

REINFORCING GLOBAL BIODEFENSE: THE CASE FOR AMENDING THE BIOLOGICAL WEAPONS CONVENTION TO ENHANCE INTERNATIONAL LAW AND LEGITIMACY

51 Rutgers L. Rec. 137 (2024) | [WestLaw](#) | [LexisNexis](#) | [PDF](#) **I. INTRODUCTION**

The COVID-19 pandemic brought the world to a standstill, infecting millions, and causing widespread economic and social disruption. The pandemic not only highlighted the importance of robust public health systems and emergency preparedness, but also brought to light the increasing threat of biological weapons. The potential for malevolent actors to use biological agents as weapons of mass destruction has been a concern for decades, but the COVID-19 pandemic has shown how devastating such an attack could be. Biological weapons involve the distribution of pathogens or poisons that can cause harm or death to living beings, including humans, animals, and plants.¹ Biological weapons are extremely dangerous and can spread easily from person to person. If used intentionally, they could have catastrophic consequences, including global spread of diseases beyond national borders, food shortages, environmental disasters, economic devastation, and widespread panic and mistrust. The aftermath of such an event would not only result in loss of lives but also impact the entire global population with far-reaching effects. There is a fifty-one-year-old international treaty that established the prevention of biological weapon usage. ²In 1972, a historic attempt to create the world's first international legal regime banning the development and possession of an entire class of weapons of mass destruction culminated in the drafting of the Biological Weapons Convention (BWC).² The BWC ³reflects a comprehensive repudiation of the development, production, and stockpiling of biological weaponry.³ Despite its symbolic importance as a norm creating treaty, the absence of verification and enforcement provisions has rendered it ⁴merely a paper agreement that could easily be circumvented.⁴

The BWC is the cornerstone of the biological weapons disarmament regime, but the treaty is having difficulty keeping up with changing threats due to its decision-making process and geopolitics. Fundamentally flawed, the BWC is ⁵crippled by key compromises made by the great powers in pursuit of various self-interested security objectives in the context of the Cold War.⁵ In November 2022, over two years after the widescale emergence of COVID-19, the international community met to review the BWC for the ninth time. In early 2022, the prospects for strengthening the BWC were the best they had been in years as China, Russia, and the United States had articulated individual plans that reflected enough common ground to craft a workable compromise.⁶ This cautious optimism around the BWC's improvement prospects were spoiled by Russia's invasion of Ukraine in February of 2022. The illegal aggression of Russia undermined the rules-based international order that the BWC is intertwined with. As part of the invasion, Russia also deliberately fabricated allegations levied against Ukraine, the United States, and other partners⁷ which ⁸stigmatizes and politicizes biosafety, biosecurity, and cooperative public health and life sciences research to the detriment of not just Ukraine, but global health security overall.⁸ Efforts to misrepresent or undermine legitimate biosafety and biosecurity research and capacity building weaken the BWC and undermine international cooperation for peaceful purposes.

Russia failed to garner support for its allegations in UN Security Council meetings in March and May of 2022 and then in June, Russia invoked Article V of the BWC to force the treaty's 184 member states to hold a special consultation meeting. While Russia stood largely alone⁹ in the November 2022 UN Security Council meeting it forced, this process highlighted how legitimate processes in treaties and governmental bodies can be turned towards illegitimate ends.¹⁰ The BWC's durable framework, may be sunseting soon after its 50th anniversary as it attempts to stay on top of a changing global landscape that includes rapidly evolving capabilities and new actors in the life sciences, as well as disinformation.¹¹ The BWC is based on good faith implementation by state parties as there are no external monitoring measures or oversight of any kind. Compliance is based not on oversight, but the international legal principle of reciprocity and the threat of withdrawal from the Convention. International cooperation, solely based on good faith is likely a fleeting dream. The bad faith hijacking of the legitimate procedures outlined in the BWC by Russia in 2022, suggests that a true, binding cooperation pillar for the BWC may be needed. The concept of a cooperation pillar was first introduced in Article III of the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT).¹² The NPT pillar was based on the concept of ¹³'atoms for peace,' which anticipated that nuclear technology would be crucial for energy production and a cooperative pillar could provide incentives for States that lacked such technology to join the NPT.¹³ The actions of Russia also call into question the legitimacy of international law and the legitimacy of international order, a foundational principle for the BWC and other international treaties which keep the world safe and secure. Arguments for legal reform to improve the BWC are not new, but in a

world with eroding international law legitimacy and norms of good faith disappearing, there is a need to reevaluate the legal landscape of the BWC which has laid dormant for over a decade.

