

Strengthening the Biological Weapons Convention

Review Conference Paper No 11

What Would be a Successful Outcome for the BTWC Sixth Review Conference in 2006?

March 2005

Series Editors

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WHAT WOULD BE A SUCCESSFUL OUTCOME FOR THE BTWC SIXTH REVIEW CONFERENCE IN 2006?*

by Jez Littlewood[†]

Introduction

1. Success is nearly always relative and so what could be regarded as successful in 2006 will to a large part depend on the perceptions about what is possible in the Biological and Toxin Weapons Convention (BTWC) Sixth Review Conference in 2006 and how ambitious (or not) the States Parties are about interpreting and fulfilling the requirement in Article XII of the Convention to “*review the operation of the Convention*” at the Sixth Review Conference.

2. Other factors will impinge on this: events between now and 2006; the outcome of the Meetings of Experts and the Annual Meetings in each year; the extent of any continued animosity between states parties over the failure of the negotiations to strengthen the BTWC through a legally binding instrument; whether or not one or more States Parties makes a proposal that will dominate proceedings to the expense of everything else (e.g. an amendment); the way in which the report¹ of the UN Secretary-General’s High Level Panel on Threats, Challenges and Change with its recommendations on the BTWC is dealt with in the UN; how any recommendations from the WMD Commission² (Blix Commission) relate to the biological and toxin weapons and to the BTWC; the plans and proposals States Parties put in place before the Review Conference convenes; and the ideas put forward by non-governmental organizations. Aspirations should not be set too low, but equally unrealistic expectations should be avoided.

3. The first point to be recognised is that success in the BTWC is due to planning by one or more States Parties. At each Review Conference to date at least one State Party has had a plan to move the Convention forward. In 1980 Sweden acted as the catalyst with its objective of enhancing the consultation mechanisms via the Consultative Committee. It had a lot of support, met fierce resistance and was aided by those States Parties seeking a compromise solution. In 1986, the CBMs were the principal element of change, and the adoption of the CBMs led to the first meeting of experts in 1987 tasked with elaborating the modalities of the information exchange. By 1991 a much more ambitious agenda for a legally-binding agreement to enhance the BWC was being proposed by a number of States Parties and by non-governmental organizations (NGOs). This led to the Verification Experts (VEREX) process in 1992 and 1993, the Special Conference in 1994 to consider the report of VEREX, and the establishment of the Ad Hoc Group (AHG) and the mandate for a legally-binding

* This Review Conference Paper is developed from a paper presented at the 21st Workshop of the Pugwash Study Group on the Implementation of the Chemical and Biological Weapons Conventions: *The BWC New Process and the Sixth Review Conference* held in Geneva, Switzerland, 4-5 December 2004.

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¹ United Nations General Assembly, *Note by the Secretary-General*, A/59/565, 2 December 2004.

² The Weapons of Mass Destruction Commission, Stockholm, Sweden. See <http://www.wmdcommission.org/>

agreement to strengthen the Convention. Other important reaffirmations, additions, understandings and agreements were made at each Review Conference and together the cumulative strengthening process can be traced from 1980 to 2001. Success is rarely accidental, so those seeking a positive outcome in 2006 will have to plan for it.³

Key Question for 2006

4. The key question that has to be addressed in preparing for the Sixth Review Conference in 2006 is whether or not the states parties continue to fall out over the Protocol and achieve another minimal agreement similar to that of 2002. Or, whether the States Parties can act constructively and agree upon a new strategy for effectively strengthening the BTWC.

5. A successful outcome in 2006 would, I propose, be adoption of a new strategy that aims to make progress in five-year blocks and allows States Parties to focus on the future rather than argue about the past. Before that, however, the first decision States Parties must take is that the Sixth Review Conference will be a full review, rather than a partial review limited to the work during the 2002-2005 period. Hence a successful 2006 should include the following elements.

6. **Conduct a full review of the Convention** as required by Article XII in line with the standard practice as at the First, Second, Third and Fourth Review Conferences. Such a review took place at the Fifth Review Conference although this was without effect as no Final Declaration was agreed. There is no reason to suppose that a full review cannot occur unless the States Parties were to explicitly decide to focus only on the outcomes of the annual Meetings of States Parties and the preceding Meetings of Experts. The standard practice to date is a full and complete review of the operation of the Convention. Even when other issues needed to be addressed, such as the progress of the Ad Hoc Group in 1996, the additional issues did not dominate the activities of the Review Conference. A partial review based only on the 2003-2005 process would be a retrograde step that would signal a significant break with the past to no obvious purpose – and certainly with no benefit.

