

# **Strengthening the Biological Weapons Convention**

## **Review Conference Paper No 14**

### **The UN Secretary-General's High Level Panel: Biological Weapons Related Issues**

**May 2005**

**Series Editors**

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# THE UN SECRETARY-GENERAL'S HIGH LEVEL PANEL: BIOLOGICAL WEAPONS RELATED ISSUES

by Graham S. Pearson

## Introduction

1. The Secretary-General in his speech<sup>1</sup> to the General Assembly in September 2003 argued that the United Nations faced a decisive moment. He pointed out that in his September 2003 report<sup>2</sup> on the implementation of the Millennium Declaration<sup>3</sup> he had said that:

*The United Nations finds itself at a critical juncture: unless the Security Council regains the confidence of States and of world public opinion, individual States will increasingly resort exclusively to their own national perceptions of emerging threats and to their own judgement on how best to address them. To forestall such a development, the United Nations will have to demonstrate its ability to deal with the most difficult issues, and to do so effectively.*

and in his speech to the General Assembly he went on to say that he would establish a High-Level Panel of eminent personalities, to which he would assign four tasks:

*First, to examine the current challenges to peace and security;*

*Second, to consider the contribution which collective action can make in addressing these challenges;*

*Third, to review the functioning of the major organs of the United Nations and the relationship between them; and*

*Fourth, to recommend ways of strengthening the United Nations, through reform of its institutions and processes.*

He added that *the Panel will focus primarily on threats to peace and security. But it will also need to examine other global challenges, in so far as these may influence or connect with those threats.*

2. The High-Level Panel on Threats, Challenges and Change was established<sup>4</sup> on 3 November 2003 with the terms of reference specifically to:

*(a) Examine today's global threats and provide an analysis of future challenges to international peace and security. While there may continue to exist a diversity of perceptions on the relative importance of the various threats facing particular*

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<sup>1</sup> United Nations Secretary-General, *Address to the General Assembly*, 23 September 2003. Available at <http://www.un.org/apps/sg/sgstats.asp?nid=517>

<sup>2</sup> United Nations General Assembly, *Implementation of the United Nations Millennium Declaration, Report of the Secretary-General*, A/58/323, 2 September 2003.

<sup>3</sup> United Nations General Assembly, *Resolution 55/2 United Nations Millennium Declaration*, adopted 8 September 2000, A/RES/55/2, 18 September 2000.

<sup>4</sup> United Nations General Assembly, *Letter dated 3 November 2003 from the Secretary-General to the President of the General Assembly*, A/58/612, 28 November 2003.

*Member States on an individual basis, it is important to find an appropriate balance at a global level. It is also important to understand the connections between different threats;*

*(b) Identify clearly the contribution that collective action can make in addressing these challenges;*

*(c) Recommend the changes necessary to ensure effective collection action, including but not limited to a review of the principal organs of the United Nations.*

3. The membership of the High-Level Panel was:

Anand **Panyarachun** (Thailand) (*Chair*) Former Prime Minister of Thailand

Robert **Badinter** (France) Member of the French Senate and former Minister of Justice of France

João Clemente **Baena Soares** (Brazil) Former General Secretary of the Ministry of External Relations of Brazil and former Secretary-General of the Organization of American States

Gro Harlem **Brundtland** (Norway) Former Prime Minister of Norway and former Director-General of the World Health Organization

Mary **Chinery-Hesse** (Ghana) Vice-Chairman of the National Development Planning Commission of Ghana and former Deputy Director-General of the International Labour Organization

Gareth **Evans** (Australia) President of the International Crisis Group and former Minister for Foreign Affairs of Australia

David **Hannay** (United Kingdom of Great Britain and Northern Ireland) Former Permanent Representative of the United Kingdom to the United Nations and former United Kingdom Special Envoy to Cyprus

Enrique **Iglesias** (Uruguay) President of the Inter-American Development Bank and former Minister for Foreign Relations of Uruguay

Amre **Moussa** (Egypt) Secretary-General of the League of Arab States and former Minister for Foreign Affairs of Egypt

Satish **Nambiar** (India) Former Lt. General in the Indian Army and Force Commander of UNPROFOR

Sadako **Ogata** (Japan) President of the Japan International Cooperation Agency and former United Nations High Commissioner for Refugees

Yevgeny **Primakov** (Russian Federation) Former Prime Minister of the Russian Federation

**Qian Qichen** (China) Former Vice Premier and Minister for Foreign Affairs of China

**Nafis Sadik** (Pakistan) Special Envoy of the United Nations Secretary-General for HIV/AIDS in Asia and former Executive Director of the United Nations Population Fund

**Salim Ahmed Salim** (United Republic of Tanzania) Former Prime Minister of the United Republic of Tanzania and former Secretary-General of the Organization of African Unity

**Brent Scowcroft** (United States of America) Former Lt. General, United States Air Force, and former United States National Security Adviser

4. The General Assembly on 3 December 2003 in its resolution<sup>5</sup> A/RES/58/16 entitled *Responding to global threats and challenges* welcomed the establishment by the Secretary-General of the High-Level Panel on Threats, Challenges and Change to make recommendations for the elements of a collective action, and expressed its readiness to consider as a matter of priority at its fifty-ninth session the recommendations of the Secretary-General thereon.

5. The General Assembly on 6 May 2004 decided<sup>6</sup> to convene in New York, at the start of its sixtieth session, a high level plenary meeting of the Assembly, in which heads of State and Government would participate — in other words, a summit — on dates to be decided by the Assembly at its present session. In the Secretary-General's report<sup>7</sup> on the modalities for the high level session, he noted that the General Assembly had asked the Secretary-General to submit a comprehensive report on the Millennium Declaration. He said that this report would be presented in March 2005. Whilst the report will cover all areas of the Millennium Declaration, the Secretary-General said that:

*6. The report will also draw, in particular in the area of peace and security, on the findings of the High-level Panel on Threats, Challenges and Change which I established one year ago and which will submit its report to me on 2 December 2004. I intend to transmit the report of the Panel to Member States without delay, together with some comments and suggestions concerning the discussion of the recommendations of the Panel and the decisions to be taken thereon, outlining, in particular, which of the recommendations may require follow-up in the various intergovernmental bodies in the United Nations system.*

The General Assembly on 17 December 2004 decided<sup>8</sup> that the high level plenary meeting of the Sixtieth Session would be held on 14 to 16 September 2005 in New York.

