Confidence building and compliance: two different approaches

Submitted by Germany

I. Introduction

1. In the run-up to the Seventh BWC Review Conference, meetings held in Wilton Park, Beijing, Montreux, Berlin and The Hague picked up key issues to be discussed at the Review Conference. One of the issues being addressed again and again at the meetings was the question of how confidence-building measures relate to compliance. Regarding both issues Germany would like to share its position, as outlined below.

II. Confidence building

2. Confidence-building measures were agreed at the Second and Third BWC Review Conferences as a means “to strengthen the authority of the Convention and to enhance confidence in the implementation of its provisions.” The Fourth and Sixth BWC Review Conferences stated in their final declarations that “the Conference welcomes the exchange of information carried out under these measures, and notes that this has contributed to enhancing transparency and building confidence.”

3. Germany understands implementation of [the Convention’s] provisions as a national responsibility. Providing information under the confidence-building measures on national implementation will make a State Party’s activities transparent and contribute to building confidence, but at the same time must be seen as a unilateral and exclusively national statement by a State Party of how it complies legally and politically with the obligations under the Convention.

4. Confidence-building measures do not provide tools to address compliance concerns.

III. Compliance

5. Dealing with compliance concerns is addressed in Article V and VI of the Convention. The basic principle is the involvement of another State Party or a third party in assessing a State Party’s compliance. Both articles provide generic approaches to deal with compliance concerns.

6. The Third BWC Review Conference and the Special Conference in 1994 set off a process to develop a “system of measures to promote compliance with the Convention.” Those measures should be designed to resolve ambiguities regarding permitted and prohibited activities of a State Party under the Convention. The process of developing a protocol dealing with verification of compliance concerns failed after six years of negotiation in 2001. During the intersessional processes since then, States Parties developed and discussed a variety of approaches to improve compliance with the Convention by national implementation of prohibitions as well as biosafety, biosecurity and other measures. Under the impression that revisiting the failed verification protocol is a non-starter for re-opening a discussion on how to improve compliance monitoring and handle compliance concerns, States Parties tried to avoid discussing these issues in detail. With the progress in life sciences within the last decade several aspects discussed under the Ad Hoc
Group of Governmental Experts (VEREX) and the verification protocol would also require new scientific and technological assessments.

7. The Sixth BWC Review Conference expressed “the need for all States Parties to deal effectively with compliance issues.” In this regard the Sixth BWC Review Conference referred primarily to “consultation procedures agreed at the Second and Third Review Conferences and through other appropriate international procedures within the framework of the United Nations and in accordance with its Charter,” but did not take note of other approaches to improve compliance monitoring and control.

8. In the margins of the intersessional process, the need for improving compliance monitoring and control was raised by States Parties and civil society representatives at several meetings. New and old ideas were introduced. Some of the proposals address measures that would allow a gradual approach to compliance monitoring by providing more information about national BWC compliance activities for third party assessment, before setting off formal consultations or other international procedures can be initiated.

IV. The way forward

9. Germany proposes the following measures to be taken into account for improving compliance monitoring and control. Some of the measures indicated below could be agreed upon at the Review Conference, other would require in-depth discussions and could be considered in the new intersessional process within the proposed structure of a task/working group:

   (a) Establishing an implementation database based on obligatory submission to ISU of regularly updated legislative documents (laws, regulations, etc). Publication of legal documents will allow cross-checks of nationally stated implementation activities with legal background documents. This measure could be agreed at the Review Conference.

   (b) Conducting national biodefence conferences with open access to representatives of all States Parties. The bi-annually organized Medical Biodefence Conference organized by the German Federal Armed Forces Institute of Microbiology could serve as an example.

   (c) Invitation for voluntary visits to relevant military and civil biodefence facilities. This measure could be agreed at the Review Conference.

   (d) Informal bilateral and multilateral consultations with follow-up information for all States Parties.

   (e) Formal bilateral and multilateral consultations with follow-up information for all States Parties.

   (f) Review of the consultation procedures agreed at the Second and Third BWC Review Conferences.

   (g) Support of the UN Secretary-General's mechanism on investigation of alleged use of biological weapons by providing information to UNODA on available national forensic experts and laboratory capacities. This measure could be agreed at the Review Conference.