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HARD TO PROVE: COMPLIANCE WITH THE BWC

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The compliance debate

- 2012 MSP WP 11: conceptual discussion “to promote common understanding of what constitutes compliance with the BWC and effective action to enhance assurance of compliance”
- *Hard to Prove* sets out a civil society perspective on what constitutes compliance with the BWC, and how states can better demonstrate their compliance with the treaty

What does BWC compliance look like in 2013?

Part 1

- Current understandings of biological threats
- Core concepts structuring responses to biological threats

Part 2

- Practice of BW verification
- The politics of verification

Part 3

- Strengthening compliance monitoring

Part 1: Multi-level stakeholder

- Political perceptions of biothreats
 - 1960-80s: use of BW by nation states
 - 1990s-present: also BW use by non-state actors; BW link with efforts to ‘secure health’
- New security actors
 - 1960-80s: groups associated with war, defence, international order and strategy
 - 1990s-present: also groups concerned with crime, internal security, public order and police investigations, as well as with medicine, healthcare and life sciences

Part 1: Network governance

- Top-down approach to law and regulation vs. governance approach with active participation of multiple actors
- Governance framework: multi-layered and consists of both connected and unconnected measures
- Managing biological threats, including BW, requires a broad range of complementary and synergistic measures at all levels from the individual to the international, and all stakeholders have important contributions to make.

Part 2: Judging intent

- What is a biological weapon?
- Lines between peaceful research, commercial production and permitted defence activity vs. illegal offensive weapons work are exceptionally blurred in the BW field
- Convention places heavy burden on interpreting the intent of an activity to determine whether or not it is compliance with Article 1
- Key experience international community has of judging intent and verifying biological disarmament: UNSCOM

Part 2: The politics of verification

- VEREX group
- Special Conference in 1994
- Ad Hoc Group and the BWC Protocol
- AHG meeting in July 2001

Part 3: Compliance monitoring

- A fully effective verification system, or certainty on full compliance with the BWC, is exceptionally difficult.
- Yet, this does not mean that it is impossible for states to be assured other nations are abiding by their treaty obligations.
- Arrangements at the multilateral level that can be strengthened or put in place to satisfy SP that they're not exposing themselves to unacceptable risks:
 - Communicating compliance
 - Conveying intent
 - Building stronger responses

Part 3: Communicating compliance

- National compliance reports
- Demonstrating compliance involves more than just providing information; it is a two-way communication process
- Currently, SP don't know whether the kind of information they provide is reassuring to others, or whether they dismiss it as irrelevant
- A dedicated forum is needed where SP can compare notes on how they carry out their obligations, and consider, discuss and give feedback on one another's reports – constructively and amicably, not adversarially
- SP would be invited, not instructed, to participate
- Forum channel a movement beyond the current pioneering initiatives towards a gradually widening multilateralism

Part 3: Conveying intent

- CBMs provide another opportunity for SP to continually demonstrate their compliance
- In current political, security and scientific contexts, it is particularly important for states to be open about dual use projects that edge close to the offensive/defense line to clearly convey the intent of their activities to the international community. CBMs offer a useful medium through which states can provide justification for their dual use activities.
- Publicly available CBMs maximise transparency

Part 3: Conveying intent

- Transparency is about something more than just the availability of relevant information.
- It is also about analysing that information, and ensuring that any outstanding questions are answered.
- A dedicated forum is needed where SP can consider, discuss and give feedback on one another's CBM returns on a regular basis
- SP would be invited, not instructed, to participate

Part 3: Conveying intent

- The “cycles of engagement” these forums establish build a clearer picture of how national compliance reports and CBMs operate in practice, and whether they inspire a satisfactory level of confidence.
- Once this emerges, an expert working group can be established to develop a clearer, collective vision of their purpose and longer-term evolution.

Part 3: Building stronger responses

- UN Secretary-General mechanism currently only multilateral vehicle available for investigating allegations of BW use
- Recurrent problems with timeliness, access, cooperation by host country, chain of custody must be addresses
- Strengthening/clarifying: triggers for launching an investigation, actors covered by mechanism, integration of data from other sources, political commitments, training exercises

The future of biological disarmament

- Today's biothreats are not material- and equipment-based threats that can be eliminated, but knowledge-based risks that must be managed.
- Risk-based regulation involves a plurality of public and private actors, instruments and purposes that can be grouped into three modes of governance:
 - Coercive regulation
 - Normative regulation
 - Mimetic regulation

The future of biological disarmament

- All 3 modes of regulation play important roles in influencing, identifying, and inhibiting those who seek to misuse the life sciences.
- Truly effective management of the knowledge-based risk posed by dual-use life science technologies must therefore couple hard-law with both normative and mimetic regulation.
- **The future of biological disarmament, and of compliance with the BWC, lies in outreach to the ever-growing group of stakeholders and in effective links and partnerships between governments, civil society, national and international scientific and medical associations, and industry.**

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