7. **The 2006 agenda** should include:

- (a) A review of the operation of the Convention as required by Article XII with a view to assuring that the purposes of the preamble and the provisions of the Convention are being realized;
- (b) The impact of scientific and technological developments relevant to the Convention;
- (c) The relevance, and the implementation, of the CWC on the implementation of the BWC, taking into account the degree of universality attained by the conventions in 2006;

³ Graham S. Pearson & Nicholas A. Sims, *Preparing for the BTWC Sixth Review Conference in 2006*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 10, February 2005. Available at <http://www.brad.ac.uk/acad/sbtwc>

- (d) The effectiveness of confidence-building measures as agreed at the Second and Third Review Conferences;
- (e) The requirement for, and the operation of, the requested allocation of resources by the United Nations Secretary-General and other requirements to assist the effective implementation of the Convention;
- (f) The work of the annual Meetings of States Parties and the preceding Meetings of Experts in 2003, 2004 and 2005, and any further action to be taken with regard to these meetings;
- (g) The work required between the Sixth Review Conference and Seventh Review Conference;
- (h) A decision to hold further Review Conferences.

8. In addition, States Parties should request the Secretariat to prepare an audit of all the politically-binding measures agreed at previous Review Conferences, with a view to assessing the extent to which these measures have been implemented and to what extent further work remains to be done on these measures. For example, if the audit assessment showed that 75% of the politically binding decisions had not been implemented or fulfilled, then the obvious lesson is for the Sixth Review Conference to focus on a few measures and to complete them, rather than agree on a lot of measures and never implement them.

9. States Parties need to accept that the Convention and their national interests are poorly served by assuming that everything can be achieved in a three-week review carried out every five years: the focus needs to be on the priority issues leaving some less important work to be put aside, and recognising that some work needs sustained effort by being conducted during the 2006-2011 period between the Review Conferences.

10. **Improve existing mechanisms before elaborating new ones.** There is much to be said for the view put forward by Nicholas Sims that '*what is needed in the BTWC review process is the more systematic and reliable implementation of the decisions of past Review Conferences.*'⁴ In Bradford Briefing Paper No.11⁵ in December 2003 it was suggested that a realistic inter Review Conference strategy with an emphasis on assessing existing obligations and how the modalities of implementation might be improved would be an achievement in the situation at that time. It can be argued that this is happening to a limited extent under the inter Review Conference process for the identified areas of work. It does have the benefit of providing a clear focus of work from which the BTWC could be strengthened and, in addition, it assuages the concerns of those reluctant to agree to additional

⁴ Nicholas A. Sims, *Return to Geneva: The Next Stage of the BWC Fifth Review Conference' Strengthening the Biological Weapons Convention*, University of Bradford Department of Peace Studies, Review Conference Paper No 5, April 2002, paragraph 50. Available at <http://www.brad.ac.uk/acad/sbtwc>

⁵ Jez Littlewood, *Preparing for a Successful Outcome of the BTWC Sixth Review Conference in 2006*, University of Bradford, Department of Peace Studies, Briefing Paper No. 11 (Second Series), December 2003. Available at <http://www.brad.ac.uk/acad/sbtwc>

commitments. As far as it goes this strategy is adequate for the 2003-2005 period but it needs to be continued, strengthened and expanded in 2006 if the BTWC is to retain its relevance to efforts to prevent the development, production, stockpiling, acquisition or use of biological and toxin weapons.

11. The international community has a tendency to assume that if something is not working it means a new mechanism has to be established. Such a tendency should be resisted. As with the annual meetings being held between 2003 and 2005, these are focussing on existing obligations and how States Parties are implementing them. In short, if it is broken – fix it: but don't reinvent the wheel.

