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# The Biological Weapons Convention protocol should be revisited

By Lynn C. Klotz, November 15, 2019

After its enactment in 1975, one criticism of the major international treaty banning biological weapons, the Biological Weapons Convention, was that it had no provisions to monitor whether countries were complying with it. Being, as it was, the middle of the Cold War, it was unlikely that the Soviet Union would allow international inspectors to visit its biodefense facilities. But as representatives from dozens of countries prepare to discuss the convention in Geneva this December, it would be worth their while to revisit a long-abandoned protocol that would address flaws in a treaty that some have even derided as a gentleman's agreement.

After the Soviet Union collapsed, countries sought to address this perceived weakness in the convention by pushing measures to enforce its terms by enacting a so-called protocol to the convention that provided procedures for randomly selected site visits and a rapid means to investigate weapons development, stockpiling, and use. But supporters of the proposal had their hopes dashed in 2001 when the United States pulled out of a UN ad hoc group tasked with drafting the protocol, meaning the proposed provisions **never were enacted** into international law. US officials were concerned that biological weapons development couldn't be verified.

Undeterred, protocol supporters held out hopes that under President Barack Obama the United States would change course. But Obama officials also refused to support the protocol—for the same reasons the previous Bush administration had cited in 2001: The legally binding additions to the convention would not achieve meaningful verification or greater security. This claim by both US presidential administrations about inability to verify misses

the important point that the main goal of the protocol was transparency, not verification.

But recent events serve to underscore that a protocol to the convention to address the treaty's shortcomings is an idea that should be revisited. Unfounded Russian allegations about biological weapons development in former Soviet countries are threatening the effectiveness of the convention. This concern along with strong arguments for the high importance of transparency in international treaties calls for revisiting the protocol, which had provisions for both transparency and for dealing with allegations like Russia's.

**The Russian allegations.** Moscow made waves ahead of a meeting of countries in the convention in late 2018 when it alleged, without evidence, that former Soviet states harbor **biological weapons laboratories**. To paraphrase biosecurity researcher Filippa Lentzos: The unfounded allegations about biological weapons development carried with them dangerous consequences. Accusations like these could help sow distrust and political dissent that could even lead to a military response. They could also erode the convention by making countries more likely to develop their own biological weapons. A coalition of nongovernmental groups that work on issues related to the convention echoed these concerns in a **joint statement** in December, 2018. These are reasons enough to revisit the protocol.

The main focus of Russia's allegations was the biosafety-level-three laboratory built in the country of Georgia to research pathogens that cause serious human disease. Biosafety-level-three laboratories have many features designed to protect laboratory workers from infection and to reduce the probability of a release of pathogens into the surrounding community. In an attempt to dispel the Russian allegations, a group of international experts visited the Georgia facility. They concluded that it demonstrated significant transparency, and they saw nothing that would not be expected in a legitimate facility.

It is surprising that Russia would take such a disruptive position and put the convention at risk. The Soviet Union was one of three countries leading support for the convention (depository states) and Russia had been active in and supportive of the protocol negotiations. But under President Vladimir Putin, the country's position has changed; It may now be trying to undermine the convention.

Two of the abandoned protocol's major provisions were randomly selected transparency visits and investigations of alleged breaches. Had the protocol

been enacted, these measures would have provided means to either deter or dispel unfounded accusations. During the intense debate 20 years ago over the protocol, it seems that no one argued, at least loudly, for its value as a tool to address allegations like Russia's that undermine the convention's effectiveness. The argument for the high importance of transparency lays the foundation for revisiting the protocol.

**The protocol.** The main purpose of randomly selected transparency visits is to help build confidence in the convention by increasing transparency at facilities. A visit by an inspection team to a randomly selected site in a country would not imply any accusation of wrongdoing and would serve solely to increase confidence in a country's activities. While the United Nations has in place **a mechanism** to investigate alleged use of chemical and biological weapons—it can dispatch a fact-finding team to the site of an alleged incident—its investigatory power doesn't apply to cases where a country may be developing or stockpiling weapons. In addition to the transparency visits, the protocol describes a mechanism for launching investigations that would include cases of alleged use, development, and stockpiling.

Under the protocol, all on-site activities, such as visits and investigations, would be conducted under so-called managed-access rules. The visiting team and the country in control of the site would negotiate the level of access to areas within a given facility. Importantly, a country would be able to take any measures it deems necessary to protect confidentiality, according to the **draft protocol**. And while the inspection team has to respect those wishes, the visited country has to “make every reasonable effort to provide alternative means to answer questions or concerns of the inspection team.”

