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# **Strengthening the Biological Weapons Convention**

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**Return to Geneva:  
Uncertainties and Options**

**October 2002**

**Series Editors**

**Graham S Pearson and Malcolm R Dando**

Department of Peace Studies, University of Bradford

# **Strengthening the Biological Weapons Convention**

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## **RETURN TO GENEVA: UNCERTAINTIES AND OPTIONS**

by Graham S. Pearson\* & Nicholas A. Sims†

### **Introduction**

1. The Fifth Review Conference of the Biological and Toxin Weapons Convention opened in Geneva on 19 November 2001 and agreed on Friday 7 December to adjourn until 11 November 2002. The Interim Report<sup>1</sup> records that:

*33. At its sixth plenary meeting on 7 December 2001, the Conference decided by consensus to adjourn its proceedings and reconvene at Geneva from 11 to 22 November 2002.*

It is timely given that the resumption is only a few weeks away to review the developments since December 2001 and consider how the States Parties might utilize the resumption in November 2002 to make the world a safer place from biological and toxin weapons for all of us.

2. There was initially hope that the United States having caused the adjournment of the Review Conference in December 2001 through its introduction two hours before the Review Conference was due to finish of language “*that the Ad Hoc Group and its mandate are hereby terminated....*” would have reconsidered and recognised a missed opportunity given the widespread international sympathy for the United States following the attacks of 11 September 2001 and the subsequent anthrax attacks and consequently a willingness to consider favourably proposals<sup>2</sup> identified by the United States which it might have then developed to strengthen the Biological and Toxin Weapons Convention regime rather than leaving them undeveloped on a take-it-or-leave-it basis.

3. This paper reviews the developments during the past twelve months that led up to the present uncertainties about the resumption of the Review Conference and what might -- or might not -- be achieved and then considers the options available to the States Parties. It is concluded that **all** the States Parties have to consider the relevance and importance to international security of the Biological and Toxin Weapons Convention and to decide what message they want to send to the international community at a time when worldwide public concern about biological weapons whether in the hands of terrorists or of Iraq is at an all time high. Much as it is desirable to find a consensus acceptable to all States Parties including the United States, the other 144 States Parties do have to address what to do if the United States

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<sup>1</sup>United Nations, Fifth 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, *Interim Report*, BWC/CONF.V/12, 14 December 2001. Available at <http://www.opbw.org>

<sup>2</sup>The White House, *Statement by the President: Strengthening the International Regime against Biological Weapons*, 1 November 2001, Available at <http://www.whitehouse.gov/news/releases/2001/11/print/20011101.htm>

chooses, for whatever reasons, not to join in the evident international will to continue to reinforce the norm enshrined in the Convention -- that biological weapons are totally prohibited -- and to continue to work to strengthen the regime.

### **Developments since December 2001**

4. The failure of the Fifth Review Conference to reach a successful conclusion because of the United States action understandably drew critical comment by analysts and observers.<sup>3</sup> There was, however, little apparent political development in the early part of 2002. The importance of preparing for the resumption of the Review Conference in November 2002 was highlighted in Review Conference Paper No. 5<sup>4</sup> issued in April 2002 which noted that:

*Delegates will have no excuse after this 11 months' interval for not having mastered their brief, including the wealth of constructive ideas and textual proposals offered by NGOs and other friends of the Convention. This resumed session **should** be the most thoroughly prepared and the best informed occasion in the whole history of the BTWC review process.*

5. In considering the developments since the adjournment of the Review Conference in December 2001, those in the States Parties other than the United States are considered first and then those that have taken place in or by the United States.

6. ***Developments in States Parties other than the United States.*** There were various signs of developments in April 2002. First, on 15 April 2002 the European Union published a list of concrete measures as part of the Council conclusions on the implications of the terrorist threat on the non-proliferation, disarmament and arms control policy of the European Union which included the following:

#### **Chapter 1 Multilateral Instruments**

##### ***A. Support all activities relevant to the universalization of existing multilateral instruments (i.e. ... BWC, ...)***

*The EU as such and its Member States will:*

- 1. Promote, at a political level, universal adherence to instruments relating to weapons of mass destruction (BWC, ...)*
- 2. Lobby for the withdrawal of all relevant reservations on the Geneva Protocol*

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<sup>3</sup>Jenni Rissanen, *Anger after the ambush: Review Conference suspended after US asks for AHG's termination*, BWC Review Conference Bulletin, 9 December 2001. Available at <http://www.acronym.org.uk/bwc/revcon8.htm> Jenni Rissanen, *Left in Limbo: BWC Review Conference Suspended on Edge of Collapse*, Disarmament Diplomacy, No. 62, pp. 18 - 32, January-February 2002. Available at <http://www.acronym.org> Graham S. Pearson, *The US Statement at the Fifth Review Conference: Compounding the Error in Rejecting the Composite Protocol*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 4, January 2002. Available at <http://www.brad.ac.uk/acad/sbtwc>.

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

***B. Work for the effective implementation of the international instruments as well as political commitments world-wide***

*The EU as such and its Member States will promote:*

- 2. Enactment and strict application of national implementation legislation as required by the international instruments;*
- 5. Timely, consistent and full implementation of reporting obligations imposed either by the international instruments or by the final reports of review conferences (... , BWC - CBMs, ...) and the creation of necessary conditions for processing the resulting information (e.g. translate and process information coming from BWC - CBMs in usable databases);*

***D. Reinforce, where needed, the multilateral instruments, in particular by:***

- 1. Working actively to fill identified gaps in the current pattern of multilateral instruments in the field of disarmament, arms control and non-proliferation;*
- 2. Review and, if needed, strengthen national implementation measures of multilateral instruments in the field of disarmament, arms control and non-proliferation;*
- 8. Working for the successful conclusion of a reconvened 5th BWC Review Conference in November 2002.*

7. Two weeks later, on 29 April 2002, the United Kingdom Foreign Secretary launched a Green Paper<sup>5</sup> which "discusses UK priorities and the next steps ahead of the reconvened BTWC Fifth Review Conference and invites comments on the proposals outlined here and on any other ideas for strengthening the Convention". This was welcomed as a valuable and timely contribution to the preparations by States Parties for the resumed Fifth Review Conference in November 2002. In its consideration of possible measures, the Green Paper rightly noted that "Such measures are likely to be more effective if they follow uniform standards contained in an international agreement that can be universally and demonstrably applied." Review Conference Paper No. 6<sup>6</sup> examined the UK Green Paper and analysed the proposals identified in the paper. This analysis noted that the Green Paper limited its consideration to measures which have been identified by the UK, its EU partners, the U.S. and academics in a number of countries and did not allude to the fact that several of the measures identified were also supported by other States Parties in their statements at the Fifth Review Conference in November 2001. It also did not mention other measures proposed by other States Parties at the Review Conference even though the Green Paper after identifying five areas for specific action then refers to the other measures identified in the Green Paper and says that "the UK is ready to examine these and any others that may serve to counter the threat." The analysis concluded that in considering the forthcoming resumed Review Conference there would be significant benefit to be gained from creating a comprehensive list

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<sup>5</sup>United Kingdom, *Strengthening The Biological And Toxin Weapons Convention: Countering The Threat From Biological Weapons*, The Stationery Office, Cm 5484, April 2002. Available at <http://www.fco.gov>

<sup>6</sup>Graham S. Pearson, *Return to Geneva: The United Kingdom Green Paper*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 6, June 2002. Available at <http://www.brad.ac.uk/acad/sbtwc>

of the measures proposed to the Fifth Review Conference as this could then attract support from many States Parties as being a list that should be reviewed and taken further at a meeting subsequent to the Review Conference. Review Conference Paper No. 77 took this further by drawing up and examining a comprehensive list of measures proposed by States Parties at the Fifth Review Conference either in their statements or in the proposals put forward as Working Papers to the Committee of the Whole.

8. The following month also saw further developments notably at the European Union and Latin American & Caribbean Summit held in Madrid on 17 May 2002. In the paper on EU-LAC Common Values and Positions<sup>8</sup> issued following the summit, the Heads of State and Government of the European Union and of Latin America and the Caribbean said that

*26. We highlight the importance of the multilateral strengthening of international legally binding and political instruments to prevent the proliferation of weapons of mass destruction and their means of delivery. We are equally committed to the reinforcement of disarmament instruments in this field. We will continue to work together for the complete eradication of chemical and biological weapons. We underline the importance of strengthening the compliance with and the promotion of the universality of the Chemical Weapons Convention and the Biological and Toxin Weapons Convention as well as other international norms against the use of chemical, biological and toxin weapons. We underline that it is our conviction the latter Convention is best enhanced by the adoption of a legally binding instrument to oversee the prohibition of the development, production and stockpiling of Biological and Toxin Weapons and their destruction. We continue to support the objective of attaining a regime that would enhance trust in compliance with the Biological Weapons Convention in accordance with the mandate of the ad hoc group set up under the said convention. [Emphasis added]*

The countries attending the Madrid summit<sup>9</sup> included the European Union, the Rio Group (Mexico and Central American countries) the Andean Community (Venezuela, Colombia, Ecuador, Peru and Bolivia), Chile, Mercosur (Brazil, Paraguay, Uruguay and Argentina) and Cariform (Belize, Cuba and other Caribbean countries). In addition to the European Union, 33 other States took part.