12. **Address the deficiencies in the CBMs, including the forms, submission process, analysis, and their assessment.** Whilst the government-to-government nature of the annual submission remains, each State Party 'owns' its own CBM. As Australia and Germany have done in the past, and the US did in 2004, each State Party could make their own CBM available to all thereby increasing transparency. This might include placing the CBM on the internet as the US did in 2004. Alternatively, as proposed in December 2003⁶, national CBMs could be submitted to "a government or parliamentary committee for review, to industry, professional bodies and academic institutions, or to individuals and other organizations upon request." Greater transparency of CBM returns would enhance confidence within a State Party and between States Parties. The Sixth Review Conference should therefore ensure that a full and complete review of the scope of the CBMs back to the initial measures agreed at the Second Review Conference in 1986 and the Ad Hoc Meeting in 1987, the extensions and additions agreed at the Third Review Conference in 1991 and the proposals made at the Fifth Review Conference in 2001 and any from the intervening period is undertaken. The following are some initial proposals for additional CBMs developed from those in the December 2003 paper:

- (a) **CBM on scientific and technical developments.** There is now wide agreement that the five-year period between Review Conferences is too great a duration for any review of the scientific and technological developments relevant to the Convention. As a possible interim measure, States Parties could use a new CBM to bring to the attention of others issues they consider are of relevance to the object and purpose of the BWC. This would serve States Parties well in the absence of a scientific advisory panel to the BWC;
- (b) **CBM on compliance with Article II of the BWC.** This would complement the existing CBM 'F' on past offensive and defensive activities. To date only the US has formally released information on its destruction of microbial and other biological and toxin agents. While it is understandable that other States Parties did not release information in the early to mid-1970s because either such programmes were not admitted or offensive biological and toxin weapons programmes as understood under the BTWC did not exist, it is now known from the public record and other documents that more States Parties than the US

⁶ Jez Littlewood, *Preparing for a Successful Outcome of the BTWC Sixth Review Conference in 2006*, University of Bradford, Department of Peace Studies, Briefing Paper No. 11 (Second Series), December 2003. Available at <http://www.brad.ac.uk/acad/sbtwc>

had offensive biological and toxin weapons programmes before 1972. What happened to the stockpiles of such agents and toxins remains unaccounted for in many cases. States Parties could now provide information on when, and how, stockpiles of prohibited items were destroyed and this could also be extended to the provision of information on the destruction, or conversion, of (previous) production facilities;

- (c) **CBM on assistance and protection measures and emergency response** plans under Article VII; this CBM could be part of a **practical plan to devise and agree means to support the objective of assistance and protection in the event of an attack with biological and toxin weapons.** The CBM could outline **what each State Party was willing and able to do immediately upon receipt of a request to provide support and assistance to other States Parties.** The purpose of this would not be to establish or negotiate a long-list of specific measures *per se*: rather the idea would be to give practical effect to Article VII and send a very clear signal to any actor – state or non-state – that the use or threat of use of biological or toxin weapons will be met by a collective humanitarian, political, and security response by the States Parties. Any use would result in action and punishment of the perpetrator(s). Thus, assistance and protection would be seen as one of the mechanisms to deter those that might be tempted to acquire and use biological weapons;
- (d) **CBM on the implementation of Article X of the BWC.** The First Review Conference in 1980 included in the Final Declaration a request for further information on the measures States Parties had taken to implement Article X of the Convention. As Sims has noted⁷, *“those countries which had hopes of benefiting from the ‘peaceful co-operation’ clauses of the Convention ... will want to know what agreements have been made which might come under this rubric.”* This did indeed prove to be the case as Brazil and Argentina proposed in 1980 that any future Review Conference should receive information collated by the Secretariat on the implementation of Article X.⁸ The Final Declaration⁹ of the First Review Conference stated that *“The Conference requests the United Nations Secretariat to include in the background information for the Second Review Conference ..., information on the implementation of Article X by States Parties.”*

⁷ Nicholas A. Sims ‘Prospects for the Biological Weapons Convention Review Conference’ (January 1980), *ADIU Report II.1* (March 1980) pp. 6-7 by the University of Sussex Armament and Disarmament Information Unit, cited in Nicholas A. Sims, *The Diplomacy of Biological Disarmament: Vicissitudes of a Treaty in Force, 1975-85*, Macmillan, London, 1988, p.145. See footnote 42.

⁸ Nicholas A. Sims, *The Diplomacy of Biological Disarmament: Vicissitudes of a Treaty in Force, 1975-85*, Macmillan, London, 1988, p.147.

