

# Norm erosion and the Eighth Review Conference of the BWC

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BWC REVIEW CONFERENCE: PROSPECTS AND PLANS

CO-SPONSORED BY THE U.S. DEPARTMENT OF STATE AND THE JAMES MARTIN  
CENTER FOR NONPROLIFERATION STUDIES

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# Key Points

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- The erosion of normative constraints on biological weapons involves multiple factors.
  - Normative constraints remain robust at this time.
  - Erosion may not be purposeful, but could be culmination of unintended consequence of many decisions
  - Wider chemical and biological issues likely to be important in future
- Erosion, or breakdown, likely a result of interplay among various factors: not sequential
  - Use of biological weapons
  - Scientific & Technological changes (including convergence)
  - Weakening of the BWC and wider anti-BW regime
  - New uses for chemical & biological weapons
  - Use of BW threats as a policy response
- 8<sup>th</sup> Review Conference may be a turning point in BWC development/enhancement
  - Failure may further marginalize the BWC, contributing to weakening of the regime
  - Success may reaffirm existing understandings and set stage for enhancement of BWC in compliance, cooperation and institutional arrangements
  - Review Conference is part of a process, not an end in itself

# General approach

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1. View the Eighth Review Conference in three ways, which are not mutually exclusive:
  - a) Routine meeting
  - b) Part of a process
  - c) Change is in the air
2. BWC 8<sup>th</sup> Review Conference won't be definitive, but is important.
3. Turn the question of 'relevance' of the BWC to future security around. Thinking about how and why the BWC may fail in the face of future security challenges. How do we avoid erosion of the norm, breakdown of the Convention, and collapse of the wider anti-BW regime?
4. Norm erosion operationalized in five ways:
  - a) Use of weapons
  - b) Technological changes
  - c) Weakening BWC and BW-regime;
  - d) New roles for (C)BW weapons;
  - e) (C)BW threats as policy responses

# Use of (C)B weapons

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The use of chemical weapons in conflict in the second half of the [20<sup>th</sup>] century has been very limited [Kenyon: 2000]

'...there have been very few BW incidents and what has occurred has had, with perhaps one significant exception, remarkably little impact.' [Carus: 2015]

'...fact that ever more individuals, groups, and states have access to materials and technology...has led to dire predictions about the imminence of massively destructive terrorist attacks. But these predictions are at stunning odds with the historical record: [Roberts: 1997]

Actual BW use is rare.

For CBW Regime survival in state cases appears to be important.

Terrorist use requires an interest, intent, and resources/capability. Groups/movements with strong 'othering' ethos most likely pursuers. Use to date is basic.

Use for assassination is not unknown (toxin overlap)

Hoaxes and allegations of use may serve a purpose

Record of response to CBW use is not one that is timely, efficient, or always effective.