9. A few days earlier, on 14 May 2002, the communiqué<sup>10</sup> of the Ministerial Meeting of the North Atlantic Council held in Reykjavik included:

*23. The Alliance's policy of support for arms control, disarmament and non-proliferation will continue to play a major role in the achievement of the Alliance's comprehensive strategy to meet the threats posed by the proliferation of WMD and their means of delivery, adopting an appropriate mix of political and defence efforts. ... The alliance stresses the importance of abiding by and strengthening existing*

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<sup>7</sup>Graham S. Pearson, *Return to Geneva: A Comprehensive List of Measures*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 7, August 2002. Available at <http://www.brad.ac.uk/acad/sbtwc>

<sup>8</sup>European Union, *EU - Latin America & the Caribbean Summit: Conclusions, EU - LAC Common values and Positions*, 17 May 2002. Available at [http://europa.eu.int/comm/world/lac/conc\\_en/val\\_pos.htm](http://europa.eu.int/comm/world/lac/conc_en/val_pos.htm)

<sup>9</sup>The countries attending the Madrid summit are listed at [http://europa.eu.int/comm/world/lac/map\\_en.htm](http://europa.eu.int/comm/world/lac/map_en.htm)

<sup>10</sup>NATO, *Final Communiqué, Ministerial Meeting of the North Atlantic Council held in Reykjavik on 14 May 2002*, Press Release M-NAC-1(2002)59, 14 May 2002. Available at <http://www.nato.int/docu/pr/2002/p02-059e.htm>

*multilateral non-proliferation and export control regimes and international arms control and disarmament accords. We will continue to contribute actively to the development of agreements and measures in this field and pursue further arms reduction, transparency and confidence and security building measures.*

10. Also in May 2002, there were developments at the World Health Assembly when the Member States considered a report<sup>11</sup> on the *Deliberate use of biological and chemical agents to cause harm*. This noted that several Member States have asked WHO for advice and that WHO focuses on the possible public health consequences of such an incident. It goes on to note that the United Nations has mandated the Secretary-General "to carry out promptly investigations in response to allegations that may be brought to his attention by any Member States concerning the possible use of chemical and bacteriological (biological) or toxin weapons ... in order to ascertain the facts of the matter ..." and that "according to the *Biological and Toxin Weapons Convention of 1972, any State Party that finds any other State Party is in breach of its obligations under the Convention may lodge a complaint with or request assistance from the United Nations.*"

11. The report goes on to say that "Should the United Nations be called upon to respond to a request to investigate, WHO could be asked to provide technical expertise or to make available its existing resources and mechanisms. Non-public health issues related to investigations of reports of possible use of chemical and bacteriological (biological) or toxin weapons, however, remain the responsibility of the United Nations. If such a request were made, information about the public health response, including the results of epidemiological and laboratory investigations, would be reported by WHO to the government of the country or countries where the vent was occurring."

12. The World Health Assembly on 18 May 2002 adopted a resolution WHA55.16 which requests the Director-General:

*(1) to continue ... to strengthen global surveillance of infectious diseases, water quality and food safety, and related activities ...*

*(2) to provide tools and support for Member States, particularly developing countries, in strengthening their national health systems, notably with regard to emergency preparedness and response plans, including disease surveillance and toxicology, risk communication and psychosocial consequences of emergencies;*

*(3) to continue to issue international guidance and technical information on recommended public health measures to deal with the deliberate use of biological and chemical agents to cause harm, and to make this information available on WHO's web site;*

*(4) to examine the possible development of new tools, within the mandate of WHO, including modelling of possible scenarios of natural occurrence, accidental release or deliberate use of biological, chemical agents and radionuclear material that affect health, and collective mechanisms concerning the global public health response to*

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<sup>11</sup>World Health Assembly, *Deliberate use of biological and chemical agents to cause harm, Public health response*, Report by the Secretariat, A55/20, 16 April 2002. Available at [http://www.who.int/gb/EB\\_WHA/PDF/WHA55/ea5520.pdf](http://www.who.int/gb/EB_WHA/PDF/WHA55/ea5520.pdf)



*contain or mitigate the effects of natural occurrence, accidental release or deliberate use of biological, chemical agents and radionuclear material that affect health.*

13. A month later the foreign and defence ministers of the Andean Community (Bolivia, Colombia, Ecuador, Peru and Venezuela) met on 17 June 2002 in Lima, Peru and agreed the Lima Commitment: Andean Charter for Peace and Security and for the Limitation and Control of the Expenditure on Foreign Defense.<sup>12</sup> This includes a section:

***VII. Commitments to Consolidate the Ban on Nuclear, Chemical and Biological Weapons***

*The Andean Community Member States reiterate their commitments to:*

*5. Not to develop, produce, acquire, stockpile, conserve or use biological and toxin weapons under any circumstances whatsoever, in keeping with the Convention on the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, of 1972.*

*6. Concertedly apply in the Andean subregion the confidence-building measures established at the Third Review Conference of the Convention on Bacteriological (Biological) and Toxin Weapons and on their Destruction and coordinate the presentation of the corresponding declaration forms.*

14. Also in June 2002, there were developments first at the G8 Foreign Ministers Meeting and then at the G8 Summit. The G-8 Foreign Ministers' meeting in Whistler, Canada on 12 - 13 June 2002 agreed a Progress Report on the Fight Against Terrorism<sup>13</sup> which included:

*G8 members call on all countries in the world to adhere to, fully comply with, and, as necessary, strengthen multilateral instruments such as the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention.*

The G-8 Foreign Ministers also developed new *G-8 Recommendations on Counter-Terrorism*<sup>14</sup> and all States were urged to join the G-8 in their implementation. These recommendations included the following in Section 3: Chemical, Biological, Radiological, Nuclear Weapons:

*We commit ourselves and urge all other States to:*

*1. a. With respect to ensuring effective action against the use of biological weapons by terrorists, make crimes the offences established in the Biological and Toxin Weapons Convention (1972), prosecute such crimes or, where appropriate, extradite individuals, in accordance with national law and*

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<sup>12</sup>Andean Community, *Lima Commitment: Andean Charter for Peace and Security and for the Limitation and Control of the Expenditure on Foreign Defense*, 17 June 2002. Available at [http://www.comunidadandina.org/ingles/document/comprimoso\\_lima.htm](http://www.comunidadandina.org/ingles/document/comprimoso_lima.htm)

<sup>13</sup>G8 Foreign Ministers, *Progress Report on the Fight Against Terrorism*, Whistler, Canada, 12 June 2002. Available at [http://www.dfait-maeci.gc.ca/g8form-g8rmae/progress\\_report\\_en.asp](http://www.dfait-maeci.gc.ca/g8form-g8rmae/progress_report_en.asp)

<sup>14</sup>G8 Foreign Ministers, *G-8 Recommendations on Counter-Terrorism*, Whistler, Canada, 12 June 2002. Available at [http://www.dfait-maeci.gc.ca/g8form-g8rmae/counter\\_terrorism\\_en.asp](http://www.dfait-maeci.gc.ca/g8form-g8rmae/counter_terrorism_en.asp)

*bilateral extradition arrangements, and work cooperatively to develop best practices to deter and detect such offences.*

*b. Take measures to work cooperatively to develop effective mechanisms to track and curb the illicit possession of selected biological agents both nationally and internationally and to explore additional measures to prevent biological agents from being used to commit terrorist acts.*

15. At the G8 Summit two weeks later, the G-8 launched its Global Partnership Against the Spread of Weapons and Materials of Mass Destruction<sup>15</sup> which includes *Principles to prevent terrorists, or those that harbour them, from gaining access to weapons or materials of mass destruction* that include:

*The G8 calls on all countries to join them in commitment to the following six principles to prevent terrorists or those that harbour them from acquiring or developing nuclear, chemical, radiological and biological weapons; missiles; and related materials, equipment and technology.*

*1. Promote the adoption, universalization, full implementation and, where necessary, strengthening of multilateral treaties and other international instruments whose aim is to prevent the proliferation or illicit acquisition of such items; strengthen the institutions designed to implement these instruments.*

....

16. In the following month, the European Union Council of Ministers adopted on 24 July 2002 a document<sup>16</sup> setting out the EU's priorities for this year's UN General Assembly session. This includes the following:

*32. The EU reiterates the high priority it attaches to a successful outcome of the resumed Fifth Review Conference of the Biological and Toxin Weapons Convention and to the strengthening of the Convention in a multilateral framework, including regular annual meetings between the States Parties. The EU strongly supports the universal adoption and implementation of the BTWC and CWC.*

17. On 25 September 2002, the International Committee of the Red Cross launched an appeal<sup>17</sup> on Biotechnology, Weapons and Humanity which stated that:

*Alarmed by the potential hostile uses of biotechnology, **the International Committee of the Red Cross (ICRC) appeals to:***

*• all political and military authorities to strengthen their commitment to the international humanitarian law norms which prohibit the hostile uses of*

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<sup>15</sup>Statement by G8 Leaders, *G8 Global Partnership Against the Spread of Weapons and Materials of Mass Destruction*, Kananaskis, Canada, June 2002. Available at [http://www.g8.gc.ca/kan\\_docs/globpart-e.asp](http://www.g8.gc.ca/kan_docs/globpart-e.asp)

<sup>16</sup>European Union, *EU Priorities for UNGA 57*, Adopted by the Council of Ministers of the European Union on 24 July 2002, available at <http://register.consilium.eu.int/pdf/en/02/st10/10801en2.pdf>

<sup>17</sup>International Committee of the Red Cross, *Appeal on Biotechnology, Weapons and Humanity*, 25 September 2002. Available at <http://www.icrc.org>

*biological agents, and to work together to subject potentially dangerous biotechnology to effective controls.*

- *the scientific and medical communities, industry and civil society in general to ensure that potentially dangerous biological knowledge and agents be subject to effective controls.*

It goes on appeal in particular to all political and military authorities:

- *To become parties to the 1925 Geneva Protocol and the 1972 Biological Weapons Convention, if they have not already done so, to encourage States which are not parties to become parties, and to lift reservations on use to the 1925 Geneva Protocol,*
- *To resume with determination efforts to ensure faithful implementation of these treaties and develop appropriate mechanisms to maintain their relevance in the face of scientific developments,*
- *To adopt stringent national legislation, where it does not yet exist, for implementation of the 1925 Geneva Protocol and the 1972 Biological Weapons Convention, and to enact effective controls on biological agents with potential for abuse,*
- *To ensure that any person who commits acts prohibited by the above instruments is prosecuted,*
- *To undertake actions to ensure that the legal norms prohibiting biological warfare are known and respected by members of armed forces,*
- *To encourage the development of effective codes of conduct by scientific and medical associations and by industry to govern activities and biological agents with potential for abuse, and*
- *To enhance international cooperation, including through the development of greater international capacity to monitor and respond to outbreaks of infectious disease.*

The appeal concludes by urging "*States to adopt at a high political level an international Declaration on "Biotechnology, Weapons and Humanity" containing a renewed commitment to existing norms and specific commitments to future preventive action.*"