⁹ United Nations, Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, *Final Document*, BWC/CONF.I/10, Geneva, 1980. Available at <http://www.opbw.org>

Such a request has been repeated in the Final Declarations of each successive Review Conference with the request in the Final Declaration¹⁰ of the Third Review Conference calling for the annual provision of information by stating that “*The Conference requests that the Secretary-General collate on an annual basis, and for the information of the States Parties, reports on how this Article is being implemented*”. Given the politically fractious nature of Article X in past review conferences these debates could in one way be pre-empted and eased by the submission of information on the implementation of Article X of the BWC. This would also have the additional benefit of providing information on what actually constitutes ‘peaceful co-operation’ under Article X of the BTWC and permit States Parties to co-ordinate and target their efforts in practical ways for the benefit of the objective of reducing the incidence of disease as a natural occurrence;

- (e) **A miscellaneous CBM** which a State Party could use to submit any other information it considers relevant to the objective of enhancing implementation of the BWC. . Such a CBM providing States Parties with an open-ended means to submit information to other States Parties may, however, pose a number of problems – particularly if the measure were to be used to propagate frivolous and unsubstantiated allegations of non-compliance or alleged use of biological weapons. However, the benefits of providing a regularised means of communication outweigh this risk. At the very least it could be implemented as a CBM whose operation would be specifically reviewed at the Seventh Review Conference with a view to deciding then whether or not to continue such a measure in the light of the experience gained since the Sixth Review Conference.

13. These proposals are by no means exhaustive as in all likelihood a CBM could be designed for most of the Articles of the Convention or existing CBMs revised for such purposes. However, as already noted the effectiveness of the existing CBMs needs to be reviewed and consideration given to how the existing CBMs can be made comprehensive and effective with all States Parties submitting an annual return. It would be a mistake to simply agree an extended list of CBMs without considering which are most relevant in regard to increasing transparency and building confidence in the implementation of the Convention by States Parties.

14. The opportunity should be taken at the Sixth Review Conference to encourage the submission of CBMs electronically as submission only in hard copy form should no longer be acceptable. States Parties should have the option to submit the required information electronically and in addition to the hard copy circulation the submissions should at least be collated on a CD-Rom. A greater improvement would be a CBM database available to States Parties. The issue of translation of the submissions also

¹⁰ United Nations, Third Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Geneva, 9 – 27 September 1991, *Final Declaration*, BWC/CONF.III/23/II, Geneva 1992. Available at <http://www.opbw.org>

needs to be considered by the State Parties. As they currently exist the CBM submissions in their present format are of limited value to most States Parties.

15. **Develop the nascent mechanisms of a Chairman or a standing Bureau and a secretariat** support on a rolling basis. There is no necessity to establish an Organization *per se*, but the States Parties and the BWC have benefited from the presence in Geneva of a small facilitating staff and an agreed point of contact in the form of a Chairman. Although a standing permanent body might be preferable, it is not a case of all or nothing. The States Parties could take a small step by simply agreeing on such a set of institutions to operate between Review Conferences and subject to renewal at each Review Conference. Such a step would enable, if the mechanism did not work, for it to be put aside.

16. Encourage States Parties possibly through an annual meeting of their experts to **report annually on scientific and technological developments** that are of relevance to the BWC. This would ideally be provided as a report to an annual Meeting of the States Parties which might function in a comparable way to that in which the annual Conference of States Parties to the Chemical Weapons Convention operates. The proposed CBM should assist in collating information.

17. Agree on **further action to be taken in regard to the topics considered at the Annual Meetings of States Parties in 2003, 2004 and 2005** in the light of reports to the Sixth Review Conference on measures taken nationally by States Parties. Consideration might be given to initiating Action Plans, similar to those recently adopted by the CWC States Parties, to achieve universality of adherence to the Convention and also to achieve effective national implementation by all States Parties.

18. Agree that **States Parties will hold an annual meeting** which might function in a comparable way to that in which the annual Conference of States Parties to the Chemical Weapons Convention operates. Such an annual Meeting of States Parties could consider the results of decisions agreed by the Review Conferences such as the implementation of any agreed Action Plans as well as the outcome of work on a number of practical topics that will strengthen the Convention and its principal function of preventing the development, production and stockpiling of biological and toxin weapons. Such topics would be agreed at the Review Conference as part of a work programme for the period between the Review Conferences.

