

A New Forum for Sharing Implementation Experience and Enhancing Compliance Assurance



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The current intersessional programme includes the Standing Agenda Item *Strengthening National Implementation* and opens up the possibility, for this Meeting of Experts and for the Meeting of States Parties in December, of the discussion going beyond existing measures. So this contribution falls within sub item e: *any potential further measures, as appropriate, relevant for implementation of the Convention.*

States Parties are rightly busy implementing the Convention. They should also be busy reassuring one another that their own implementation is working well, and demonstrates their own compliance. But they still lack a forum for doing this systematically and effectively. One of the most encouraging signs of progress in the recent history of the BWC has been the readiness of certain States Parties, in twos or threes, to embark on a new process of compliance assessment in a new spirit of openness and partnership. The next stage for the BWC should build on such initiatives.

A new forum is needed, which would perform two functions for the BWC. First, it would enable States Parties to compare notes on how they are carrying out their obligations by reporting on their experience of national implementation, discussing one another's reports, and learning from one another's experience. Second, it would contribute to enhancing compliance assurance.

Some States Parties already provide information relevant to BWC implementation. They have long done this in national compliance reports to the Review Conferences, and to some extent they now do it intersessionally as well. This is patchy and incomplete but it is good as far as it goes. It is intended to demonstrate their commitment to the Convention and their compliance with its obligations. Each State Party chooses individually how to do this, so the States Parties end up selecting the information that they judge will best demonstrate their commitment and their compliance.

But how do they know if it has succeeded? It may be missing the target. Without some structure for the BWC States Parties collectively to consider these reports and give feedback, the State Party providing information will not know whether this is the kind of information that others find reassuring, or whether they dismiss it as irrelevant to compliance assurance. It needs to know how its information is received; how it is assessed by others. If it misses its target, the State Party needs to know what additional information, which it has not initially provided, would constitute more convincing evidence of compliance in the eyes of other States Parties.

What is lacking is a dedicated space in which this information can be considered, free of accusatory overtones, in an a new forum where the emphasis is on learning from one another's implementation experience. In the course of such discussion, compliance assurance should be enhanced; or, alternatively, it may become clearer what information is missing that, if provided, would enhance it.

The new forum would develop a practice of exchanging comments on national compliance reports and information supplied. It could be inaugurated at the Eighth Review Conference; and the Conference, having built it in to its own timetable, could also build it into the structure of the next intersessional process. If this were done, it would be possible to consider implementation in each area of the Convention year by year and enhance compliance assurance systematically through the intervals between Review Conferences. A well-structured forum would thereby reaffirm the unity of the Convention and ensure that over the intersessional period every part of it was comprehensively attended to.

There would be a clear expectation of offering comment constructively and amicably, and of sharing experience with a view to each State Party considering for itself where its own implementation might be strengthened. There could be advantage in having a somewhat informal status for the forum, with the understanding that any report would be procedural, just saying how many States Parties participated and which ones presented reports, together with any general conclusions and recommendations. The value of the forum would consist largely in its own proceedings: in the points made, questions asked and responses given within the room.

Its very existence would also give more States Parties an incentive to put care and effort into compiling their national compliance reports, as some do already. Up to now, they have had no way of knowing whether their reports have been well received, badly received, or simply ignored. Reports were first requested in 1979 but successive Review Conferences have not organised themselves to discuss them. No time has been set aside for this. Nor have the Review Conferences mandated the intersessional meetings to discuss them. There, too, no time has been set aside, even though information has been voluntarily provided on various aspects of the Convention to the Meetings of Experts and Meetings of States Parties.

Adding this new forum would be a modest contribution to strengthening the treaty architecture of the BWC in one area where it shows particular weakness. Of course participation would be patchy and incomplete. But it would be better than what we have now. The BWC has suffered far too long from uncertainties over how its obligations are being implemented and how doubts over compliance may be alleviated. Greater transparency is part of most proposals for incremental improvement of how the Convention works in practice, and this one is no exception. Where it differs from some proposals is in its emphasis on going beyond the mere provision of information to collective consideration of that information, with questions and answers through discussion in a dedicated forum, as being the next, and necessary, stage to move on to.

Treaty partners are understandably keen on reciprocity. Nevertheless, it is sometimes worth taking an initiative even without the certainty that it will be reciprocated, and this may well be one such case. Let us consider some initiatives already taken. Canada and Switzerland, joined in 2012 by the Czech Republic, have taken an initiative in compiling evidence of their own compliance through an analysis of their regulatory frameworks, in accordance with their shared concept of *compliance assessment*. They have put the results into the public domain without waiting for other States Parties to do the same. France and its eventual partner in *peer review*, understood as review by counterparts, will likewise be taking an initiative without any certainty that others will follow suit. These are examples of good practice to be emulated; but even if emulation is a patchy process these initiatives are worth taking for the sake of the Convention's health. Over the history of the BWC there have been others. The forum proposal builds on such initiatives and the motives which have inspired them.

It is vital to emphasise that States Parties would be invited, not instructed, to participate in the new forum. Nothing mandatory is being suggested. Nor is it assumed that take-up would be near-universal. Instead the assumption is that the forum would shape and channel a movement beyond the pioneering efforts already noted, a movement towards a gradually widening multilateralism. This approach is notably less ambitious than aiming for a Convention-wide accountability framework designed to involve every State Party from the start; but it may be more attainable. It starts from where we are and asks States Parties to go one step further. It relies on encouraging voluntary initiatives by those States Parties which have the confidence to take them so as to share implementation experience and enhance compliance assurance. And it proposes the creation of a new forum which would encourage emulation and build this sharing of experience into the operation of the BWC as it evolves through successive Review Conferences and intersessional processes.

[A fuller discussion, with possible texts for the Meeting of Experts to recommend for the Meeting of States Parties to consider in accordance with its mandate, will be found in paragraphs 23-43 of Graham S. Pearson & Nicholas A. Sims, *Moving towards Enhanced Assurance of Compliance with the Biological and Toxin Weapons Convention*, Briefing Paper No. 8 (Third Series), June 2013, from the Division of Peace Studies, University of Bradford, U.K., available at http://www.brad.ac.uk/acad/sbtwc/briefing/three_bw_briefing.htm]