# Technological Changes

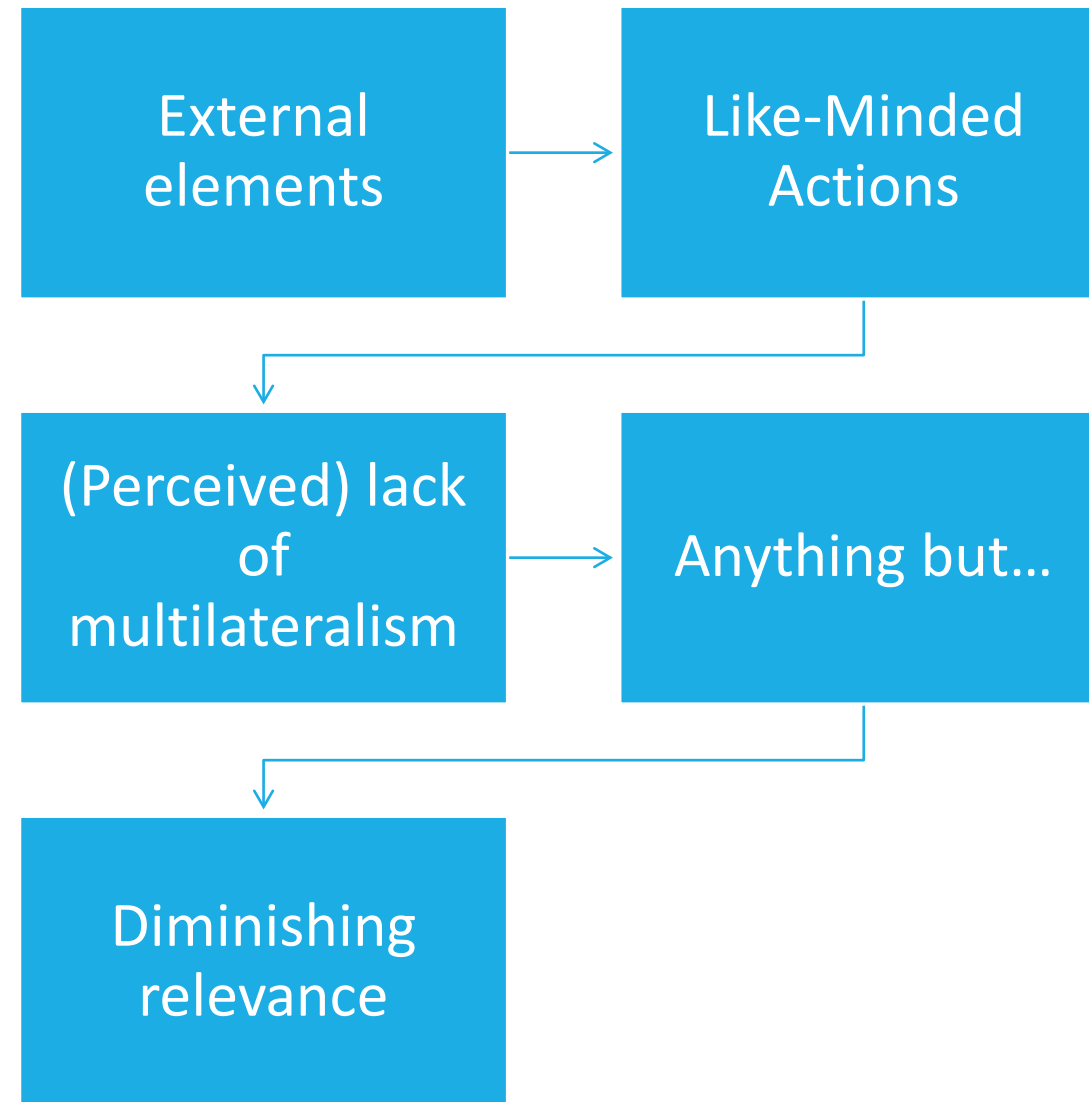
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- All are familiar with S&T developments, issue of convergence, and implications for biological weapons
- Three difficult issues flow from 40+ years of S&T developments
  - Awareness is not enough – have to translate awareness into safeguards and procedures to ward against misuse. Technology management and capacity building
  - State programs revealed post-BWC not always at cutting edge of science: non-state programs revealed remain basic. Cannot focus solely on cutting edge or emerging technologies/science
  - Convergence, global science, and public concern about science mean BWC is minor aspect of the responses: other than reaffirmation of Article I, hard to detect action by BWC parties as a whole. Significant effort required to turn that reality into something more effective.
- Multi-level governance and mix of hard law, soft law and informal practices very hard to agree upon multilaterally: how do we live with necessary different responses?
- 170+ states parties do not all need the same mechanisms. Response likely to require a different form than traditional arms control

# Weakening of the BW regime

- BWC part of wider regime
  - Use – Geneva Protocol
  - Non-Proliferation: AG and UNSCR 1540, PSI etc.
  - Investigations – UNSG
  - Capacity building & Cooperation
  - Overlap with CWC
- Regime has emerged ad hoc among like-minded or via external actors/institutions. Positive and has closed loopholes, but there is a negative implication.
- Sovereign control, multilateralism, influence over decisions important to some: AHG collapse still rankles among certain parties; traditional arms control still attractive
- Verification stalemate
- BWC relevant to developments external to it?