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<sup>5</sup> United Nations General Assembly, *Resolution 58/16 Responding to global threats and challenges*, adopted 3 December 2004, A/RES/58/16, 26 January 2004.

<sup>6</sup> United Nations General Assembly, *Resolution 58/291. Follow-up to the outcome of the Millennium Summit and integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic and social fields*, adopted 6 May 2004, A/RES/58/291, 17 May 2004.

<sup>7</sup> United Nations General Assembly, *Modalities, format and organization of the High-Level Plenary Meeting of the Sixtieth Session of the General Assembly, Report of the Secretary-General*, A/59/545, 1 November 2004.

<sup>8</sup> United Nations General Assembly, *Resolution 59/145. Modalities, format and organization of the High-level Plenary Meeting of the Sixtieth Session of the General Assembly*, adopted 17 December 2004, A/RES/59/145, 13 January 2005.

6. The Report of the High Level Panel was issued<sup>9</sup> on 2 December 2004. In his covering note the Secretary-General said that he wholly endorsed the core arguments of the High Level Panel for “*a broader, more comprehensive concept of collective security: one that tackles new and old threats and addresses the security concerns of all States – rich and poor, weak and strong.*” [Emphasis in original] The Secretary-General also urged that “*we should move forward quickly and take action on recommendations wherever we can.*”

7. The Secretary-General’s comprehensive report<sup>10</sup> on the Millennium Declaration, mentioned above, was presented to the General Assembly on 21 March 2005. In the introduction to this report, the Secretary-General says that he has *drawn inspiration from two wide-ranging reviews of our global challenges — one from the 16-member High-level Panel on Threats, Challenges and Change, whom I asked to make proposals to strengthen our collective security system (see A/59/565); and the other from the 250 experts who undertook the Millennium Project.* The Secretary-General goes on to state that:

*I have resisted the temptation to include all areas in which progress is important or desirable. I have limited myself to items on which I believe action is both vital and achievable in the coming months. These are reforms that are within reach — reforms that are actionable if we can garner the necessary political will. With very few exceptions, this is an agenda of highest priorities for September. Many other issues will need to be advanced in other forums and on other occasions.*

8. A number of recommendations in the High Level Panel report relate to the States Parties to the Biological and Toxin Weapons Convention (BTWC). Whilst the States Parties to the BTWC will be holding a meeting in Geneva on 5 to 9 December 2005, this meeting is held under the decision of the Fifth Review Conference that annual meetings would be held between the Fifth and Sixth Review Conferences to consider specific topics with the topic for 2005 being:

*v. the content, promulgation, and adoption of codes of conduct for scientists*

Although, as at the Meeting of the BTWC States Parties in Geneva on 6 to 10 December 2004, it is probable that, in the opening plenary meeting of 2005, States Parties will in their statements refer to the recommendations of the Secretary-General’s High Level Panel on Threats, Challenges and Change, the States Parties will first have the opportunity to consider these recommendations at the Sixth Review Conference to be held in 2006.

9. Although terrorism was a major topic of concern in the High Level Panel report, in this Review Conference Paper it is recognised that the counters to threats posed by biological weapon attacks – whether by States or by sub-State actors such as terrorist groups – needs to be addressed by a multilayered approach or web of assurance – which embraces all possible measures. Any single measure alone will not suffice – it is the mutually reinforcing effect of the different elements of the web of assurance that will be effective in countering the threat from biological weapons.

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<sup>9</sup> United Nations General Assembly, *Note by the Secretary-General*, A/59/565, 2 December 2004.

<sup>10</sup> United Nations General Assembly, *In larger freedom: towards development, security and human rights for all*, *Report of the Secretary-General*, A/59/2005, 21 March 2005.

10. It is, however, evident that the High Level Panel's recommendations particularly insofar as they have been incorporated into the Secretary-General's comprehensive report on the Millennium Declaration will receive attention at the General Assembly session commencing in September 2005 as well as at the BTWC Sixth Review Conference in 2006. It is therefore timely in this Review Conference Paper to examine those aspects of the High Level Panel report and of the subsequent Secretary-General's comprehensive report on the Millennium Declaration relating to the threat from biological weapons and to the recommendations related to such weapons.

11. This Review Conference paper sets out the conclusions and recommendations relating to biological weapons first in the High Level Panel's report, then in the Secretary-General's report of 21 March 2005 and finally in the Secretary-General's recommendations for decision by the Heads of State and Government at the Summit Plenary of the General Assembly on 14 – 16 September 2005. These conclusions and recommendations are then analysed from the point of view of the States Parties to the Biological and Toxin Weapons Convention in the reverse order – first the Summit Plenary, then the Secretary-General's recommendations and finally the High Level Panel's recommendations. Consideration is given to how these should be addressed and taken forward at the BTWC Sixth Review Conference in 2006.

### **High Level Panel on Threats, Challenges and Change**

12. The High-Level Panel report, A/59/565, embraces a wide range of topics. In considering its report, it needs to be recognised that the Panel covered an extremely broad canvas in its six meetings and that the Panel although knowledgeable in many areas could not be regarded as expert in every area that it addressed. However, the Panel were aware of the tensions in the areas such as public health and security that they addressed and they were, in addition, seeking to take an independent view of the threats, challenges and change<sup>11</sup>.

13. The Panel report points out that

*The case for collective security today rests on three basic pillars. Today's threats recognize no national boundaries, are connected, and must be addressed at the global and regional as well as national levels. No State, no matter how powerful, can by its own efforts alone make itself invulnerable to today's threats. And it cannot be assumed that every State will always be able, or willing, to meet its responsibility to protect its own peoples and not to harm its neighbours.*

It goes on to identify what presents a threat to international security as being:

*Any event or process that leads to large-scale death or lessening of life chances and undermines States as the basic unit of the international system is a threat to international security. So defined, there are six clusters of threats with which the world must be concerned now and in the decades ahead:*

- *Economic and social threats, including poverty, infectious disease and environmental degradation*
- *Inter-State conflict*

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<sup>11</sup> High Level Panel research staff, *Private communication*, 7 April 2005.

- *Internal conflict, including civil war, genocide and other large-scale atrocities*
- *Nuclear, radiological, chemical and biological weapons*
- *Terrorism*
- *Transnational organized crime*

14. In regard to infectious disease and biological weapons, two sections address relevant aspects: “*III Poverty, infectious disease and environmental degradation*” and “*V Nuclear, radiological, chemical and biological weapons.*” Understandably, the High Level Panel report is compressed and deals with many topics in only a few paragraphs.