The 9th Review Conference, which ended in late 2022, was far from perfect, but it provided a glimmer of hope in an overall bleak international security environment.¹⁴ This note calls for an amendment to the Biological Weapons Convention that leverages a cooperation pillar to ensure compliance with the treaty while subsequently enhancing the legitimacy of international law, building upon a slim inertia for positive change. Part I of this paper analyzes the historical context to the creation of the Biological Weapons Convention and the legislative features that frames its current structure. Part II investigates the scope of international law and legitimacy, historically and in the current climate. Section I of Part II analyzes the components of international legitimacy. Next the subpart will define the framework of analysis of international law legitimacy. Section II of Part II investigates the current conflicts of international legitimacy and international law. The final section of Part II will subsequently suggest the principles which can make international law more legitimate. Part III of the note will discuss international institutions and their role in instilling a cooperation pillar for the BWC. The final section of this note, Part IV, will suggest recommendations that will improve the BWC and make it more adaptable to the evolving threats both in the international law and relations space, but also in the rapidly changing landscape of biological threats.

1 Biological Weapons Convention, U.N. OFF. FOR DISARMAMENT AFFS.,
<https://www.un.org/disarmament/biological-weapons/> (last visited Mar. 2, 2024).

2 Jack M. Beard, *The Shortcomings of Indeterminacy in Arms Control Regimes: The Case of the Biological Weapons Convention*, 101 AM. J. INT'L L. 271, 271 (2007).

3 Michael P. Scharf, *Clear and Present Danger: Enforcing the International Ban on Biological and Chemical Weapons Through Sanctions, Use of Force, and Criminalization*, 20 MICH. J. INT'L L. 477, 482 (1999).

4 See Susan Wright, *Prospects for Biological Disarmament in the 1990s*, 2 TRANSNAT'L. L. & CONTEMP. PROBS. 453, 454 (1992); see also Nicholas A. Sims, *The Diplomacy of Biological Disarmament: Vicissitudes of a Treaty in Force 1975-85*, 84 AM. J. INT'L L. 984 (1988) (Sims concludes, "Those who took the British initiative of 1968 [which included strong provisions for verification and complaint investigation] and watered it down into the Convention of 1972 gave the world biological disarmament on the cheap: a disarmament regime of minimal machinery which would cost next to nothing to sustain. It is now painfully evident that these short-term savings have been outweighed by the long-term costs of a regime lacking the means to sustain its credibility in the face of suspicious events which cannot be resolved one way or the other.?).

5 Beard, *supra* note 2, at 271.

6 Gregory D. Koblentz & Filippa Lentzos, *A Plan B to Strengthen Biosafety and Biosecurity*, THINKGLOBALHEALTH (Nov. 15, 2022),
https://www.thinkglobalhealth.org/article/plan-b-strengthen-biosafety-and-biosecurity?utm_medium=social_owned&utm_source=tw_tgh.

7 [Russia made spurious allegations that the United States and other NATO members are violating the treaty by developing biological weapons in Ukraine.](#)

8 Ryan Houser et al., *Understanding Biosafety and Biosecurity in Ukraine*, 21 HEALTH SECURITY 70, 80 (2023).

9 Only China supported Russia's formal accusation that the United States was noncompliant with the BWC.

10 Yong-Bee Lim et al., *Preparing for Twenty-First-Century Bioweapons*, ISSUES SCI. & TECH. (Dec. 8, 2022);

<https://issues.org/bioweapons-biological-weapons-convention-bwc-ngos/>.

11 Id.

12 James Reville & María Garzón Maceda, Options for Article of the Biological Weapons Convention, U.N. INST. FOR DISARMAMENT RSCH. (Feb. 3, 2022), <https://unidir.org/publication/options-article-x-biological-weapons-convention/>.

13 [Id.](#)

14 Una Jakob, The 9th Review Conference of the Biological Weapons Convention, PRIF BLOG (Feb. 7, 2023), <https://blog.prif.org/2023/02/07/the-9th-review-conference-of-the-biological-weapons-convention/> (citing UN Secretary-General Antonio Guterres).

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