18. ***Developments in the United States.*** In May 2002, John Bolton of the State Department in a presentation<sup>18</sup> entitled *Beyond the Axis of Evil: Additional Threats from Weapons of Mass Destruction* to the Heritage Foundation noted that *Multilateral agreements are important to our nonproliferation arsenal. ... Therefore, strict compliance with existing treaties remains a major goal of our arms control policy.* and went on to add that *This has been our aim in particular with the Biological Weapons Convention (BWC).* He then noted that:

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<sup>18</sup>U.S. Department of State, Washington File, *Text: Libya, Syria, Cuba need scrutiny for weapons programs, U.S. says*, 6 May 2002. Available at <http://usinfo.state.gov>

*Whilst the vast majority of the BWC's parties have conscientiously met their commitments, the United States is extremely concerned that several states are conducting offensive biological weapons programs whilst publicly avowing compliance with the agreement. To expose some of these violators to the international community, last November, I named publicly several states the U.S. government knows to be producing biological warfare agents in violation of the BWC.*

and went on to recap about the biological weapons programs of Iraq, North Korea and Iran. He then said that *Today, I want to discuss three other state sponsors of terrorism that are pursuing or have the potential to pursue weapons of mass destruction or have the capability to do so in violation of their treaty obligations* and went on to address Libya, Syria and Cuba before concluding by saying that the goals of America are *"to stop the development of weapons of mass destruction and insure compliance with existing arms control and nonproliferation treaties and commitments, which the Bush administration strongly supports..."*

19. Later the same month, the U.S. State Department on 22 May 2002 issued a Fact Sheet<sup>19</sup> on the Biological Weapons Convention which said that:

*The U.S. presented a package of "alternative measures" to strengthen the Convention to the Conference held in November 2001 to review the operation of the global ban. Our goals at the Conference were to highlight compliance concerns and gain support from all States Parties for our package and other measures that would address the biological weapons threat of today and the future. There was widespread support for U.S. and allied initiatives intended to strengthen the Convention through practical, national implementation measures and continuing expert meetings. The U.S. succeeded in raising worldwide awareness of the serious problem of noncompliance with the BWC.*

*The Review Conference adjourned on December 7, 2001 and will reconvene on November 11, 2002. At the time of adjournment there were major disagreements on several issues, including "the way forward" for strengthening the Convention and on how to reflect compliance concerns. The challenge that lies ahead before the Conference resumes in November is to develop a mutually acceptable approach, building upon the foundations of the proposals and themes the U.S. tabled in November 2001.*

20. Three months later, John Bolton set out *The U.S. Position on the Biological Weapons Convention: Combating the BW Threat* in a presentation<sup>20</sup> on 26 August 2002 to the Tokyo America Center, Tokyo. In this he started by saying that:

*... The United States strongly supports the global norm established by the BWC and places high priority on combating the threat posed by biological weapons. We continue to be a strong supporter of this treaty.*

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<sup>19</sup>U.S. Department of State, *The Biological Weapons Convention*, Fact sheet, 22 May 2002. Available at <http://www.state.gov/t/ac/rls/fs/10401pf.htm>

<sup>20</sup>U.S. Department of State, *The U.S. Position on the Biological Weapons Convention: Combating the BW Threat*, John R. Bolton, Under Secretary for Arms Control and International Security, Remarks at Tokyo America Center, Tokyo, Japan, 26 August 2002. Available at <http://www.state.gov/t/us/rm/13090pf.htm>

*The threat from biological weapons is real, growing and extremely dangerous, and is evolving rapidly with the pace of technology. Given the deadly potential of such weapons of mass destruction, as President Bush has said, "there is no margin for error, and no chance to learn from our mistakes."*

21. He then continued to comment on the U.S. rejection of the draft BW Protocol noting that *"Traditional arms control measures that have worked so well for many other types of weapons, including nuclear weapons, are not workable for biological weapons."* and going on to say that *"Traditional arms control measures, in fact, applied to biological activities yield no benefit and actually do great harm."* Much of this restates the flawed arguments<sup>21</sup> put forward initially in the United States statement to the Ad Hoc Group in July 2001. He then states that *"We need to find a way to move beyond this debate and focus on what counts: a strengthened commitment to counter the biological weapons threat."* and went on to say that:

*The United States last fall proposed several important measures to combat the BW threat, through means that would be far more effective than the draft Protocol. In the past year great progress has been made to combat the threat posed by biological weapons. National, bilateral and multilateral efforts have made it more difficult for those pursuing biological weapons to obtain the necessary ingredients and made it easier to detect and counter any attack.*

22. He then noted that the U.S. had enacted two laws during the past year and that *"The United States has placed great emphasis on working multilaterally and with likeminded groups to combat the BW threat"* listing the G-8 Global Partnership against the spread of weapons and materials of mass destruction, the WHO agreement in May 2002 to strengthen health surveillance systems, several NATO Defense Group on Proliferation initiatives and the Australia Group's tougher export measures. He concludes by calling upon *"Japan to join the United States in promoting an aggressive and effective anti-BW campaign that combats the BW threat without crippling other national and multilateral efforts. Stemming the proliferation of biological weapons cannot be accomplished by one country alone. "A single arrow is easily broken, a bundle of ten is not" as they say here in Japan. By working together, and by exchanging ideas and proposals that will help us meet this critical security challenge, I am confident that we can succeed in advancing the worldwide effort to reduce and eventually eliminate the biological weapons threat."*

23. The approach taken in Tokyo was reflected a week later on 2 September 2002 in the U.S. biological weapons non-paper and sharpened in the U.S. talking points paper<sup>22</sup> for the Western Group meeting in Geneva. The latter states that the United States approach to the Review Conference has evolved and that the United States has *"reached the following conclusions on key issues:*

- *Follow-on meetings (annual, expert, etc. ): the U.S. does not support follow-on meetings between November 2002 and 2006 Review Conferences.*

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<sup>21</sup>See Graham S. Pearson, *The U.S. Rejection of the Composite Protocol: A Huge Mistake based on Illogical Assessments*, University of Bradford, Department of Peace Studies, Briefing Paper No. 22, August 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

<sup>22</sup>United States, *U.S. Biological Weapons Convention Talking Points*, 2 September 2002.

- *Non-compliance: if the RevCon is very short, the U.S. would not "name names." We would do so in a longer RevCon.*
- *Ad Hoc Group: on the termination of the Ad Hoc Group, the U.S. position remains unchanged. We seek the end of the Ad Hoc Group and its mandate. The U.S. will make our position on the Ad Hoc Group clear. If the RevCon is very short, we would not explicitly address the issue. We would do so in a longer RevCon.*
- *RevCon duration: the U.S. prefers a very short RevCon.*
- *U.S. definition of a "very short RevCon" is one with the sole purpose and outcome of agreeing to hold a RevCon in 2006."*

*The United States remains strongly committed to the Biological Weapons Convention, which is a bedrock of our efforts to counter weapons of mass destruction."*

The United States makes it clear that it seeks a "quick and quiet RevCon, whose only action would be to agree that the sixth RevCon be held in 2006."

24. The talking points paper does not justify any of these "conclusions" although it does include statements such as "*The negative response to these efforts [the attempts made by the United States in November 2001 to place its ideas in the BWC context] convinced us that the meetings in the BWC context are not the most effective venues for pursuing measures to combat and respond to the BW threat.*" and "*We believe that the measures that can be most effective in enhancing our ability to combat the BW threat can be done best in fora other than the BWC. Therefore, we will not support convening any meetings in the context of the BWC before a 2006 RevCon.*"

### **Statements at the UN General Assembly**

25. Following these developments around the world, it is interesting to examine the statements made at the 57th session of the United Nations General Assembly and in the First Committee. The scene was set at the outset of the General Debate in the First Committee by the statement<sup>23</sup> of Jayantha Dhanapala, the United Nations Under Secretary-General for Disarmament Affairs who said that:

*The collapse last year of long-standing efforts to conclude a Protocol to strengthen the BWC was greeted with disappointment throughout the world community, a development that set back disarmament, non-proliferation, and counter-terrorism relating to those deadly weapons. The challenge facing all countries will be to ensure that the resumed Review Conference of the BWC next November does not lapse into either a 10-minute revolving door exercise or two weeks of mutual recrimination. Surely the diplomatic skills of states parties can devise alternative scenarios agreeing on measures that can be accepted by all till the next Review Conference in 2006. A failure to achieve this compromise would be a betrayal of the hopes of the world in the face of persisting biological weapons threats.*

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<sup>23</sup>Jayantha Dhanapala, Statement before the First Committee of the General Assembly by Jayantha Dhanapala, Under Secretary-General for Disarmament Affairs, 30 September 2002. Available at <http://www.reachingcriticalwill.org/1com/1com02/speeches/1/USG093002.html>

The statements made by Western Group states, by other States, by the ICRC and then by the United States are considered below.

#### *Western Group statements*

26. The representative of Denmark spoke at the General Assembly First Committee on 30 September 2002 on behalf of the European Union and of the associated countries -- Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia -- as well as Cyprus and Malta and Iceland and Norway -- some 29 States in all. This speech<sup>24</sup> stated that:

*The Biological and Toxin Weapons Convention represents a key instrument to prevent biological agents or toxins being used as weapons. The total ban on such weapons of mass destruction becomes especially important in the light of their actual use for terrorist purposes over the last year. The European Union attaches high priority to the strengthening of the Convention and a successful outcome of the Fifth Review Conference when it resumes in November of this year. Member States of the EU have considered the issue of national compliance and legislative and regulatory implementation measures and support proposals to strengthen such measures. The Union has presented proposals to this effect as well as on confidence building on non-compliance clarification and investigation during the first part of the Fifth Review Conference in November of 2001. The European Union believes that such proposals could be agreed for a follow-up process to strengthen the BTWC when the Review Conference resumes in November of this year. The Union is consulting with States Parties for a consensus along these lines at the Review Conference and encourages other States Parties to take a similar approach.*

As is becoming increasingly the norm, this is the only statement to the First Committee to be made by the European Union and none of the individual member States have made statements there although individual States have felt able to make statements to the General Assembly.

