicing of two annual meetings - would not worsen the situation. However, it is questionable whether this is the best use of States' time and resources and unclear what this means for the sustainability of interest in the BWC.

Option 2: Compliance Reporting & Clarification

A second option is for States Parties to submit background materials on their national

compliance. Such an activity is one of the underlying reasons for the Confidence Building Measures (CBMs) but also has precedent in the reports submitted by Canada, the Czech Republic & Switzerland and the national compliance reports that have been submitted to Review Conferences since 1980. In 2011, 36 states submitted such reports with contributions averaging about three and a half pages and divided between an article-by-article approach and a thematic approach. The cost of these reports will primarily be borne in officials' time and will depend on the extent of materials already available.

Thus far, any issues arising from compliance reports have seemingly been dealt with on a bilateral basis. However, if compliance reports are considered useful - or could potentially be strengthened, standardised and/or submitted annually - then there may be value in allocating time for discussion and clarification of any issues that may arise. Thus States Parties could consider allocating a three-hour session in a future provisional programme of work to a closed session mandated to review and discuss compliance reports.

Based on the estimated conference servicing costs for the third ISP, a single three-hour session would entail an annual cost of \$34,210. If unused, the session could be reallocated for other activities.

Option 3: Standing Agenda Item on Compliance

Another minimalist option could be agreement at the Eighth Review Conference to a standing agenda item on compliance. In circumstances where there is ambiguity around obligations, 'discussion, and promotion of common understanding and effective action' could be useful to narrow down differences in interpretations and potentially lay the foundations for future work. Standing agenda items have typically been dealt with through two sessions at the Meetings of Experts and one session of the Meeting of States Parties.

Based on the estimated conference servicing costing for the third ISP, a standing agenda item on compliance can be costed at \$95,210 per annum.

Option 4: Peer Review

A further activity that could facilitate progress in compliance is Peer Review. There are several

variants on the Peer Review concept that have been explored, as evidenced in the work of France and, subsequently, a collective of Benelux countries. These models differ in the extent they directly relate to compliance: the French model explored best practices in areas of biosafety, biosecurity and export controls, whereas the Benelux model focused on biodefence and national legislation and included both documentary assessment and visits to facilities.

Peer review is no substitute for verification, but nor is it currently a distraction as it provides a greater understanding of how compliance could be demonstrated, as well as encouraging scrutiny over national activities and sharing lessons learned. Moreover, it is a flexible tool that can be applied to a number of other BWC obligations, including potentially best practices in assistance and international cooperation.³

The costs of peer review will depend upon the scope and duration of the exercise; however, as a guide the French Peer Review process cost \$31,959 inclusive of travel, accommodation, subsistence and the production of the report. With the Benelux model, costs were primarily borne in terms of officials' time.

Option 5: VEREX 2.0

Science and technology (S&T) of relevance to assessing compliance has changed considerably since the work of the Verification Experts (VEREX) group in the early 1990s. Indeed, the VEREX report acknowledged some of the measures assessed as being limited by availability and "stages of development";⁴ and whilst the central conclusions of VEREX may still hold true in that some "measures would contribute to strengthening the effectiveness" of the BWC, advances in S&T since 1994 will have almost certainly effected evaluations of the 21 verification measures identified and potentially created a number of new tools. Furthermore, there has been a significant shift in risk perceptions that such a group could usefully explore to provide a solid technical foundation for political discussion.

As such, there could be merit to revisiting the S&T of relevance to compliance, taking into account developments in technologies such as biosensors and satellites; new online sources and means of information monitoring; new practices in the life

sciences that could enhance or undermine efforts to strengthen the Convention; and new knowledge from past programmes. As in the past, such a suggestion is likely to inflame political sensitivities. It will also require financial support and time, particularly from technical experts. The VEREX group, for example, produced 176 working papers and 84 non-papers.

VEREX met four times between 1992 and 1993, each time for two working weeks. Using estimated conference servicing costs for the third ISP, an equivalent set of expert meetings can be estimated at \$1,368,400 per year. In addition there would be considerable time costs in updating background materials, something that could be aided by international scientific organisations undertaking technical discussion outside of the main conference room, thereby eliciting greater scientific debate.

Option 6: Open-Ended Working Group

The concept of an open-ended working group (OEWG) has precedent in a number of other agreements, such as the CWC and CTBTO. In the BWC context, Australia, Japan and New Zealand proposed the establishment of an OEWG on compliance in 2011 with meetings suggested as forming part of an annual MXP to "discuss and develop common understandings on issues relevant to enhancing assurance of compliance with the BWC". The proposal focused on two key questions: what constitutes compliance and how can this be demonstrated?⁵ As such, it offered one useful route into both conceptual and practical discussion on compliance. However, the proposal failed to gain significant traction in 2011.