#### *Infectious Disease*

15. In regard to infectious disease, the report in Section III states that:

*68. The fight against HIV/AIDS, tuberculosis and malaria depends on capable, responsible States with functioning public health systems. The absence of health facilities is the primary factor spurring the proliferation of malaria. Funding gaps are preventing health-sector reforms in many heavily burdened countries, particularly those in South Asia and sub-Saharan Africa. Inconsistent or partial treatment, resulting from insufficient funding, has allowed new strains of tuberculosis to develop that are far more difficult to treat. Even when programme funding for HIV/AIDS is available, inadequate or non-existent health facilities in the poorest areas of sub-Saharan Africa hinder programmes from being effectively or sustainably implemented. **International donors, in partnership with national authorities and local civil society organizations, should undertake a major new global initiative to rebuild local and national public health systems throughout the developing world.** [Emphasis in original]*

*69. Such efforts should be undertaken simultaneously with improving global disease monitoring capabilities. This is triply imperative — as a means of fighting new emerging infectious disease, defending against the threat of biological terrorism and building effective, responsible States. **Members of the World Health Assembly should provide greater resources to the WHO Global Outbreak Alert and Response Network to increase its capacity to cope with potential disease outbreaks.** [Emphasis in original]*

*70. In extreme cases of threat posed by a new emerging infectious disease or intentional release of an infectious agent, there may be a need for cooperation between WHO and the Security Council in establishing effective quarantine measures.*

16. Although mention is made elsewhere in the report to food insecurity, it is notable that the emphasis adopted by the High Level Panel in regard to infectious disease has focussed exclusively on the dangers of disease as a threat to humans and the potential threat to animals and plants is not mentioned. It can be speculated that this may, in part, reflect the participation in the High Level Panel of the past Director General of the World Health Organization (WHO). In addition, the High Level Panel in its paragraph 70 may have been seeking to deal with an outbreak of disease with overwhelming consequences and may have considered that such circumstances may necessitate cooperation between the WHO and the Security Council. It is also possible that the High Level Panel considered that if the danger

from a deliberate outbreak of human disease was sufficiently great – at a very high threshold – then the circumstances may necessitate cooperation between the WHO and the Security Council. Whilst the High Level Panel report refers in several places to the WHO, there is no mention of the comparable animal and plant health organizations – the OIE and the FAO. This failure to address overwhelming outbreaks of animal or plant disease may reflect a perception that the danger from human disease outbreaks has greater impact than animal or plant disease outbreaks.

### *Chemical and Biological Weapons*

17. In regard to chemical and biological weapons, the report in Section V *Nuclear, radiological, chemical and biological weapons* addresses:

A. *The threats we face*

B. *Meeting the challenge of prevention*

1. *Better strategies to reduce demand*
2. *Better strategies to reduce supply*
3. *Better enforcement capability*
4. *Better public health defences.*

Both chemical and biological weapons are considered together in the High Level Panel report. This Review Conference Paper considers each of these sections in turn.

18. In regard to *the threats we face*, the Panel states that:

*114. Chemical and biological materials also pose a growing threat: they share with nuclear weapons the awful potential of being used in a single attack to inflict mass casualties. Chemical agents are widespread and relatively easy to acquire and weaponize. There are almost 6,000 industrial chemical facilities worldwide, posing potential targets and opportunities for the acquisition of materials. Chemical weapon States have lagged behind in the destruction of chemical weapons scheduled by the Chemical Weapons Convention: of the 70,000 metric tons of declared weapons agents, the Organization for the Prohibition of Chemical Weapons (OPCW) has verified the destruction of only 9,600, and if the current pace persists, the Convention’s goal of the complete destruction of chemical weapons agents will not be met even by the agreed extended deadline of 2012.*

*115. While rapid growth and scientific advances in the biotechnology sector hold out the prospect of prevention and cure for many diseases, they also increase opportunities for the development of deadly new ones. Dramatic advances in recombinant DNA technology and direct genetic manipulation raise the spectre of “designer bugs”, which may be developed to reconstruct eradicated diseases and to resist existing vaccinations, antibiotics and other treatments. There are countless fermentation, medical and research facilities equipped to produce biological agents. Meanwhile, the biological toxin ricin has been discovered in several terrorist workshops. Unlike anthrax, which can be treated by antibiotics, ricin has no antidote and is lethal to humans in quantities smaller than the size of a pinhead. Use of similar materials to cause deliberate outbreaks of infectious disease could prove equally if*

*not more lethal than a nuclear detonation. Under worst-case assumptions, an attack using only one gram of weaponized smallpox could produce between 100,000 and 1,000,000 fatalities.*

*116. That a high-damage attack has not occurred is not a cause for complacency but a call for urgent prevention.*

The potential danger from biological weapons is recognised both in the opening sentence of para. 114 and in the body of para. 115 whilst para. 116 rightly calls for urgent prevention.

19. Insofar as *meeting the challenge of prevention*, the Panel states that:

*117. Multilayered action is required. The first layer of an effective strategy to prevent the proliferation of nuclear, radiological, chemical and biological weapons should feature global instruments that reduce the demand for them. The second layer should contain global instruments that operate on the supply side — to limit the capacity of both States and non-State actors to acquire weapons and the materials and expertise needed to build them. The third layer must consist of Security Council enforcement activity underpinned by credible, shared information and analysis. The fourth layer must comprise national and international civilian and public health defence.*

20. This approach is essentially identical to the web of deterrence or web of assurance that I have long advocated<sup>12</sup>:

*There continues to be a vital need in every country for all the elements of the **web of assurance** -- to assure the public that all reasonable steps have been taken both nationally and internationally. The web of assurance is made up of the following elements:*

*a. International and national regimes that totally prohibit chemical and biological weapons.*

- Universality of the BTWC and CWC and the 1925 Geneva Protocol*
- Withdrawal of all reservations to the Geneva Protocol*
- Legally binding instrument to strengthen the effectiveness of the BTWC*
- National implementing legislation for BTWC and CWC in all countries*

*b. Controls of dangerous pathogens and chemicals*

- Addressing handling, use, storage and transfer both nationally and internationally*

*c. Broadband protective measures*

- Preparedness, detection, diagnosis and medical countermeasures*

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<sup>12</sup> Most recently in Graham S. Pearson, *21 Years of CBW Protection: A Changing World*, 8th International Symposium on Protection against Chemical and Biological Agents, Gothenburg, Sweden, 2-6 June 2004. Also available in Bradford Briefing Paper (Second Series) No. 14, *Two Decades of Strengthening CBW Prohibitions: Priorities for the BTWC in the 21st Century*, University of Bradford, Department of Peace Studies, November 2004. Available at <http://www.brad.ac.uk/acad/sbtwc>

