Compliance Measures: Declarations and Visits

As we saw in Chapter 5, the long decade of investigations and negotiations since the Third Review Conference of 1991 had, by December 2000, produced an almost 300-page document constructed with enormous effort by various States Parties in an attempt to meet the requirements of the mandate to strengthen the Convention. Yet there were clearly differences in the views of various states over how quickly the work should be carried out and over the relative importance of the different objectives. Indeed it was possible to discern a number of different objectives, and different perceptions of the importance of various aspects of the Protocol, amongst the States Parties negotiating in the AHG. In an article written in 1998 and devoted mainly to the evolution of US policy, Jonathan Tucker suggested that there were eight issues of major importance (Table 6.1).\(^1\)

This listing gives a good picture of the diversity of interests brought to bear on the negotiations, but it also suggests that it may be difficult to

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**Table 6.1** Major issues in the BTWC Protocol*  

1. Definitions, lists and criteria.  
2. Declarations.  
3. Challenge inspections of facilities suspected of a treaty violation.  
4. Field investigations of unusual disease outbreaks (possibly associated with the covert use of biological weapons or an accidental leak from a clandestine development or production facility).  
5. Non-challenge visits to declared facilities.  
6. Protection of confidential information.  
7. Scientific and technological cooperation in the peaceful uses of biotechnology.  
8. The non-transfer of equipment and know-how needed for the production of biological weapons.

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*Note: *From Chapter 6, reference 1.
obtain a coherent grasp of what was happening in the negotiations and which aspects were of critical importance. This is actually not a correct viewpoint. Clearly, item 1 of Table 6.1 is related to concerns which some states had that there should be precise definitions of what was required to comply with the Convention, while others were concerned to ensure that the Convention’s General Purpose Criterion was in no way affected by the measures taken to implement the Protocol. Item 4 was of concern to some states which felt that there should be no role for the BTWC in dealing with natural outbreaks of disease and to others who felt that the BTWC did have a role if outbreaks were suspicious. Items 7 and 8 were related to the long-running debate over the place of export control regimes outside of the Convention for States Parties which signed up to the Protocol. The rest of the items related to differing views about the extent of intrusiveness of the central compliance measures.

That all these divisions were fairly obvious is not surprising because they reflect long-standing differences between States Parties. It is rare for states’ policies to undergo seismic shifts. For the most part the policies brought to bear in such multilateral negotiations are the product of detailed internal studies based on a long-term understanding of major foreign policy interests. This stability and persistence of policy is obvious in the area of central concern here – compliance measures – and is demonstrated in the proposals consistently advocated by the European Union (EU) and associated states. For example, the Ambassador of Portugal, speaking on behalf of the EU at the 19th Session of the AHG on 13 March 2000, stated in part:

The EU favours a comprehensive declaration regime that will capture in a balanced way all facilities and activities relevant to the Convention. The EU maintains that it is essential that biodefensive activities and facilities, vaccine production, maximum biological containment, work with listed agents and/or toxins, and other production be declared annually...

The Protocol must contain an effective mechanism for follow-up of declarations in the form of visits. The concept of visits based on random selection that is now widely accepted is an important step forward. The EU emphasizes its belief that a visit regime must include such visits, selected on the basis of appropriate mechanisms of random selection ... we believe that these visits must apply to all declared facilities.

The Protocol must contain appropriate clarification procedures. Most cases can be solved through consultations or, if necessary, through