27. For example, on 14 September 2002, the United Kingdom Foreign Secretary in his speech<sup>25</sup> to the United Nations General Assembly entitled "*Security is not an option, it is a necessity*" said that:

*Alongside the threats from failing states and from terrorism, the proliferation of weapons of mass destruction poses the greatest current threat to global security. Nowhere is the case for universal support for the enforcement of the UN's law stronger than in the field of weapons of mass destruction.*

*The Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention comprise one of the world's most significant bodies of international law....*

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<sup>24</sup>Erling Harild Nielsen, Statement by H.E. Ambassador Erling Harild Nielsen on behalf of the European Union, United Nations General Assembly, First Committee, 30 September 2002. Available at [http://www.eu2002.dk/news/news\\_read.asp?iInformationID=23008](http://www.eu2002.dk/news/news_read.asp?iInformationID=23008) and at <http://www.reachingcriticalwill.org/1com/1com02/speeches/1/den093002.pdf>

<sup>25</sup>Jack Straw, *Security is not an option, it is a necessity*, United Nations General Assembly, 14 September 2002. Available at <http://www.fco.gov.uk>

*Every society from the smallest village to the global community represented here in the General Assembly must have rules, and every member of that community must accept responsibility for respecting and maintaining those rules. Without it the very concept of community breaks down.*

28. Norway, although associated with the statement on behalf of the EU, also made a statement<sup>26</sup> to the First Committee saying that:

*Norway believes that strengthening the Biological Weapons Convention must be a priority for the international community, especially in the light of the use terrorists could make of such weapons. We should use the Fifth Review Conference to reaffirm our commitment to preventing the production, proliferation and use of biological weapons when the conference resumes in a few weeks' time.*

*We urge all States Parties to the Biological Weapons Convention to demonstrate sufficient flexibility so that a consensus decision can be reached when the Fifth Review Conference resumes. But we need to explore further national as well as international measures to ensure compliance with the Convention.*

29. Ambassador Michael Smith of Australia in his statement<sup>27</sup> to the First Committee said that:

*Australia is strongly committed to preventing the spread of chemical and biological weapons. We were disappointed that efforts last year to conclude a protocol to strengthen the Biological Weapons Convention (BWC) proved unsuccessful and that the Fifth BWC Review Conference subsequently failed to agree on a forward programme. In light of these setbacks, it is vital that momentum towards strengthening the BWC is renewed at the resumed Review Conference in November. Australia urges all states to increase their efforts to achieve practical and effective international measures promoting effective implementation of the BWC.*

30. Ambassador Chris Westdal of Canada in his statement<sup>28</sup> said that:

*Mr. Chairman, other weapons of mass destruction pose ominous threats. We are thus concerned that the Biological and Toxin Weapons Convention lacks effective means to ensure compliance and that our sustained effort to negotiate a Protocol to that end has so far been fruitless. At the resumed Review Conference next month, we want to reaffirm that biological weapons are repugnant, abhorrent. And we will want to plan concerted, cooperative, practical BTWC implementation.*

31. Japan in its statement<sup>29</sup> to the First Committee said that:

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<sup>26</sup>Leif A. Ulland, *Statement by Ambassador Leif A. Ulland, Special Adviser on Disarmament, Ministry of Foreign Affairs, Oslo, 2 October 2002.* Available at <http://www.reachingcriticalwill.org/1com/1com02/speeches/1/nor100202.pdf>

<sup>27</sup>Michael Smith, *Statement by H. E. Mr. Michael Smith, Ambassador and Permanent Representative, Australian Permanent Mission to the United Nations in Geneva and to the Conference on Disarmament, General Debate Statement, 7 October 2002.* Available at <http://www.reachingcriticalwill.org/1com/1com02/speeches/2/austra100702.pdf>

<sup>28</sup>Christopher Westdal, *Statement by Mr. Christopher Westdal, Ambassador for Disarmament to the First Committee of the Fifth-Seventh Session of the General Assembly of the United Nations, 30 September 2002.* Available at <http://www.reachingcriticalwill.org/1com/1com02/speeches/1/can093002.pdf>



*In order to address the threat of biological weapons, it is necessary to create a comprehensive strategy, with the Biological Weapons Convention as its most fundamental element. However, since the suspension last year of the BWC Review Conference, States parties have yet to agree on a common goal to strengthen this multilateral convention. It is critical for the success of the Review Conference in November to agree on a follow-up mechanism addressing a focused agenda of certain key issues. We will continue to support the efforts by Ambassador Tibor Toth, President of the Conference, to bring about a convergence of positions.*

32. Switzerland in its statement<sup>30</sup> said that:

*With respect to biological weapons, disarmament efforts are an issue of grave concern to my country. Biological weapons represent a real and present danger. The rapid scientific and technical progress in the area of biotechnology and genetics in both civilian and military spheres increases the risk of abuse of this knowledge for military purposes. A concerted action by the international community to prevent such abuses is needed. In this respect, we welcome the recent appeal of the ICRC concerning biological disarmament. For my country, despite its imperfections, the Biological Weapons Convention remains by far the most effective means to prevent the proliferation, development and use of biological weapons. We deeply deplore that it has not been possible to successfully conclude the negotiations on the strengthening of the Convention and we hold dear that multilateral efforts in this area are vigorously pursued without further delay.*

33. Argentina in its statement<sup>31</sup> said that:

*Argentina regrets that after six years the negotiations of the Ad Hoc Committee of the Convention on the Prohibition of Bacteriological (Biological) and Toxin Weapons on the basis of the text proposed by the President in order to achieve an effective protocol of verification that would reduce the risk of biological weapons and would serve as discouragement for their proliferation have not to been completed. In this sense, Argentina considers that no country should be exempt from the formulation of a legally binding regime and calls for the study of innovative ways that would legitimately serve for the strengthening of the verification regime.*

34. The Republic of Korea in its statement<sup>32</sup> said that:

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<sup>29</sup>Kuniko Inogouchi, *Statement by H.E. Dr Kuniko Inogouchi, Representative of Japan at the First Committee of the 57th Session of the General Assembly*, 1 October 2002. Available at <http://www.reachingcriticalwill.org/1com/1com02/speeches/1/jap100102.pdf>

<sup>30</sup>Christian Faessler, *Statement by Mr. Christian Faessler, Permanent Representative of Switzerland to the Conference on Disarmament*, 2 October 2002. Available at <http://www.reachingcriticalwill.org/1com/1com02/speeches/1/swie100202.pdf>

<sup>31</sup>Luis E. Cappagli, *Statement by Minister Luis E. Cappagli, Deputy Permanent Representative of the Argentine Republic to the United Nations*, 2 October 2002. Available at <http://www.reachingcriticalwill.org/1com/1com02/speeches/1/arge100202.pdf>

<sup>32</sup>Sun Joun-yung, *Statement by Ambassador Sun Joun-yung Permanent Representative of the Republic of Korea to the United Nations at the General Debate in the First Committee of the 57th Session of the United Nations General Assembly*, 30 September 2002. Available at <http://www.reachingcriticalwill.org/1com/1com02/speeches/1/repkor100102.pdf>

*With regard to biological weapons, national, bilateral and multilateral efforts are all necessary in combating the threat posed by biological weapons. Within the framework of the Biological Weapons Convention (BWC), it is our sincere hope that, in the interests of strengthening the Convention, States Parties will be able to devise an effective work programme at the resumed Review Conference of the Convention in November of this year.*

35. New Zealand in its statement<sup>33</sup> said that:

*It is an issue of deep concern to New Zealand that the preparations for the resumed Review Conference of the Biological Weapons Convention, scheduled to take place in November this year, are in difficulty. States have negotiated for years towards the development and implementation of a compliance mechanism for the Biological Weapons Convention. The technology and science that feeds into biosecurity and bioterrorism is being rapidly developed. But while the United Nations is still struggling to identify and eliminate biological weapons developed in one State, and we have witnessed the use of BW in another State, we have been unable to bring the negotiation for a system of verification and compliance to completion.*

#### *Statements by Other States Parties*

36. Russia in its statement<sup>34</sup> said that:

*Favouring the continuation of the multilateral efforts to strengthen the Biological and Toxin Weapons Convention (BWC), we are willing to discuss also the proposals that supplement the verification mechanisms, on enhancing the Convention during the second stage of the 5th BWC Review Conference in November.*

37. China in its statement<sup>35</sup> on 1 October 2002 to the First Committee said that:

*China has supported and actively participated in the negotiations of the protocol to the Biological Weapons Convention (BWC). We deeply regret that the protocol failed to come to fruition as expected. In the current situation it is particularly important to strengthen the effectiveness of the Convention. Therefore, China welcomes and is willing to discuss within multilateral framework any suggestions and measures aimed at strengthening the effectiveness of the Convention. As the resumed Review Conference is approaching, China wishes to work with other parties in a constructive manner to seek consensus on the specific mechanism and measures for strengthening the effectiveness of the Convention, so that the conference could achieve concrete results.*

38. Brazil in its statement<sup>36</sup> said that:

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<sup>33</sup>Deborah Panckhurst, *Statement by the New Zealand Representative Deborah Panckhurst*, First Committee, 30 September 2002. Available at <http://www.reachingcriticalwill.org/1com/1com02/speeches/1/newz093002.pdf>

<sup>34</sup>Andrey Granovsky, *Address by Ambassador Andrey Granovsky, Representative of the Russian Federation to the First Committee of the 57th Session of the UN General Assembly*, 9 October 2002. Available at <http://www.reachingcriticalwill.org/1com/1com02/speeches/2/rus100902.pdf>

<sup>35</sup>Hu Xiaodi, *Statement by H.E. Ambassador Hu Xiaodi at the First Committee of the 57th Session of the United Nations General Assembly*, 1 October 2002. Available at <http://un.fmprc.gov.cn/eng/35422.html>

<sup>36</sup>Celina Assumpcao do Velle Pereira, *Statement by H.E. Ambassador Celina Assumpcao do Velle Pereira, Deputy Permanent Representative of Brazil to the United Nations in Geneva to the First Committee of the LVII*

*We can no longer continue to ignore the threats to security posed by biological weapons and must work together to reinforce the BTWC regime. The negotiations of a Verification Protocol were abruptly suspended in July 2001. The 5th Review Conference was left unconcluded because it did not reach consensus on whether multilateral negotiations on the strengthening of the BWC were to proceed. For Brazil there is no alternative to a multilateral approach.*

*The outlook for the 5th Review Conference, to be resumed next November in Geneva, is not promising. At the present stage, a failure of the Conference to be resumed might express that the BTWC is in agony.*