-- Preparedness **before** and after release

d. *Determined national and international response to use or threat of use*

-- Diplomatic actions, sanctions, military intervention

-- Security Council P5 need to recognise their responsibilities

*A strong public commitment to such a web of assurance both nationally and internationally provides two immense benefits -- first to deter the would-be user and second to reassure the public both nationally and internationally that all reasonable steps are being taken to ensure their safety and security.*

21. In considering *better strategies to reduce demand*, the Panel report has seven paragraphs addressing nuclear weapons and one paragraph relating to biological weapons which says:

*126. Verification of the Chemical Weapons Convention should also be further strengthened, and the long-standing impasse over a verification mechanism for the Biological and Toxin Weapons Convention, which has undermined confidence in the overall regime, should be overcome. **States parties to the Biological and Toxin Weapons Convention should without delay return to negotiations for a credible verification protocol, inviting the active participation of the biotechnology industry.** States parties to the Biological and Toxin Weapons Convention and the Chemical Weapons Convention must increase bilateral diplomatic pressure to universalize membership. [Emphasis in original]*

22. On *better strategies to reduce supply*, the Panel report has some eight paragraphs relating to nuclear weapons, three which relate to nuclear, biological and chemical weapons and one relating specifically to biological weapons. Those relating to nuclear, biological and chemical weapons are:

*133. In order to reinforce international legal provisions against the illicit trafficking of nuclear, biological and chemical weapons and materials, ongoing negotiations at the International Maritime Organization (IMO) to amend the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation should be completed in a timely manner. The Security Council may need to be prepared to consider mandatory action if progress in the Convention negotiations is unsatisfactory.*

and

*135. Urgent short-term action is needed to defend against the possible terrorist use of nuclear, radiological, chemical and biological weapons. High priority must be accorded to consolidating, securing, and when possible eliminating potentially hazardous materials, and implementing effective export controls. To that end, we welcome the Global Threat Reduction Initiative, which facilitates (a) the reduction of global highly enriched uranium stockpiles, (b) the conversion of HEU research reactors to “proliferation-resistant” reactors, and (c) the “downblending” of existing HEU. **The proposed timeline for implementing the Global Threat Reduction Initiative should be halved from 10 to 5 years.** [Emphasis in original]*

*136. The Security Council, acting under its resolution 1540 (2004), can offer States model legislation for security, tracking, criminalization and export controls, and by 2006 develop minimum standards for United Nations Member State implementation. To achieve that goal, the implementation committee of Council resolution 1540 (2004) should establish a permanent liaison with IAEA, OPCW and the Nuclear Suppliers Group.*

23. The paragraph relating specifically to biological weapons is:

*137. States parties to the Biological and Toxin Weapons Convention should also negotiate a new bio-security protocol to classify dangerous biological agents and establish binding international standards for the export of such agents. Within a designated time frame, States parties to the Convention should refrain from participating in such biotechnology commerce with non-members. [Emphasis in original]*

It is noted that para. 137 relates specifically to biological agents and that there is no parallel relating to chemical agents other than the recognition of the steps that the Security Council can take under SCR 1540 (2004) and the proposal in para. 136 for establishing a permanent liaison with the OPCW. There is, somewhat surprisingly, no parallel proposal for establishing any permanent liaison with the States Parties to the BTWC. Whilst there may currently not be any OPBW or even an interim supportive institution for the BTWC, this is something which could be remedied relatively easily<sup>13</sup> by the States Parties to the BTWC and it is regretted that the High Level Panel has not recommended establishment of permanent liaison with a future secretariat for the BTWC.

24. In a like vein, it is noted that this section in addressing nuclear weapons includes a proposal relating to withdrawal from the Nuclear Non-Proliferation Treaty in para. 134:

*134. While the Treaty on the Non-Proliferation of Nuclear Weapons provides the right of withdrawal from the Treaty, States should be urged not to do so. Those who withdraw should be held responsible for violations committed while still a party to the Treaty. A State's notice of withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons should prompt immediate verification of its compliance with the Treaty, if necessary mandated by the Security Council. The IAEA Board of Governors should resolve that, in the event of violations, all assistance provided by IAEA should be withdrawn. [Emphasis in original]*

It is observed that both the BTWC and the CWC include Articles which provide a right of withdrawal from them. It is regretted that the High Level Panel has not used parallel language urging the States not to withdraw from the BTWC and the CWC and has not recommended that a State's notice of withdrawal from the BTWC or from the CWC should prompt immediate verification of its compliance with these Conventions, if necessary mandated by the Security Council.

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<sup>13</sup> Nicholas A. Sims, *Remedies for the Institutional Deficit of the BTWC: Proposals for the Sixth Review Conference*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 12, March 2005. Available at <http://www.brad.ac.uk/acad/sbtwc>

25. In regard to *better enforcement capability*, the High Level Panel stated that:

*139. The Security Council today has few arrows in its quiver other than sanctions and military force to enforce non-proliferation agreements. Moreover, a special referral to the Security Council that results in no action is worse than no referral. The ability of the Security Council to generate credible information about potential instances of proliferation should be strengthened.*

*140. To that end, links between IAEA and OPCW and the Security Council must also be strengthened. **The Directors-General of IAEA and OPCW should be invited by the Security Council to report to it twice-yearly on the status of safeguards and verification processes, as well as on any serious concerns they have which might fall short of an actual breach of the Treaty on the Non-Proliferation of Nuclear Weapons and the Chemical Weapons Convention.** [Emphasis in original]*

*141. The Security Council should also be prepared to deploy inspection capacities for suspected nuclear and chemical violations, drawing on the capacities of IAEA and OPCW. Until multilateral negotiations yield a Biological and Toxin Weapons Convention verification mechanism, the Security Council should avail itself of the Secretary-General's roster of inspectors for biological weapons, who should remain independent and work under United Nations staff codes. This roster of inspectors should also be available to advise the Council and liaise with WHO authorities in the event of a suspicious disease outbreak, as discussed below.*

It is again noted that the language in para. 140 whilst addressing the IAEA and the OPCW excludes any parallel consideration of the BTWC<sup>14</sup>. As noted earlier, whilst there may currently not be any OPBW or even an interim supportive institution for the BTWC, this is something which could be remedied relatively easily by the States Parties to the BTWC and it is regretted that the High Level Panel has not recommended that the head of a future secretariat for the BTWC should also report twice-yearly to the Security Council on the status of verification processes as well as on any serious concerns they have which might fall short of an actual breach of the BTWC. Although it might be argued that there are currently no verification processes under the BTWC, the opportunity could still be taken at the present time to report on the status of the annual confidence-building measure submissions by the States Parties and at a later stage to report on any eventually agreed verification or compliance measures. Such a step would help the Security Council to generate credible information about States Parties as recommended in para. 139.