19. For the period from 2006 to 2011 between the Sixth and Seventh Review Conferences, it is suggested that consideration should be given to the following topics:

- (a) **practical means to support the objective of assistance and protection under Article VII of the BTWC.** It has been argued that an attack with biological and/or toxin weapons is more likely in the future and some consider such an attack inevitable. In the event of an attack with biological and toxin weapons, there will be an urgent need for practical measures to provide international assistance. During the past decade, both in the BTWC Protocol negotiations and in 2001 at the initial session of the Fifth Review Conference important progress

was made towards reaching agreement to enhance assistance and protection measures. The purpose of these measures went beyond the simple negotiation of a long-list of specific measures *per se*: the idea was to give practical effect to Article VII. Prior to September 2001 this was viewed as simply strengthening the Convention and bringing it into line with comparable articles in the CWC. There is now the additional benefit that giving practical effect to Article VII would also send a very clear signal to any actor – state or non-state – that the use or threat of use of biological or toxin weapons would be met by a collective humanitarian, political, and security response by the States Parties. States Parties to the BTWC need to send a clear signal that any use will result in action and punishment of the perpetrator(s). Thus, assistance and protection would be seen as one of the mechanisms to deter those that might be tempted to acquire and use biological weapons;

- (b) **develop a programme to achieve universal membership of the BTWC.** Although the Convention has a significant number of States Parties it is falling behind the CWC and is well behind the NPT. Rather than the usual calls for States to accede to the BTWC, actually develop a programme with the specific objective of bolstering numbers by the Seventh Review Conference in 2011. This might be achieved by a decision at the Review Conference to adopt an Action Plan with its implementation monitored at annual Meetings of the States Parties;
- (c) **pressure States Parties to withdraw any remaining reservations they have for the 1925 Geneva Protocol** incompatible with the BWC. This might be achieved by a regular publication of a list of the remaining States Parties having reservations to the 1925 Geneva Protocol and of their outstanding reservations;
- (d) **support the efforts to establish the global disease surveillance network** in line with the original objective of Article X of the BWC to support the prevention of disease;
- (e) **elaborate the precise mechanisms required to fulfil the Article XIII:2 withdrawal clause**, including the response of States Parties. Any notification of an intention to withdraw should at least warrant an emergency meeting of the States Parties and initiation of an immediate action plan to dissuade the State Party seeking to withdraw. Thus, the mechanisms need to be detailed and made binding to ensure that any State Party considering withdrawing from the BTWC knows what it has to do to fulfil that Article and what other States Parties require it to do to implement that Article.

20. During the run up to the 2006 Review Conference the BTWC States Parties also need to be aware of other developments and proposals that *may* be useful to them. The UN High Level Panel has already reported¹¹ with two explicit

¹¹ United Nations General Assembly, *Note by the Secretary-General*, A/59/565, 2 December 2004.

recommendations related to the BWC. The WMD Commission¹² chaired by Dr Hans Blix is expected to report in early 2006 with *“realistic proposals aimed at the greatest possible reduction of the dangers of weapons of mass destruction. These should comprise both short-term and long-term approaches and aim at preventing the further spread of weapons as well as at their reduction and elimination. The scope of the investigation should be comprehensive and include nuclear, biological, chemical and radiological weapons and the means of delivering them, as well as possible links between these issues and terrorists.”* In addition, it should be recalled that prior to the Third Review Conference in 1991 a number of NGOs offered a number of specific proposals to the States Parties, many of which were of practical value and taken up in 1991 and later dates. States Parties need to be aware of all such developments and proposals and to take them into account in preparing for the Review Conference in 2006.

Conclusions

21. The Sixth Review Conference in 2006 should be viewed as a new starting point: an opportunity to develop a strategy to achieve the objective of biological disarmament in the twenty-first century. States Parties need to start planning **now** in order to achieve a successful outcome from the three week Review Conference. Although success is relative, a real successful outcome does require a full review of the Convention. It also needs to lead to a Final Declaration which further reaffirms, develops and extends the common understandings reached at the First to Fourth Review Conferences. In addition, the Review Conference needs to recognise that the Biological and Toxin Weapons Convention needs to be effectively strengthened in this age of heightened concern about weapons of mass destruction and their possible use whether by States or by sub-State actors.

22. The international community needs enhanced safety and security through universal agreement that the deliberate use of disease or toxins to cause harm to humans, animals or plants is totally prohibited. Whilst national measures can help to achieve this objective, action by the States Parties of the Biological and Toxin Weapons Convention is central to effective achievement.

¹² The Weapons of Mass Destruction Commission, Stockholm, Sweden. See <http://www.wmdcommission.org/>