39. India in its statement<sup>37</sup> said that:

*India is deeply concerned by the circumstances in which the Fifth Review Conference of the Biological Weapons Convention last year had to be abruptly adjourned. The developments since then do not bode well for the resumed Review Conference this year. The anthrax incidents of last year, instead of prompting the world community to act collectively to challenge the threat of Biological Weapons, have instead led to a path that rejects the framework for multilateral action and may threaten the norm that has existed for 30 years. While national implementation measures and certain group efforts may be worth pursuing, they cannot substitute for meaningful multilateral efforts to strengthen the Convention. We hope the resumed Review Conference can be saved from failure by at least reaching agreement on a modest follow up work in the truly multilateral context. At a time when the threat from BW proliferation and bioterrorism is of great concern to the people, it would be tragic to undermine the norm established by the BWC.*

40. Pakistan in its statement<sup>38</sup> said that:

*We regret the fact that the Fifth BWC Review Conference last year had to be suspended. In view of the evolving threats, particularly in the context of bio-terrorism, this instrument should be further strengthened. To this end, Pakistan would continue to remain engaged. The reconvened Fifth Review Conference in November would need to agree on a balanced and meaningful follow-up programme, encompassing both regulatory and promotional activities.*

41. Iran in its statement<sup>39</sup> said:

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*Session of the United Nations General Assembly, 9 October 2002. Available at <http://www.reachingcriticalwill.org/1com/1com02/speeches/2/bra100902.pdf>*

<sup>37</sup>Rakesh Sood, *Statement by H.E. Mr Rakesh Sood, Ambassador, Permanent Representative of India to the Conference on Disarmament at the 57th Session of the First Committee, United Nations General Assembly, New York, 7 October 2002. Available at <http://www.reachingcriticalwill.org/1com/1com02/speeches/2/indi100702.pdf>*

<sup>38</sup>Shaukat Umer, *Statement by Ambassador Shaukat Umer, Permanent Representative of Pakistan to the United Nations, Geneva, in the General Debate of the First Committee of the 57th Session of the United Nations General Assembly, 10 October 2002. Available at <http://www.reachingcriticalwill.org/1com/1com02/speeches/2/pak101002.pdf>*

<sup>39</sup>Javad Zarif, *Statement by H.E. Dr Javad Zarif, Permanent Representative of the Islamic Republic of Iran before the First Committee, 4 October 2002. Available at <http://www.reachingcriticalwill.org/1com/1com02/speeches/speechesindex.html>*

... Unfortunately, disarmament negotiations have faced severe setbacks, which in some important areas have undermined the decade-long endeavors by the international community to ban weapons of mass destruction. The negotiations on a Protocol strengthening the implementation of the Biological Weapons Convention, which was blocked at the very final stage of its conclusion and adoption, await good will and practical initiatives to exit from the impasse. The situation is more difficult to be justified in an era which is overwhelmed by threats of mass destruction.

42. Myanmar in a statement<sup>40</sup> on behalf of the ASEAN member States (Brunei Darussalam, Cambodia, Indonesia, the Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam) said that:

*We recall that the 34th ASEAN Ministerial Meeting noted the progress that had been made in the negotiation of a Protocol on the verification of the Biological Weapons Convention (BWC). However, we note with regret that the 5th Review Conference of the States parties to the BWC was adjourned without any substantive results and with a lack of consensus at the twenty-fourth session of the Ad Hoc Group on the draft composite text of the Protocol. The ASEAN countries regret that the Group could not adopt a final report on its work. The ASEAN countries emphasize the validity of the mandate that was given to the Ad Hoc Group and underline that the only sustainable method of strengthening the Convention is through multilateral negotiations aimed at concluding a non-discriminatory legally-binding agreement.*

*We express our hope that the re-convened session of the BWC Review Conference to be held in November 2002 will make progress in efforts to strengthen the Biological Weapons Convention (BWC), especially by agreeing to hold annual meetings of the States Parties.*

43. Interestingly, the representative of South Africa in its statement<sup>41</sup> put forward to the First Committee some detailed proposals relating to the BTWC:

*In the area of the Biological Weapons Convention (BWC), the situation has also moved from bad to worse -- with a faint glimmer of hope being vested in the resumed meeting of the suspended BWC Review Conference, which is to take place in Geneva during November 2002. We had believed that the inability of the States parties to adopt the draft Protocol to strengthen the implementation of the BWC, which had been the subject of detailed and protracted negotiation over so many years, was a low point in the history of the Convention and we had consequently approached the Review Conference in 2001 with scepticism and a low expectation. It, however, turned out to be possible for even scepticism and a low expectation to be further disappointed when the Conference had to be suspended, unable to even agree on a minimalist common position. The reconvened Review Conference will therefore be starting from a low point and it will be important for the overwhelming number of States Parties, who had joined together from all political groupings during the*

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<sup>40</sup>U Mya Than, *Statement by His Excellency U Mya Than, Permanent Representative of the Union of Myanmar to the United Nations, Geneva, on behalf of the ASEAN Member States in the General Debate of the First Committee of the 57th Session of the United Nations General Assembly*, 9 October 2002. Available at <http://www.reachingcriticalwill.org/1com/1com02/speeches/2/mya100902.pdf>

<sup>41</sup>South Africa, *Statement by South Africa, First Committee of the United Nations 57th Session of the General Assembly*, 2 October 2002. Available at <http://www.reachingcriticalwill.org/1com/1com02/speeches/1/sou100202.pdf>

*meetings in 2001, not to be forced into accepting a failure. South Africa was persuaded by the strong arguments put forward at the Review Conference by many of the States Parties (from all of the political groupings) that it would be important not to allow a situation where no further work is done to enhance the implementation of the BWC. These States Parties, many of whom are sitting in this room, insisted that a vacuum in the period until the next Review Conference in 2006 would be detrimental to the Convention and for our fight against the biological weapons threats confronting the international community, also as these threats are exacerbated by the scourge of terrorism. To this end, South Africa would support a proposal at the reconvened meeting of the Review Conference that would include:*

- The rapid conclusion of the Review Conference's work with a focus on future work to enhance the implementation of the Convention, also without raising divisive issues where it is known that agreement will not be possible;*
- No reference to the BWC Ad Hoc Group and its draft Protocol in the final documents of the Review Conference;*
- Agreement to establish a Group or Groups of Experts to deal with a limited and non-exhaustive list of specific issues related to the Convention and to consider and reach agreement on proposals that could enhance the implementation of the Convention.*
- Annual meetings of the Group or Groups of Experts for a period of approximately four weeks in two separate periods. If there is still time available after the reconvened meeting of the Review Conference in November has completed its work, then the remaining time could be used by the newly established Expert Group or Groups to begin an initial consideration of their work.*
- Annual meeting of the States Parties for a limited duration of time (a few days) that would consider the work of the Group or Groups and could decide upon further work once issues had been dealt with. The annual meeting should coincide with one of the periods of time that have been allocated for a meeting of the Expert Group or Groups; and,*
- The possible strengthening of the UN Secretariat in the area of biological weapons so as to assist the States Parties, especially from developing countries, in the abovementioned work.*

#### *Statement by the ICRC*

44. The International Committee of the Red Cross in a statement<sup>42</sup> to the First Committee said that:

*The **Biological Weapons Convention**, by prohibiting the production, stockpiling and transfer of biological weapons, provides an indispensable component to the absolute prohibition of the use of such weapons contained in the 1925 Geneva Protocol. The*

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<sup>42</sup>ICRC, *Statement by International Committee of the Red Cross (ICRC)*, 7 October 2002. Available at <http://www.reachingcriticalwill.org/1com/1com02/speeches/2/icrc100702.pdf>

*ICRC therefore regrets that lengthy negotiations to strengthen the Convention through a compliance-monitoring regime were not concluded as expected in November 2001. We urge States Parties to spare no effort to ensure that the resumed Fifth Review Conference of the Biological Weapons Convention in November takes steps to ensure that the norms contained in the 1925 Protocol and the 1972 Convention are maintained and strengthened in the face of rapid scientific developments.*

*The ICRC is concerned that the "biotechnology revolution" which has already begun could inadvertently facilitate the use of biological weapons. This led the Institution to issue a rare appeal to governments, scientists and industry on "**Biotechnology, Weapons and Humanity**" in late September which is being distributed to Permanent Missions.*

The statement goes on to outline the actions proposed in the Appeal (already listed earlier in paragraph 17 of this Review Conference Paper) and concludes by stating that:

*Finally, the ICRC has urged States to adopt at a high political level an international Declaration on "Biotechnology, Weapons and Humanity" containing a renewed commitment to existing norms and specific commitments to future preventive action.*

#### *Statement by the United States*

45. The United States statement<sup>43</sup> by Stephen G. Rademaker, Assistant Secretary for Arms Control, to the First Committee on 3 October 2002 although emphasising the risks from weapons of mass destruction had very little to say about the Biological Weapons Convention:

*.... We shudder to imagine how much more death and destruction they [terrorists] would seek to inflict if they chose to use weapons of mass destruction.*

*This is nothing less than a fight between civilization and barbarism. There are roles in the fight for the law enforcement community, the military, public health workers, and others. What the arms control community can do is strengthen the international framework to prevent weapons of mass destruction from falling into the hands of terrorists, or into the hands of states that support terrorism as a matter of national policy. The arms control community can also better enforce obligations undertaken in the existing frameworks. Obligations must be lived up to if they are to serve a useful purpose.*

*We believe every country in the world should belong to the Nuclear Non-Proliferation Treaty, the Biological Weapons Convention and the Chemical Weapons Convention; that every country belonging to them should fully comply with their provisions; and that the Parties must hold each other accountable and take appropriate steps to deter violations.*

#### **Analysis of Statements to the First Committee**

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<sup>43</sup>Stephen G. Rademaker, *Statement by Stephen G. Rademaker, Assistant Secretary for Arms Control, Department of State, Washington, D.C., 3 October 2002.* Available at <http://www.reachingcriticalwill.org/lcom/lcom02/speeches/1/usa100302.pdf>

46. Although the statements of all of the States Parties to the BTWC detailed above have reiterated in the First Committee the importance of the Convention and of its effective implementation and have indicated the wish that the resumption of the Fifth Review Conference should lead to a programme of further work, there is no sign that the United States has shifted its position.