26. In regard to the recommendation in para. 141 regarding use of the Secretary-General's roster of inspectors for biological weapons, note should be taken of the outcome of the Meeting of States Parties to the BTWC in December 2004 which specifically considered:

*iii. enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease;*

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<sup>14</sup> It should, however, be noted that toxins are covered by both the CWC and the BTWC and consequently it could be expected that the Director-General of the OPCW could cover verification processes and serious concerns relating to both chemicals and toxins.

and in its final report<sup>15</sup> concluded that:

*the States Parties recognised that:*

- a) capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease promote the object and purpose of the Convention;*
- b) States Parties' national preparedness and arrangements substantially contribute to international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease;*
- c) the Secretary-General's investigation mechanism, set out in A/44/561 and endorsed by the General Assembly in its resolution A/Res/45/57, represents an international institutional mechanism for investigating cases of alleged use of biological or toxin weapons.*

*21. The States Parties consequently agreed on the value of:*

- a) continuing to develop their own national capacities for response, investigation and mitigation, in cooperation with the relevant international and regional organisations, and, if in a position to do so, assisting and encouraging, with the necessary agreement, other States Parties to do the same;*
- b) the Sixth Review Conference considering, inter alia, the further development of current procedures for the provision of assistance, by those in a position to do so, to States Parties in cases of alleged use of biological weapons or suspicious outbreaks of disease.*

27. It should, however, be noted that the outcome of the Meeting of States Parties in December 2004 had failed<sup>16</sup> to reach consensus on the proposal put forward by the Chairman that:

*Recognising that the Secretary-General's investigation mechanism, set out in A/44/561 and endorsed by the General Assembly in its resolution A/Res/45/57, represents the only existing international institutional mechanism for investigating cases of alleged use of biological or toxin weapons, States Parties authorise the Chairman to write on their behalf to the Secretary-General to request that he review and consider updating the investigation mechanism ...*

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<sup>15</sup> United Nations, *Report of the Meeting of States Parties*, Meeting of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Second Meeting, Geneva, 6 - 10 December 2004, BWC/MSP/2004/3, 14 December 2004. Available at <http://www.opbw.org>

<sup>16</sup> Graham S. Pearson, *The Biological Weapons Convention Meeting of States Parties*, Report from Geneva, Review No 22, *The CBW Conventions Bulletin*, Issue No. 66, December 2004. Available at <http://www.sussex.ac.uk/Units/spru/hsp>

and on the proposal that the outcome paragraph would have included the following:

*b) consideration being given by the United Nations General Assembly to reviewing the Secretary General's mechanism for investigation of cases of alleged use of biological or toxin weapons, and the Sixth Review Conference considering, inter alia, any actions that may be taken in this regard, bearing in mind that any investigation of alleged use of biological or toxin weapons would be of direct relevance to violations of Article I of the Convention;*

Consequently, the recommendation in the High Level Panel report is welcomed.

28. On *better public health defences*, the High Level Panel stated:

*142. Scientific advancements in biotechnology and the ubiquity of facilities capable of producing biological agents circumscribe prospects for the elimination of biological weapons and complicate verification efforts. But unlike nuclear weapons, many (though not all) biological agents can be countered by vaccinations and effective responses (including rapid diagnosis, quarantines and treatment). Well prepared societies may thus be able to avoid the worst-case scenarios of biological attacks.*

*143. However, at present, international aid for infectious disease monitoring, detection and response is lacking, security planning and spending are poorly coordinated with health-care policies and budgets, and there is insufficient understanding that an inevitable, new biological future makes active bio-defence the most viable option against the likelihood of attack.*

*144. Given the potential international security threat posed by the intentional release of an infectious biological agent or an overwhelming natural outbreak of an infectious disease, there is a need for the WHO Director-General, through the Secretary-General, to keep the Security Council informed during any suspicious or overwhelming outbreak of infectious disease. In such an event, the Security Council should be prepared to support the work of WHO investigators or to deploy experts reporting directly to the Council, and if existing International Health Regulations do not provide adequate access for WHO investigations and response coordination, the Security Council should be prepared to mandate greater compliance. In the event that a State is unable to adequately quarantine large numbers of potential carriers, the Security Council should be prepared to support international action to assist in cordon operations. **The Security Council should consult with the WHO Director-General to establish the necessary procedures for working together in the event of a suspicious or overwhelming outbreak of infectious disease.** [Emphasis in original]*

29. It is noted that para. 142 makes the statement that *unlike nuclear weapons, many (though not all) biological agents can be countered by vaccinations and effective responses (including rapid diagnosis, quarantines and treatment)*. This is a surprising statement – which is in sharp contrast to the much more accurate assessment of biological weapons made in the earlier section on *the threats we face*, notably in para. 114 and 115 which recognize that “*deliberate outbreaks of infectious disease could prove equally if not more lethal than a nuclear detonation.*” Medical countermeasures such as vaccines and effective responses are only available for very few of the known biological agents and even there the vaccines are

not regarded as being suitable for much of the civil population. In any event, medical countermeasures and vaccines are not, by themselves, a solution. It may be that the High Level Panel was seeking to draw the distinction between nuclear and biological weapon attacks in that the response to biological weapon attacks can have a major effect in mitigation. Whilst this is true, it is considered that the High Level Panel was unduly optimistic and incorrect in its judgments expressed in the last two sentences of para. 142.

30. The statement made in para. 144 is also treading on dangerous ground saying that there is *a need for the WHO Director-General, through the Secretary-General, to keep the Security Council informed during any suspicious or overwhelming outbreak of infectious disease*. Throughout the past decade, it has become increasingly evident that the effectiveness of the World Health Organization rests on its political neutrality and the widespread recognition that its purpose is to provide assistance to its member States when they are faced with outbreaks of disease. Whilst the High Level Panel may have been seeking to address a situation in which there is an overwhelming outbreak of infectious disease – and suggesting that in such circumstances, the WHO and the Security Council should work together – the language actually used in para. 144 refers to “*any suspicious or overwhelming outbreak of infectious disease*” [Emphasis added]. The recommendation thus applies to **any** suspicious outbreak and as such is flawed. The ability of the WHO to carry out its primary mission will be jeopardized if there should be any suggestion that the Director-General of the WHO is going to keep the Security Council informed *during any suspicious ... outbreak of infectious disease*. [Emphasis added]. It is considered that the High Level Panel has failed to recognize the dangers that its proposals in para. 144 present to the primary mission of the WHO. In addition, as already noted earlier, the absence of any consideration of animal and plant infectious disease outbreaks – or of the OIE or FAO – indicates a limited appreciation of the threat posed by biological weapons.