In 2015, the Russian Federation proposed the establishment of an OEWG "to elaborate on a basis of consensus appropriate measures and draft proposals to strengthen the Convention to be included, as appropriate, in a legally binding instrument". The proposal envisages work in a number of areas including, *inter alia*, transparency, national implementation, monitoring S&T, strengthening international cooperation, and a mechanism for assistance and protection.⁶ As such, the Russian proposal arguably provides a broad package of measures that may appeal to cross-regional groups and potentially stimulate higher-level interest in the BWC. It is, however,

³ See for example OECD's Development Assistance Committee Peer Reviews.

⁴ BWC/CONF.III/VEREX/8 page 7

⁵ BWC/CONF.VII/WP.11

⁶ Russian Federation (2015) "Proposal by the Russian Federation

unclear whether this proposal will garner sufficient support: by avoiding reference to verification, some will see this as too modest; by proposing a return to negotiations, yet others will see this as a potentially muddy road to nowhere.

Moreover, the proposed Russian OEWG may be more expensive with a number of meetings likely to be needed to reach consensus on the broad range of issues identified, particularly if the objective is achieving a legally binding agreement. As such, the best indicator of costing perhaps remains the work of the Ad Hoc Group (AHG), which can be estimated as costing \$3,245,062 per annum for conference servicing, based on 2011 prices (see below).

Option 7: The Protocol

For many states, a multilaterally negotiated, legally binding, verification protocol is the only sustainable means of strengthening the Convention. Some form of verification remains a 'gold standard' for disarmament agreements and something to continue to aspire to, not least, as this would provide the BWC with 'teeth', presumably in the form of some mechanism for monitoring, assessment and evaluation of compliance. However, even if some form of verification were technically feasible, returning to the protocol will be politically divisive, time consuming and expensive. The 24 sessions of the AHG conducted between January 1995 and August 2001 officially consisted of 332 working days of meetings in Geneva. Based on current estimated costs of a five-day Meeting of Experts, an equivalent set of meetings would now amount to a total of \$22,715,440, or \$3,245,062 per year. This estimate excludes the cost of travel, accommodation and time allotted to the production of working papers, of which there was a total of 455 published.

If successful, such a figure is perhaps a small price to pay for a BWC verification system, but were efforts to fail again, it would be an extremely expensive failure on many levels. Of course negotiations on some form of protocol could proceed much quicker than past efforts, facilitated by elements of the work of the AHG that may retain relevance (as well as aspects of work in the ISP). Yet it is also likely that much of the work of the AHG would need both re-doing to account for technical changes and/or evolving perceptions of security since 2001, and re-learning because of

the lack of institutional memory. All of this makes the protocol an ambitious yet high-risk option.

Reflections

The value of effective, sustained biological disarmament – undertaken in a manner that encourages peaceful cooperation – is priceless. However, achieving this will entail financial and political costs, and the choice of any one route towards strengthening the Convention over another may entail opportunity costs. None of these costs can be realistically predicted in advance; but if there is appetite to do something towards strengthening the Convention in a time of austerity, then financial costs cannot be ignored.

Option	Estimated financial cost
Status Quo	\$610,000 per annum
Clarification Session	\$34,210 per annum
SAI Compliance	\$95,210 per annum
Peer Review	\$31,959 travel & report
VEREX 2.0	\$1,368,400 per annum
OEWG	\$3,245,062 per annum
The Protocol	\$3,245,062 per annum

This note has provided a crude estimate of option costs based on the conference service costs as presented in BWC/CONF.VII/4/Rev.1 for the third ISP. As noted earlier, these estimated costs are *not* a comprehensive estimate of all financial costs that can be associated with any particular option; nor do they take into account the cost of the three-person Implementation Support Unit (ISU), which may need to be expanded should states wish to undertake more ambitious activities.

Deciding whether any of these options – or combinations of options - is worth it will depend on whether States Parties are sufficiently concerned to act; and, if so, how far they are willing and able to agree to provide political will and financial support to strengthening the Convention by developing a system in which the benefits of participation in biological disarmament even more outweigh the costs of not participating.

This note is part of a series being produced by the Harvard Sussex Program in the run up to the Eighth Review Conference.

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Correspondence about this note should be addressed to j.revill@sussex.ac.uk