47. It is understood that the Western Group at its meeting in Geneva in September 2002 unanimously rejected the U.S. proposals outlined in its talking points paper (see paragraph 23 above) and there is some hope that the strength of the Western Group rejection may have caused the United States to reconsider its position. The U.S. position in its talking points is unbelievably short sighted with its suggestion of doing nothing other than agreeing to meet again in 2006. Such a position is totally at variance with the statement<sup>44</sup> that *The United States remains strongly committed to the Biological Weapons Convention, which is a bedrock of our efforts to counter weapons of mass destruction.* [Emphasis added] The impression given by the United States is that, for reasons which are far from clear, it appears not to care about the BTWC or about a strengthened regime despite all the rhetoric from the highest levels in the United States about bioterrorism and about biological weapons in Iraq and other countries of concern. Indeed, there is now speculation as to why the United States is being so backward in its position regarding the BTWC ranging from whether the U.S. wishes to withdraw from the BTWC, through a U.S. wish to maintain elements in its defence programmes that are pushing the boundaries of what is permitted under the Convention such as the programmes reported by the New York Times<sup>45</sup> and the U.S. interest in non-lethal weapons involving materials in the mid-spectrum region, to an ideological blind-spot that fails to recognise the dangers of neglecting multilateral frameworks at a time when biotechnology is of burgeoning interest worldwide and when weapons of mass destruction and especially biological weapons are of greater concern internationally than ever before. To do nothing is simply not an option.

48. As the resumption of the Fifth Review Conference draws near, it is evident that there is much uncertainty amongst the States Parties preparing to return to Geneva. Will there indeed be a successful outcome or will there be "*a 10-minute revolving door exercise*"<sup>46</sup> which will satisfy noone or further acrimony resulting in no outcome? Given the increasing concern worldwide about biological weapons particularly in regard to bioterrorism and, more recently, to the initiatives being taken in the United Nations in regard to concerns that Iraq has continued an offensive biological weapons programme, it would severely damage the credibility of the Biological and Toxin Weapons Convention -- and of its States Parties -- if there is no successful outcome.

### Options for the Resumed Review Conference

49. There appear to be a number of options for the outcome of the resumed Fifth Review Conference:

#### A. Agreement on a Final Declaration, either by consensus or following voting

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<sup>44</sup>United States, *U.S. Biological Weapons Convention Talking Points*, 2 September 2002.

<sup>45</sup>Judith Miller, *When is Bomb Not a Bomb? Germ Experts Confront U.S.*, New York Times, 5 September 2001.

<sup>46</sup>Jayantha Dhanapala, Statement before the First Committee of the General Assembly by Jayantha Dhanapala, Under Secretary-General for Disarmament Affairs, 30 September 2002. Available at <http://www.reachingcriticalwill.org/1com/1com02/speeches/1/USG093002.html>

- B. Agreement on a procedural report whose attached papers contain agreed language from the 2001 Draft Final Declaration
- C. Agreement on a short statement declaring the Review Conference concluded with an attached paper on follow-up
- D. Agreement on a further adjournment of the Review Conference
- E. Ending of the adjourned Review Conference without agreement

50. The **central** issue which underpins these options is whether the great majority of the States Parties to the BTWC will meekly go along with whatever the United States decides it wants to do -- which at current indications, is simply to agree that a further Review Conference be held in 2006: there would be no Final Declaration and no agreement on follow-up action -- or are going to show to the world that the total prohibition of biological and toxin weapons is indeed important and that they agree that steps should continue to be taken to strengthen the regime with the consequential benefits for disarmament, non-proliferation and counter-terrorism efforts even without the United States.

51. It has to be remembered that the BTWC has had a series of Review Conferences which have successfully developed through the Final Declarations extended understandings that have already begun to strengthen the regime.<sup>47</sup> This can be clearly illustrated for example by the developments in the the Article I section of the Final Declaration relating to scientific and technological advances of relevance to the Convention which have addressed both the **scope** and the **apprehensions** caused by recent developments. In regard to the **scope** of the Convention, the extended understandings that have developed at successive Review Conferences in the language in the Article I section of the Final Declaration are summarised in the table below where the developments are emphasised in bold:

Convention (Article I)	<i>Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;</i>
First Rev Con	<i>The Conference believes that Article I has proved sufficiently comprehensive to have covered recent scientific and technological developments relevant to the Convention.</i>
Second Rev Con	<i>... the Convention unequivocally applies to all <b>natural or artificially created</b> microbial or other biological agents or toxins whatever their origin or method of production.</i>
Third Rev Con	<i>... the Convention unequivocally covers all microbial agents or toxins, naturally or artificially created <b>or altered</b>, whatever their origin or method of production.</i>

<sup>47</sup>For an analysis which considers the BTWC in detail article by article and shows how the understandings between States Parties have been successfully extended by the Final Declarations of successive Review Conferences see Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims (eds), *Strengthening the Biological Weapons Convention: Key Points for the Fifth Review Conference*, University of Bradford, Department of Peace Studies, November 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>



Fourth Rev Con	<i>... the Convention unequivocally covers all microbial or other biological agents or toxins, naturally or artificially created or altered, <b>as well as their components</b>, whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes.</i>
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In a similar way, successive Review Conferences have extended the understandings regarding the **apprehensions** raised by recent developments by reaffirming *that the undertaking given by the States Parties in Article I applies to all such developments*. The table below shows how the apprehensions addressed have been extended by successive Review Conferences where the developments are emphasised in bold:

Convention	<i>Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;</i>
First Rev Con	<i>The Conference believes that Article I has proved sufficiently comprehensive to have covered recent scientific and technological developments relevant to the Convention.</i>
Second Rev Con	<i>... apprehensions arising from relevant scientific and technological developments, <u>inter alia</u>, in the fields of <b>microbiology, genetic engineering and biotechnology</b>,</i>
Third Rev Con	<i>... apprehensions arising from relevant scientific and technological developments, <u>inter alia</u>, in the fields of microbiology, genetic engineering and biotechnology,</i>
Fourth Rev Con	<i>... apprehensions arising from relevant scientific and technological developments, <u>inter alia</u>, in the fields of microbiology, biotechnology, <b>molecular biology</b>, genetic engineering and <b>any application resulting from genome studies</b>,</i>

52. Against this background, the realization that the relevant scientific and technological developments have burgeoned during the past five years and that biotechnology is seen as the technology of the 21st Century makes it even more critical that the Fifth Review Conference should in its Final Declaration further extend the understandings relating to both the scope and the apprehensions arising from relevant developments.<sup>48</sup>

53. In addition, it needs to be recalled that Review Conferences have also developed procedures for handling compliance concerns, through the Article V contingency mechanism for Consultative Meetings; have enhanced and expanded a system of Confidence-Building Measures; and have drawn out the implications and latent potential of other Articles of the Convention through a cumulative process of developing the BTWC as a treaty regime in full evolution.<sup>49</sup> This cumulative process would be greatly damaged if the Fifth Review Conference proved unable even to reaffirm, let alone develop, the achievements of previous Review Conferences.

<sup>48</sup>Graham S. Pearson, *New Scientific and Technological Developments of Relevance to the Fifth Review Conference*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 3, July 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

<sup>49</sup>Nicholas A. Sims, *The Evolution of Biological Disarmament*, SIPRI Chemical & Biological Warfare Studies no. 19, Oxford, Oxford University Press, 2001.

54. Consequently, if the Fifth Review Conference fails to conclude with a Final Declaration, it will be evident in retrospect that at a time when the world was more concerned than ever before about the deliberate use of disease to cause harm, the 145 States Parties failed to demonstrate a collective determination and will to use the political and legally binding instrument available to them to good effect.

55. How then can this failure be averted? What needs to be done to rescue the Fifth Review Conference from going down in history as an occasion when the sole super-power, for reasons that are far from clear and seem to ignore its own longer-term interests, obstructed the interests of the great majority of the States Parties?

### **Rescuing the Fifth Review Conference**

56. Although there is some hope that the United States may have reconsidered its position and may come to the Review Conference prepared to agree to a Final Declaration and to follow-up meetings to strengthen the regime further, it would be **prudent** for States Parties to consider what to do if the United States comes with a position unchanged from that indicated in the John Bolton speech in Tokyo on 26 August 2002 and the U.S. talking points paper of 2 September 2002 for the Western Group.

57. We therefore need to return to the increasingly urgent question of decision-making procedure: **to vote or not to vote?** which was initially addressed in April 2002 in Review Conference Paper No. 5.<sup>50</sup>

58. At the resumed session, some decisions may have to be taken by majority vote. Consensus is not sacrosanct. The BTWC Review Conferences have possessed the same fall-back provision for voting ever since the Conference rules were first devised in 1979. Rule 28 reads as follows:

#### *VI. VOTING AND ELECTIONS*

##### *Adoption of decisions*

##### *Rule 28*

*1. Decisions on matters of procedure and in elections shall be taken by a majority of representatives present and voting.*

*2. The task of the Review Conference being to review the operation of the Convention with a view to assuring that the purposes of the preamble and the provisions of the Convention are being realized, and thus to strengthen its effectiveness, every effort should be made to reach agreement on substantive matters by means of consensus. There should be no voting on such matters until all efforts to achieve consensus have been exhausted.*

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

3. *If, notwithstanding the best efforts of delegates to achieve consensus, a matter of substance comes up for voting, the President shall defer the vote for 48 hours and during this period of deferment shall make every effort, with the assistance of the General Committee, to facilitate the achievement of general agreement, and shall report to the Conference prior to the end of the period.*

4. *If by the end of the period of deferment the Conference has not reached agreement, voting shall take place and decisions shall be taken by a two-thirds majority of the representatives present and voting, providing such majority shall include at least a majority of the States participating in the Conference.*

5. *If the question arises as to whether a matter is one of procedure or of substance, the President of the Conference shall rule on the question. An appeal against this ruling shall immediately be put to the vote and the President's ruling shall stand unless the appeal is approved by a majority of the representatives present and voting.*

6. *In cases where a vote is taken in accordance with paragraphs 1 and 4 above, the relevant rules of procedure relating to the voting of the General Assembly of the United Nations shall apply, except as otherwise specifically provided herein.*

59. Until 2001 voting was seldom, if ever, considered; but the precarious state of the BTWC over the past year has encouraged fresh thinking about the decision-making procedures of its Review Conferences. A provision left unused for 23 years may need at last to be invoked in November 2002.