31. There is, however, a much sounder argument that any overwhelming outbreak of disease, without regard to its cause, in humans, animals or plants may well merit urgent international action to mobilize aid and take steps to contain the outbreak that could be considerably facilitated by the Security Council. It is considered that it would have been much better in para. 144 to delete any mention of “suspicious or” and have extended the liaison to the Director-Generals of the WHO, OIE and FAO as appropriate.

32. The statement in para. 143 that *an inevitable, new biological future makes active bio-defence the most viable option* appears to recognize that the pace of development in biotechnology and the life sciences is such that the uncertain future necessitates public health defences that are ongoing and not dormant – and hence the reference to *active* bio-defence is taken as referring to a viable public, animal and plant health defence programme that is adjusted in the light of the likely dangers.

33. The High Level Panel is likely to have recognized the benefits that building public health defences can bring to improving the well-being of people around the globe in all countries – and that building public health defences also helps to counter the threat posed by biological weapons. It would, however, have been better if the High Level Panel report had clearly stated the benefits of building public, animal and plant health defences around the world and recognized that such enhanced public, animal and plant health defences would also counter the threat from biological weapons. Rather than jeopardizing the neutrality of the WHO through suggesting the linkage to the Security Council, it would have been prudent if the High Level Panel had recognized that strengthening the capabilities of the WHO, OIE and

FAO would improve the information available to all the Member States to counter human, animal and plant disease outbreaks. It would then be open for individual Security Council members to have judged whether a particular outbreak merited consideration by the Security Council for whatever reason.

34. *Analysis.* In considering the conclusions and recommendations of the High Level Panel it needs to be born in mind that the Panel covered an extremely broad canvas during the course of its six meetings and that none of the members of the Panel were particularly expert in the field of chemical or biological weapons. However, they were in areas aware of the tensions relating to particular aspects such as public health and security and made recommendations accordingly.<sup>17</sup>

### **Secretary-General's Comprehensive Report on the Millennium Declaration**

35. As noted earlier, the Secretary-General in his comprehensive report on the Millennium Declaration issued on 21 March 2005 has drawn inspiration from the High Level Panel report. However, in doing so, he has limited himself to items on which he believes action is both vital and achievable in the coming months. As he said these *are reforms that are within reach — reforms that are actionable if we can garner the necessary political will.*

#### *II Freedom from Want*

36. In the report in Section *II Freedom from Want* a subsection addresses *Infectious disease surveillance and monitoring* and states that:

*64. The rapid response to SARS also showed that the spread of infectious disease can be contained when effective global institutions, such as the World Health Organization (WHO), work in close partnership with functioning national health agencies and expert technical institution. No State could have achieved this degree of containment on its own. To strengthen existing mechanisms for timely and effective international cooperation, I call on Member States to agree on the revision of the International Health Regulations at the World Health Assembly to be held in May 2005. To contain the risk of future outbreaks, greater resources should also be given to the WHO Global Outbreak Alert and Response Network so that it can coordinate the response of a broad international partnership in support of national health surveillance and response systems. [Emphasis in original]*

#### *III Freedom from Fear*

37. In his report in section *III Freedom from Fear* he sets out *A vision of collective security* which includes:

*78. The threats to peace and security in the twenty-first century include not just international war and conflict but civil violence, organized crime, terrorism and weapons of mass destruction. They also include poverty, deadly infectious disease and environmental degradation since these can have equally catastrophic consequences. All of these threats can cause death or lessen life chances on a large scale. All of them can undermine States as the basic unit of the international system.*

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<sup>17</sup> High Level Panel research staff, *Private communication*, 7 April 2005.

He goes on to recognise that *in our globalized world, the threats we face are interconnected* and as a consequence:

*81. On this interconnectedness of threats we must found a new security consensus, the first article of which must be that all are entitled to freedom from fear, and that whatever threatens one threatens all. Once we understand this, we have no choice but to tackle the whole range of threats. ... Moreover, we must address all these threats preventively, acting at a sufficiently early stage with the full range of available instruments.*

*82. We need to ensure that States abide by the security treaties they have signed so that all can continue to reap the benefit. More consistent monitoring, more effective implementation and, where necessary, firmer enforcement are essential if States are to have confidence in multilateral mechanisms and use them to avoid conflict.*

*83. These are not theoretical issues but issues of deadly urgency. If we do not reach a consensus on them this year and start to act on it, we may not have another chance.*

...

38. In regard to nuclear, biological and chemical weapons, the Secretary-General in the vision of collective security states that;

*85. We must revitalize our multilateral frameworks for handling threats from nuclear, biological and chemical weapons. The threat posed by these weapons is not limited to terrorist use. The existence of multilateral instruments to promote disarmament and prevent proliferation among States has been central to the maintenance of international peace and security ever since those instruments were agreed. But they are now in danger of erosion. They must be revitalized to ensure continued progress on disarmament and to address the growing risk of a cascade of proliferation, especially in the nuclear field.*

39. Also in section *III Freedom from Fear*, another subsection addresses *Nuclear, biological and chemical weapons*. The first four paragraphs deal with nuclear weapons, the fifth with delivery means, the sixth with chemical weapons and the seventh and eighth with biological weapons and the final paragraph with how the Security Council could be better informed about nuclear, chemical and biological threats.