## Simplified process of regime weakening due to non-BWC activity

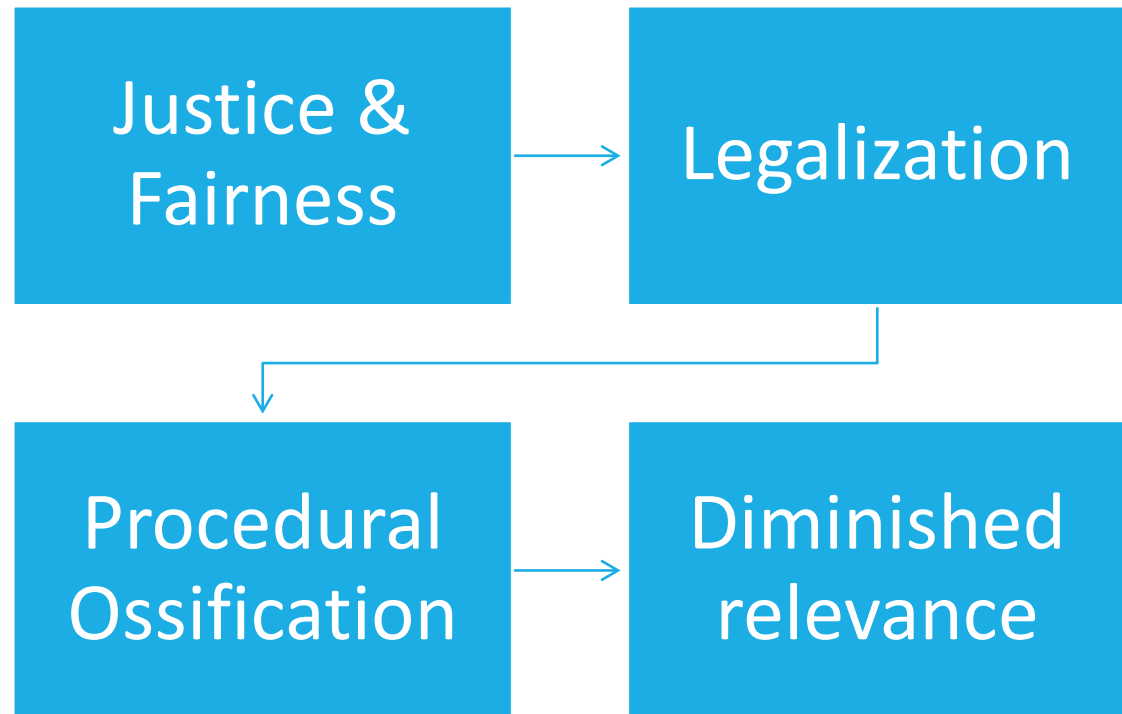


# Weakening of the BW regime

Justice = principle that benefits and burdens should be distributed in equitable manner  
Fairness = cases are treated alike; lack of bias  
Legalization = institutionalized behavior: obligation, precision, delegation (ritualistic, time consuming, exclusionary, technical)

Result:  
*May* be an ossified process:  
*May* focus on procedural and not substantive issues.  
*BWC might* become detached from reality:  
diminishing relevance.

Simplified process of regime weakening due to process-led obstructions



# New roles of (C)B Weapons & Policy responses

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## NEW ROLES

- Likely to be chemical, not biological but...
  - Allure of incapacitant weapons is problematic
  - Wide area dispersal systems for RCAs undermines Articles I and III
  - Not everything of interest or relevance is classic (C)BW
  - CB convergence and mid-spectrum agents blur lines
  - COIN, CT, PKO, continue to evolve

## POLICY RESPONSES & (C)BW

- Will BW, or threats of BW, be part of the policy response?
  - Historically, not really. CW examples
  - Yet has implications for biodefense, which creates its own problems
  - And has implications for deterring adversaries and willingness to engage: alter the conflict environment
  - Framing and hyperbole catalyst for action



# BWC Review Conference Implications

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- BWC and developments in wider regime have maintained the normative constraints, enhanced counterproliferation, and raised awareness, but:
  - BWC somewhat peripheral to these developments
  - Difficult to avoid the fact that we do need to talk about compliance
- Proposals for altering the meetings, institutional structure, and operation of the BWC on the table. No guarantee of success.
- An enhanced BWC likely needs a mix of old and new arms control/disarmament
  - ‘old’ disarmament to ensure buy-in, shape priorities, pressure various parties, and kick-start a process (i.e. a multilateral process)
  - ‘new’ disarmament to devise and implement the necessary mix of hard law, soft law, and practices (i.e. giving effect to implementation in a coordinated manner)
  - Will have to include peaceful cooperation: but that debate can be shaped
  - Will have to include capacity building. Some states cannot comply with the BWC
  - Will have to go beyond the 2021 (9<sup>th</sup>) Review Conference.
  - Will require new money and additional time commitments.

# Conclusions

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1. The BWC is at the center of the legal, normative, and moral authority under which action is taken to counter biological weapons.
2. Possible to identify a number of developments that are ‘nibbling’ at the norm and beginning to call its mid-to-long term existence into question.
3. Norm is highly unlikely to collapse in the next few years.
4. 8<sup>th</sup> Review Conference can reaffirm commitments and obligations and strengthen the norm
5. If a new process – which could take many forms – does not emerge in 2016, BWC risks becoming more peripheral. That would pose more dangers to the norm over time.
6. Fifteen years after the collapse of the Ad Hoc Group we have made some progress, but not enough. Opportune time to be more ambitious.