60. There are risks attached to any departure from consensus into voting when the tradition of consensus has been as long established as in the case of the BTWC Review Conferences. However, a temporary and limited departure from this tradition may be a necessary price to pay for **rescuing the Fifth Review Conference**.

61. Because of the shocks to which the BTWC was subjected between July and December 2001, previously accepted understandings about the review process and how it is best conducted have been called into question. The tradition of consensus had already been seriously damaged in 2001 by hard-line iterations of U.S. policy and their confrontational expression. During 2002 U.S. policy has continued to harden, and to diverge from the international mainstream, until the prospect of constructive U.S. participation in the diplomacy of the BTWC review as conventionally understood is vanishingly remote.

62. Voting is best avoided, under most circumstances; but persistent intransigence in ever more extreme U.S. positions can only bring nearer the prospect of voting in November 2002.

63. Such voting should be regarded as a temporary and limited departure from consensus: temporary, because the crisis of 2001/2002 around U.S. intransigence may turn out to have been an isolated episode from which the BTWC regime recovers; limited, because voting should be confined to a very few issues. Even during the recourse to voting in November 2002, as many decisions of the Fifth Review Conference as possible should be taken by consensus.

64. The following sections address in turn:

- Specific objections to voting and how they may be answered;

- Voting on procedural decisions;
- Voting on substantive decisions;
- Consequences of voting.

*Specific objections to voting and how they may be answered*

65. The following tabulation summarises specific objections to voting and provides answers to the objections.

Objection	Voting on matters of substance is divisive
Answer	Under Rule 28 voting on matters of substance can only take place after the reality of division has first been clearly established (28.2) and then sustained over the 48-hour period of deferment of vote despite the efforts of the President and the General Committee of the Conference (28.3). <i>"There should be no voting on such matters until all efforts to achieve consensus have been exhausted."</i> (28.2) If consensus is being relentlessly blocked, voting may be the only way around the blockage.

Objection	Voting risks driving the U.S. even further into the corner of its own self-imposed isolation from the international mainstream of BWC diplomacy
Answer	If it continues to move at the pace of the slowest, the BTWC will get nowhere and fall rapidly into disrepute. It is necessary for those States Parties which have the clearest view of how the BTWC is going to be strengthened to organise themselves, so as to steer its constructive evolution. They must take it forward, even if that does mean going further and faster than others would like. The U.S. has failed to develop a plausible, substantial, alternative agenda for strengthening the BTWC or to persuade the other States Parties that their own approaches are mistaken. The greater risk to the BTWC and the longer-term interests of its States Parties -- including the interests of the United States -- is that States Parties will condone short-term U.S. policy positions and condemn the BTWC to immobility, at a time when worldwide concern about biological weapons is greater than ever before, not out of conviction but for fear of offending a State Party which has already shown itself impervious to attempts at bridging the gulf and bringing it back into the mainstream of diplomacy.
Objection	Voting in a BTWC Review Conference might encourage recourse to voting under the equivalent rule in a Nuclear Non-Proliferation Treaty (NPT) Review Conference.
Answer	The interests of the BTWC should not be subordinated to speculative NPT considerations, as if the treaties concerning the weapons of mass destruction could be arranged into an order of priority in a neat hierarchy. After all, 2002 has seen the use of voting in one of the treaties concerning weapons of mass destruction -- at the instigation of the United States -- in the Special Session of the Conference of States Parties to the Chemical Weapons Convention. In any case, the history of the NPT has produced its own internal treaty dynamics and a significantly different pattern of diplomacy from that of the BTWC. For example, there is not an unbroken series of Final Declarations from the NPT Review Conferences but a more varied range of outcomes between 1975 and 2000; and the enhanced NPT review process agreed in 1995 has given the Preparatory Committees in their annual sessions of 1997-99 and 2002-04 a role unique to the particular conditions and requirements of NPT diplomacy. There is no BTWC equivalent.

Objection	Voting would bring the BTWC into disrepute.
Answer	The reputation and credibility of the BTWC would suffer worse damage from further adjournment of the Fifth Review Conference, sometimes termed "serial suspension", or from its conclusion without a Final Declaration or other substantive outcome. Such failure would indicate that the States Parties were incapable of organising themselves as a coherent majority to rescue the Fifth Review Conference and hence keep the review process and indeed the Convention itself from becoming moribund. It would reveal the States Parties as indecisive and lacking in conviction. This would send the wrong signals, given the gravity of the threat from biological and toxin weapons in the world at large, from the guardians of the world's main treaty bulwark against biological and toxin weapons. Decisions adopted by vote, if consensus is impossible, would be very much better than no decisions at all.

### *Voting on procedural decisions*

66. It is useful next to distinguish **procedural** decisions from **substantive** decisions. **Procedural** decisions are taken by a simple majority of representatives present and voting. Under Rule 28.1 there is no requirement for a majority of the States Parties participating in the Conference, just a majority of those **present and voting** (which, under Rule 30<sup>51</sup>, is defined to exclude those who abstain from voting). To take a deliberately extreme example, even if 80 of the (say) 85 States Parties present at a meeting were to abstain, a procedural decision could still be taken on a majority of 3 to 2.

67. There are at least two procedural decisions which might go to a vote very early in the resumed Review Conference. One is the decision **whether to aim for a Final Declaration** or for some other outcome, such as a procedural report or even less. The other is the **duration of the resumed session**. The first session of the Fifth Review Conference decided, when it adjourned on 7 December 2001, that the resumed session should take place from 11 November to 22 November 2002. That decision could be revisited and changed on 11 November, by consensus or by vote. Any change of plan -- for example, to shorten the session to just one or two days' duration -- is a procedural decision. It should be noted that the decision to shorten the Fourth Review Conference from the three weeks foreseen in UNGA's Resolution 50/79 (12 December 1995) to two weeks (25 November -- 6 December 1996) was taken by its Preparatory Committee on 9 -- 10 April 1996 (see BWC/CONF.IV/9, para. 12). It would be an entirely different matter for the Fifth Review Conference to change its mind over the 11-22 November 2002 duration of its resumed session, because there has been no Preparatory Committee since the Conference's adjournment decision of 7 December 2001. Consequently, if States Parties are unhappy with the prospect of the session being so drastically shortened, they can presumably overturn the 'shortening' proposal by a simple majority. This would not stop an impatient State Party from pulling its delegation out after one or two days, but it would mean that the other States Parties could continue to schedule meetings of the Conference until 22 November 2002 and produce outcomes with the full authority of the Conference. A proposal for further adjournment would also be subject to

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<sup>51</sup>Rule 30. *Meaning of the phrase "representatives present and voting"* For the purpose of these rules, the phrase "representatives present and voting" means representatives casting an affirmative or negative vote. Representatives who abstain from voting are considered as not voting.

simple majority vote in the absence of agreement. The other outcomes listed as possibilities earlier in this Review Conference Paper in paragraph 49, apart from no agreement, are more likely to be considered matters of substance rather than of procedure.

#### *Voting on substantive decisions*

68. **Substantive** decisions are subject to Rule 28.2 (consensus preferred), Rule 28.3 (48 hours' mandatory deferment and President to report back before vote) and Rule 28.4 (majority vote). The vote under Rule 28.4 requires two conditions to be fulfilled. **First**, there must be a two-thirds majority of the representatives present and voting. **Second**, this majority must include at least a majority of the States Parties participating in the Conference. In 1996, 77 States Parties took part in the Fourth Review Conference, so even a two-thirds majority of the representatives present and voting would have been insufficient to take a substantive decision if that majority had included fewer than 39 States Parties. "States participating" in Rule 28.4 can be taken to mean "States Parties participating" because signatory-only States have always been excluded from taking part in the adoption of decisions, whether by consensus or by vote, in accordance with Rule 44.1.

69. Voting on substantive decisions would be impossible in a resumed session of **one** day or even **two** days' duration, because of the application of Rule 28.3. It is arguable that this might also apply to a session of **three** days' duration because of Rule 24:

#### *Submission of proposals and substantive amendments*

##### *Rule 24*

*Proposals and substantive amendments shall normally be submitted in writing to the Secretary-General of the Conference, who shall circulate copies to all delegations. Unless the Conference decides otherwise, proposals and substantive amendments shall be discussed or decided upon no earlier than 24 hours after copies have been circulated in all languages of the Conference to all delegations.*

Whether it **would** so apply depends on whether the period of 24 hours required after circulation of a proposal before it can be "discussed or decided" has to elapse **before** the 48 hours' deferment of vote begins, or whether the two periods can be elided. However, the 24 hours' delay before a circulated proposal can even be discussed is less mandatory, because Rule 24 includes the qualifying clause "Unless the Conference decides otherwise", than the 48 hours' deferment before a proposal on "a matter of substance" can be put to the vote.

70. Voting on substantive decisions **would** be possible, whatever the correct construction of the interaction between Rules 24 and 28, if the resumed session lasted longer than three days -- and assuming that the "matter of substance" is identified three days prior to the end of the session. Thus if it assumed that the resumed session lasts for two weeks as currently agreed, it would be necessary to identify at latest by Day 8 which matters of substance are:

- a. proposed by one or more States Parties **and**
- b. not going to be adopted by consensus **and**
- c. important enough to be put to the vote.

71. The following can be identified as proposals which might conceivably involve matters of substance not amenable to consensus, and which might accordingly be possible candidates for a two-thirds majority vote:

- Decision to adopt a Final Declaration
- Decision on the content of the Article XII section of the Final Declaration
- Decision on the content of other sections of the Final Declaration
- Decision to convene annual meetings in 2003, 2004 and 2005
- Decision to convene a single meeting in 2003
- Mandate of the annual meetings or single meeting and their relationship to expert meetings
- Mandate of a Scientific Advisory Panel and any other "interim supportive institutions" (Committee of Oversight, Legal Advisory Panel, secretariat) established to bridge the gap between the Fifth and Sixth Review Conferences.<sup>52 53</sup>

### *Consequences of voting*

72. Even to raise the possibility of voting at the resumed session of the Fifth Review Conference alters the calculations and expectations of governments, with consequences which are as much political as legal and are not easily predicted. Some possible consequences may however be noted here.