40. On delivery means, the Secretary-General states that:

*101. The availability of ballistic missiles with extended range and greater accuracy is of growing concern to many States, as is the spread of shoulder-fired missiles which could be used by terrorists. **Member States should adopt effective national export controls covering missiles and other means of delivery for nuclear, biological and chemical weapons, rockets and shoulder-fired missiles, as well as a ban on transferring any of them to non-State actors.** The Security Council should also consider adopting a resolution aimed at making it harder for terrorists to acquire or use shoulder-fired missiles. [Emphasis in original]*

41. In regard to chemical weapons, the Secretary-General focuses on the scheduled destruction of chemical weapons as well universality of accession to the CWC:

*102. Where progress has been made, it should be consolidated. The 1997 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction calls for the complete elimination and destruction of chemical weapons by all States parties, thus offering a historic opportunity to complete a task begun more than a century ago. **States parties to the Convention on Chemical Weapons should recommit themselves to achieving the scheduled destruction of declared chemical weapons stockpiles. I call upon all States to accede immediately to the Convention.** [Emphasis in original]*

42. On biological weapons, the Secretary-General looks ahead to the 2006 Review Conference, universality of accession to the BTWC as well as increased transparency of bio-defence programmes:

*103. The 1975 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction<sup>14</sup> has enjoyed a remarkable degree of support and adherence, and has been strengthened further through recent annual meetings. **States parties should consolidate the results of these meetings at the 2006 Review Conference and commit themselves to further measures to strengthen the Biological and Toxin Weapons Convention. I also call upon all States to accede immediately to the Convention and to increase the transparency of bio-defence programmes.** [Emphasis in original]*

In addition, he recommends strengthening of the capability of the Secretary-General to investigate suspected use of biological weapons:

*104. Further efforts are needed to bolster the biological security regime. The capability of the Secretary-General to investigate suspected use of biological agents, as authorized by the General Assembly in its resolution 42/37, should be strengthened to incorporate the latest technology and expertise; and the Security Council should make use of that capability, consistent with Security Council resolution 620 (1988).*

43. Finally, in regard to how the Security Council could be better informed about nuclear, chemical and biological threats:

*105. Indeed, the Security Council must be better informed on all matters relevant to nuclear, chemical and biological threats. I encourage the Council to regularly invite the Director-General of IAEA and the Director-General of the Organization for the Prohibition of Chemical Weapons to brief the Council on the status of safeguards and verification processes. And I myself stand ready, in consultation with the Director-General of the World Health Organization, to use my powers under Article 99 of the Charter of the United Nations to call to the attention of the Security Council any overwhelming outbreak of infectious disease that threatens international peace and security.*

V Strengthening the United Nations

44. In another section of the report *V Strengthening the United Nations* there is a particular recommendation relating to the Secretariat that has potential to have an impact on the regimes against chemical and biological weapons. This is the recommendation urging that all mandates over five years old be reviewed to see whether they are still genuinely required:

*187. Member States also have a central role to play in ensuring that the Organization's mandates stay current. I therefore ask the General Assembly to review all mandates older than five years to see whether the activities concerned are still genuinely needed or whether the resources assigned to them can be reallocated in response to new and emerging challenges.* [Emphasis in original]

### **Secretary-General's Recommendations for Decision by Heads of State and Government**

45. The Secretary-General's progress report concludes with an Annex entitled *For Decision by Heads of State and Government* at the Summit to be held at the United Nations in New York on 14 to 16 September 2005. The Annex in its introductory paragraphs states:

*3. No State can stand wholly alone in today's world. We all share responsibility for each other's development and security. Collective strategies, collective institutions and collective action are indispensable.*

*4. Heads of State and Government must therefore agree on the nature of the threats and opportunities before us and take decisive action.*

It then goes on in its section *II. Freedom from fear* to state:

*6. In order to provide effective collective security in the twenty-first century, I urge Heads of State and Government to pledge concerted action against the whole range of threats to international peace and security, and in particular to:*

*(a) Affirm and commit themselves to implementing a new security consensus based on the recognition that threats are interlinked, that development, security and human rights are mutually interdependent, that no State can protect itself acting entirely alone and that all States need an equitable, efficient and effective collective security system; and therefore commit themselves to agreeing on, and implementing, comprehensive strategies for confronting the whole range of threats, from international war through weapons of mass destruction, terrorism, State collapse and civil conflict to deadly infectious disease, extreme poverty and the destruction of the environment;*

*(b) Pledge full compliance with all articles of the Treaty on the Non-Proliferation of Nuclear Weapons, the Biological and Toxin Weapons Convention, and the Chemical Weapons Convention in order to further strengthen the multilateral framework for non-proliferation and disarmament, and in particular:*

...

(v) *Commit themselves to further strengthening the Biological and Toxin Weapons Convention;*

(vi) *Urge all chemical-weapon States to expedite the scheduled destruction of chemical-weapon stockpiles;*

## **Analysis**

46. Consideration can now be given to these various recommendations – those to be considered by the Heads of States and Government at the summit on 14 – 16 September 2005, those made in the Secretary-General's progress report issued on 21 March 2005 and those made in the Secretary-General's High Level Panel report issued on 2 December 2004. It needs, however, to be born in mind that the recommendations put forward for the summit on 14 – 16 September 2005 as well as those made in the Secretary-General's progress report issued on 21 March 2005 are qualified by the Secretary-General's covering words that:

*5. In the present report, I have resisted the temptation to include all areas in which progress is important or desirable. I have limited myself to items on which I believe action is both vital and achievable in the coming months. These are reforms that are within reach — reforms that are actionable if we can garner the necessary political will. With very few exceptions, this is an agenda of highest priorities for September. Many other issues will need to be advanced in other forums and on other occasions.*

In other words, they are focussed on those achievable in the coming months and the other issues will need to be addressed in other forums.

### *Summit Recommendations*

47. The summit recommendations relating to biological weapons are relatively modest. First the call for the Heads of State and Government to *pledge concerted action against the whole range of threats to international peace and security* and for them to *affirm and commit themselves to implementing a new security consensus based on the recognition that threats are interlinked, that development, security and human rights are mutually interdependent, that no State can protect itself acting entirely alone and that all States need an equitable, efficient and effective collective security system;* should serve to help achieve the right environment in which the regime countering biological and toxin weapons can be strengthened effectively.

48. The second relevant summit recommendation calls for the Heads of State and Government to *pledge full compliance with all articles of the Treaty on the Non-Proliferation of Nuclear Weapons, the Biological and Toxin Weapons Convention, and the Chemical Weapons Convention in order to further strengthen the multilateral framework for non-proliferation and disarmament.* This should provide a stimulus to all States Parties to enact national legislation to implement the BTWC in accordance with Article IV and to comply fully with all the articles of the Convention.

49. The third relevant summit recommendation calls for the Heads of State and Government to *commit themselves to further strengthening the Biological and Toxin Weapons Convention.* This should help to ensure that all States Parties approach the BTWC Sixth Review Conference in 2006 with a political commitment to further strengthen the Convention.