Managed access has a long history in inspections related to international treaties. As John Gilbert, a member of the Scientists Working Group on Biological and Chemical Security at the Center for Arms Control and Non-Proliferation, points out, it's part of the Nuclear Non-Proliferation Treaty and the Comprehensive Test Ban Treaty. It's also the model for inspections under the Chemical Weapons Convention. “In the nearly 22 years since the Chemical Weapons Convention entered into force, managed access has proven to be an effective tool for conducting successful inspections, and its procedures have become routine for both inspectors and facility managers,” Gilbert wrote in an email.

If the United Nations were to once again take up something like the protocol, negotiators should take into account several developments over the last 20 years that **call for changes** in its text, including in how it would handle

enforcement and monitoring. For instance, new technologies should be monitored for their potential role in biological weapons development. Additionally, online databases have made it easier to monitor new research as it gets published, and a new protocol should include surveillance of these publications. Drone technology also has the potential to aid with off-site (and on-site) monitoring and negotiators should consider its value as a tool to further the aims of the protocol.

**Why the protocol was abandoned in 2001.** Much of the debate over the value of the protocol occurred years ago. Ahead of the collapse of the protocol negotiations, officials in the US State Department were split between those for and against it. The main argument that detractors made was that the protocol couldn't be used to verify whether a country was in compliance with the convention. Offensive biological weapons development can be easily hidden. A biological weapon could be developed in many innocent-appearing laboratories and then brought into large-scale production shortly before it was to be employed. For instance, pharmaceutical fermentation facilities could be converted to biological weapons manufacture. This manufacturing capability is the reason that the international pharmaceutical industry was a major focus of the protocol.

In the United States, the pharmaceutical industry was adamantly against visits to their facilities, some of which manufactured antibiotics using proprietary strains of bacteria. Some in the industry felt that stealing a microbe was akin to stealing a whole factory's operation. There were also concerns that visitors would demand to see rooms with proprietary manufacturing processes or that employees would inadvertently give out proprietary information. Furthermore, the industry was concerned about damage to its good-will from misunderstandings about the purpose of random transparency visits or from false accusations of bioweapons development. But as experience with the Chemical Weapons Convention shows, the concepts of **managed access** have eased some of industry's concerns.

There were US government concerns as well. Some officials argued that convention-sanctioned international teams visiting biodefense facilities posed a risk to classified information and materials, especially if the delegations included foreign intelligence agents. But the United States has already agreed to intrusive inspections under managed access for at least three other international treaties.

John Bolton, appointed early in the George W. Bush administration as undersecretary of state for arms control, pulled the United States from the

protocol and pressured the UN ad hoc group to abandon it as well. Even without this overt pressure, supporters of the protocol would have been hard-pressed to enact it without US support. The United States withdrew at a very late stage; the ad hoc group's chairman's text was completed and was ready to be submitted to the United Nations for potential approval.

When Obama was elected in 2008, there was hope among protocol supporters that it would finally be enacted, especially since its sister treaty, the Chemical Weapons Convention, was enacted in 1997. This was a false hope. In 2009, Under Secretary of State Ellen Tauscher told a meeting of convention members that the Obama administration would **not seek** enactment of the protocol. The administration had "determined that a legally binding protocol would not achieve meaningful verification or greater security. It is extraordinarily difficult to verify compliance."

Subsequently, US Ambassador Laura Kennedy and Secretary of State Hillary Clinton made almost identical arguments about the **inability to verify**. The US government under Obama had become ensnared in the verification trap. Even though discovery of hidden offensive biological weapons activities is difficult, other aspects of compliance with the convention are verifiable. Unfortunately, the word "verification" leads people into drawing false parallels to nuclear arms control where weapons development is often possible to verify.

Although it actually focused on transparency, the 2001 protocol was viewed by some as a verification mechanism, a misguided view that helped lead to its collapse. The word "verification" does not appear even once in the draft of the protocol and the word "transparency" appears perhaps a hundred times. The protocol collapsed in part due to this misunderstanding (or misrepresentation).

As the *Bioweapons Monitor* eloquently argued in 2011, "Compliance with the (bioweapons) prohibition is about more than verifying the absence of biological weapons. Perhaps more importantly, it is also about verifying the peaceful nature of activities that could contribute to biological weapons development efforts."

The *Monitor* argued that political scientists and diplomats have consistently stressed that multilateral arms control regimes rely on transparency to be effective. Transparency serves to reassure countries that others are not conducting illicit work. "Excessive secrecy of activities in the biological field, particularly if carried out in military facilities, is likely to lead to misinterpretation and suspicion, and may result in a new biological arms race."

A revised protocol could help counter destabilizing efforts like those of Russia, whose unfounded allegations threatened to undermine confidence in the convention. By dramatically increasing transparency around biological work, a new protocol could bolster the broader convention and help stave off the potential for a biological weapons arms race.

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