73. One consequence might be to politicise the normally uncomplicated operations of the Credentials Committee. A State Party at risk of defeat would have every interest in disputing the credentials of delegations likely to vote against it, while maximising the attendance of friendly delegations and ensuring that their credentials are accepted in time for their votes to count.

74. Attention would also turn to the tactics whereby an adverse outcome could be prevented. A State Party at risk of defeat would probably try to organise a mass abstention or a 'blocking third' to prevent one or other of the necessary conditions being met under the procedure of Rule 28.4. Assuming for purposes of illustration that the number of States Parties participating in the conference were to rise to 100, it would only be necessary to persuade 51 of them either to abstain or to absent themselves from the vote for a defeat to be avoided, even if all the other 49 were to vote the same, adverse, way. Failing that, a 'blocking third' might still be organised to ensure that a two-thirds majority of those present and voting cannot be attained. For example, if 40 delegations were persuaded to abstain or were merely absent, only 21 'no' votes would be needed for a proposition favoured by the remaining 39 delegations to fall. These calculations all assume a vote on a matter of substance under Rule 28.4. It would be harder to avoid defeat on a simple majority vote under Rule 28.1, which is why there is likely to be pressure for some matters which might in other circumstances be regarded as procedural to be defined on this occasion as matters of substance.

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<sup>52</sup>Nicholas A. Sims, *The Functions of the BTWC Review Conferences: Maximizing The Benefits From The Fifth Review Conference*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 2, April 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

<sup>53</sup>Nicholas A. Sims, *Nurturing the BWC: Agenda for the Fifth Review Conference and Beyond*, The CBW Conventions Bulletin, Issue No. 53, September 2001, pp. 3-5. Available at <http://www.fas.harvard.edu/~hsp>



75. It is always possible that individual votes might be swung by positive or negative incentives, but it is questionable whether a State Party facing defeat would consider it worth the effort to prevent an adverse outcome. It might instead simply walk away after Day 1 and leave the remaining States Parties to get on with the work.

## Analysis

76. If the United States found itself in that position, either walking away after Day 1 of the resumed session or staying to be defeated on majority votes, the question then arises of what retaliation, if any -- given the marginalisation of the BTWC from U.S. policy on countering the threat from biological and toxin weapons -- might be expected after the Conference.

77. The resort to voting would undoubtedly alienate the present U.S. government, but its consequences in breaking a debilitating deadlock and enabling the BTWC to go forward might yet be welcomed by future Administrations when wiser counsels prevail. There needs to be a strengthened BTWC treaty regime for a future, multilaterally-inclined, U.S. government to engage with later, as well as for the benefit of other States Parties in the meantime.

78. The retaliatory options open to the present U.S. government under the BTWC are few. Because Review Conferences can in the last resort proceed by vote, and can mandate any future BTWC meetings they may authorise to proceed by vote under a similar absence of consensus, the U.S. cannot use the consensus rule to impose an effective veto. Because there are as yet no permanent or even interim institutions in the service of the Convention, there is no budgetary sanction available to the U.S. as a threat to the continued operation of such institutions. At worst, withholding of its pro-rated contributions to the costs of Review Conferences and any other meetings during the period of U.S. retaliation would slightly increase the share of costs payable by each of the other States Parties. But such costs are well within their means.

79. U.S. absence from meetings of which it disapproves, as from the Fifth Review Conference if its duration exceeds the one day to which the U.S. wants the resumed session to be restricted, would **not** invalidate their proceedings or prevent the other States Parties organising to deal more effectively with the BTW threat.

80. It would be regrettable if the U.S. were to retaliate by discontinuing its annual declarations under the long-established programme of Confidence-Building Measures, which it did much to inaugurate in 1986. However, declared and undeclared information about the U.S. is more likely to be made available both on the web and through the media -- as was demonstrated by the New York Times on 5 September 2001 in respect of three previously undeclared U.S. biodefence programmes<sup>54</sup> -- than would be the case in less open societies.

81. There is much residual goodwill towards the BTWC in U.S. non-official circles, which continue to include some of its most knowledgeable and committed advocates. U.S. scientists, scholars, politicians and NGOs have made many distinguished contributions to the origins and subsequent development of the BTWC since the 1960s and have been active in efforts to strengthen it. Nor should the value of U.S. diplomacy to the BTWC in the past be underestimated. Its eclipse in recent years is as regrettable as its revival will be welcomed

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<sup>54</sup>Judith Miller, *When is Bomb Not a Bomb? Germ Experts Confront U.S.*, New York Times, 5 September 2001.

when U.S. policy shifts back, as it should undoubtedly do eventually, towards strengthening the BTWC.

82. U.S. performance of its Depositary responsibilities, which are primarily legal rather than political, is unlikely to be affected by any political retaliation; but even if the present U.S. government were to decline to act as a Depositary, the BTWC would continue to be served by the other two Depositaries: the Russian Federation and the United Kingdom. They could act without the U.S., at least in dealings with all States Parties which had deposited their instruments of ratification or accession in London or Moscow. The Convention in its designation of Depositaries does not afford them, individually or collectively, any blocking rights.

83. For the sake of completeness it should be noted that the U.S. has two other sanctions available to it under the BTWC. It could use its veto as a Permanent Member of the UN Security Council to stop an investigation being initiated under Article VI. It could also use its veto against a Security Council finding of exposure to danger resulting from a violation of the BTWC which would otherwise trigger international measures of practical support to the victim State Party under Article VII. However, there is no precedent for Article VI or Article VII being invoked, and if they were to be invoked it is hard to see how obstructing the implementation of either Article would sit well with the repeated U.S. emphasis on dealing more robustly than before with cases of BTWC non-compliance.

84. This analysis so far has assumed that the U.S. will remain a party to the BTWC, however inactive its participation under its present government, further disenchanted by a resort to voting at the resumed session. If, on the other hand, the U.S. were to take retaliation to the point of exercising its conditional right of withdrawal under Article XIII, paragraph 2, only three months' notice need be given. It might, for example, 'name names' in an attempt to justify the withdrawal-clause criterion of extraordinary BTWC-related events jeopardizing its national security. This would be an extreme and drastic act, especially given the many U.S. government professions of commitment to the BTWC; but it is difficult to see how the U.S. would benefit, or how the remaining States Parties would suffer, unless leaving the BTWC were to be accompanied by the creation of a rival regime for like-minded governments equally alienated from the BTWC. There is no sign of such a move attracting support, even if the U.S. were contemplating an initiative in that direction. On the contrary, **no** government has even joined the present U.S. government in distancing itself from involvement in strengthening the BTWC to the extent that, ill-advisedly, it seems intent on doing.

85. Instead, most States Parties will continue to pursue a BTWC agenda with or without the participation of the U.S.. For them, what matters is strengthening the treaty constraints against BTW which are built on principles of equality and reciprocity. These treaty constraints are not a distraction or an irrelevance but -- for the great majority of states -- constitute the main framework of law and diplomacy within which to counter the BTW threat: a framework which needs consolidation and reinforcement.

86. From their point of view, there is nothing to be gained from allowing the present U.S. government to hold them back from pursuing their agenda. On the contrary, there is every reason given the gravity of the BTW threat to use the years between now and 2006 to intensify their efforts to strengthen the BTWC. The precedent of having resorted to decision-making by majority vote in November 2002 would also serve usefully to discourage other, potentially obstructive, States Parties from making any future attempt to block decisions. The U.S. is by no means the only conceivable source of obstruction for the BTWC, and it is

important to prevent the imposition of effective vetoes on BTWC diplomacy, from whatever quarter they might arise.

87. First, however, the majority of States Parties with the interests of the BTWC at heart must make sure that the uncertainties surrounding the resumed session of the Fifth Review Conference are successfully overcome, and the best options chosen, as a foundation for progress in working together to strengthen the Convention over the years ahead.

### **Conclusions -- A Time for Action**

88. The risks from biological weapons are currently of greater concern worldwide following the anthrax attacks in the United States and the concerns expressed about the possession of biological weapons by Iraq being voiced particularly by the United States and the United Kingdom. The growing awareness that the burgeoning developments in biotechnology may be misused for hostile purposes has led to the International Committee of the Red Cross launching a rare appeal to States to adopt an International Declaration on "Biotechnology, Weapons and Humanity". Against this background, it is simply **not** an option to do nothing at the resumed Review Conference in November 2002.

89. Although it would be preferable to move ahead by consensus to a Final Declaration that extends further the understandings developed at previous Review Conferences and enables future meetings to strengthen the regime, the very apparent uncertainties about the United States position must not be allowed to **paralyse** the great majority of the other States Parties to the Convention who have expressed, in their statements this September and October to the First Committee, their wish to move forward to a strengthened regime for the Biological and Toxin Weapons Convention.

90. If the States Parties choose to go along meekly with whatever the United States decides that it wants to do -- "*a quick and quiet*" termination of the Review Conference or as in the words of the UN Under Secretary-General "*a ten-minute revolving door exercise*" -- with no evident steps to strengthen the BTWC regime, history will indeed see the BTWC as being "*in agony*" and the failure to utilize the resumed Fifth Review Conference seen as the point when the Convention began to fall into disrepute. It is a time when the like-minded States Parties - - and there are indeed many of them -- the EU and its associated States (~ 29 States), the other 33 States who participated in the EU-Latin America and Caribbean summit in Madrid earlier this year, the Andean Community (5 States) and the ASEAN States (10 States) as well as States such as Australia, Canada, Japan, New Zealand, Republic of Korea, and South Africa, amounting in all to some 78 States -- need to recognise their responsibilities as States Parties to the Convention and to stand up and be counted at the resumed Review Conference in Geneva in November 2002.

91. The analysis of **to vote or not to vote** provided in this paper makes it clear that, although voting is best avoided, voting should certainly be adopted if this is necessary to rescue the Review Conference from the continued intransigence of one State Party, the United States. The security of the international community of States Parties demands that the Review Conference be rescued and that the work to strengthen the BTWC regime continue. It is time for action -- after all, as John Bolton said in Tokyo, albeit in a different context, "*A single arrow is easily broken, a bundle of ten is not.*" Likewise the great majority of the States Parties should not easily be broken.

92. States Parties may need to be alert in the first few minutes of the resumed Fifth Review Conference as it would be then that, were the President to suggest that there was a consensus for a very short Review Conference merely agreeing to a further Review Conference in 2006, they would need to speak to ensure that this did not happen by default.