50. The Secretary-General recommendations relating to biological weapons are primarily in the section of his report dealing with *III Freedom from fear*. There is, however, one in the previous section *II Freedom from want* that is relevant. This relates to infectious disease and monitoring where the Secretary-General stated that:

*64. The rapid response to SARS also showed that the spread of infectious disease can be contained when effective global institutions, such as the World Health Organization (WHO), work in close partnership with functioning national health agencies and expert technical institutions. No State could have achieved this degree of containment on its own. To strengthen existing mechanisms for timely and effective international cooperation, I call on Member States to agree on the revision of the International Health Regulations at the World Health Assembly to be held in May 2005. To contain the risk of future outbreaks, greater resources should also be given to the WHO Global Outbreak Alert and Response Network so that it can coordinate the response of a broad international partnership in support of national health surveillance and response systems. [Emphasis in original]*

This recommendation is fully supported as it has not suggested any action that is contrary to the primary role of the WHO – and, in contrast to the recommendations of the High Level Panel, it has not suggested entangling the WHO in security matters which can only put the primary role of the WHO at risk.

51. In the section dealing with *III Freedom from fear* the Secretary-General rightly points out the interconnectedness of the threats that we face:

*81. On this interconnectedness of threats we must found a new security consensus, the first article of which must be that all are entitled to freedom from fear, and that whatever threatens one threatens all. Once we understand this, we have no choice but to tackle the whole range of threats. We must respond to HIV/AIDS as robustly as we do to terrorism and to poverty as effectively as we do to proliferation. We must strive just as hard to eliminate the threat of small arms and light weapons as we do to eliminate the threat of weapons of mass destruction. Moreover, we must address all these threats preventively, acting at a sufficiently early stage with the full range of available instruments.*

The point that *whatever threatens one threatens all* applies to all States – the largest as well as the smallest – and should serve as an impetus for **all** States to engage constructively in making the world safer for all of us. No State can afford to say that this doesn't apply to us or that our national measures will suffice.

52. The Secretary-General goes on to say that:

*82. We need to ensure that States abide by the security treaties they have signed so that all can continue to reap the benefit. More consistent monitoring, more effective implementation and, where necessary, firmer enforcement are essential if States are to have confidence in multilateral mechanisms and use them to avoid conflict.*

This again rightly puts the emphasis on more consistent monitoring and more effective implementation of the existing multilateral treaties. This again should help to ensure that the States Parties to the BTWC approach the Sixth Review Conference in 2006 constructively.

53. He goes on to emphasize the importance of revitalizing the multilateral frameworks for handling threats from nuclear, biological and chemical weapons:

*85. We must revitalize our multilateral frameworks for handling threats from nuclear, biological and chemical weapons. The threat posed by these weapons is not limited to terrorist use. The existence of multilateral instruments to promote disarmament and prevent proliferation among States has been central to the maintenance of international peace and security ever since those instruments were agreed. But they are now in danger of erosion. They must be revitalized to ensure continued progress on disarmament and to address the growing risk of a cascade of proliferation, especially in the nuclear field.*

These words are particularly true in regard to the BTWC – following the failure of the negotiations of a legally binding instrument in 2001 and the subsequent collapse of the Fifth Review Conference, this has been a Convention in crisis and with a real danger of erosion of its comprehensive prohibitions which have been extended and strengthened over the years by successive Review Conferences. There is a real necessity for the BTWC regime to be revitalized at the Sixth Review Conference – and this is achievable if all States Parties are indeed determined to maximise the benefits from the Convention regime.

54. The Secretary-General has one paragraph making recommendations directly relating to the BTWC:

*103. The 1975 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction has enjoyed a remarkable degree of support and adherence, and has been strengthened further through recent annual meetings. States parties should consolidate the results of these meetings at the 2006 Review Conference and commit themselves to further measures to strengthen the Biological and Toxin Weapons Convention. I also call upon all States to accede immediately to the Convention and to increase the transparency of bio-defence programmes.* [Emphasis in original].

This paragraph addresses the current situation in regard to the BTWC and makes no reference to past failures. It rightly emphasizes the importance of consolidating the results of the annual meetings at the Sixth Review Conference in 2006 – which is precisely what the mandate for the annual meetings requires:

*(e) The Sixth Review Conference will consider the work of these meetings and decide on any further action.*

It also rightly calls upon the States Parties to *commit themselves to further measures to strengthen* the Convention. Interestingly, this does not echo the recommendations made in the High Level Panel report.

55. The urging of *all States to accede immediately to the Convention* is welcomed. This reflects the call that has been frequently made by the States Parties with a recent example being the joint statement issued by the three BTWC Depositary States – the Russian Federation, the UK and the USA –to mark the thirtieth anniversary on 26 March 2005 of the entry into force of the Convention which said *inter alia*:

*We call on all States Not Party to the BWC to join promptly and thereby strengthen the global effort to counter proliferation.*

56. The final part of this Secretary-General’s recommendation calls upon all States *to increase the transparency of bio-defence programmes* is not developed from the High Level Panel report which is silent on the topic of bio-defence apart from noting that *an inevitable, new biological future makes active bio-defence the most viable option against the likelihood of attack*. It seems probable that the High Level Panel in referring to *active bio-defence* was making the point that public, animal and plant health defence programmes need to be ongoing and not dormant – hence the use of the term “active”. The Secretary-General’s recommendation would appear to reflect the concerns that have been expressed in the last few years about activities which have been carried out in the biological defence programme of one State Party in particular – the United States. It could also reflect the fact that public, animal and plant health defence programmes to counter disease outbreaks are effectively the same whether mounted by health departments or defence departments – and transparency of such programmes is necessary to build confidence between States Parties. However, the decision of the United States to post its CBM return on the internet is greatly welcomed and gives leadership to other States Parties – and other States Parties are encouraged to do likewise by posting their CBM returns on the internet. The States Parties to the BTWC are all politically committed to making annual submissions under the Confidence-Building Measures agreed in 1986 and extended in 1991. One such CBM requires an annual declaration about national biological defence programmes. It would have been more effective if the Secretary-General had called for all States Parties to the BTWC to make complete and timely annual CBM submissions rather than singling out bio-defence for attention.

57. The Secretary-General then goes on to address how *the biological security regime* might be bolstered:

*104. Further efforts are needed to bolster the biological security regime. The capability of the Secretary-General to investigate suspected use of biological agents, as authorized by the General Assembly in its resolution 42/37, should be strengthened to incorporate the latest technology and expertise; and the Security Council should make use of that capability, consistent with Security Council resolution 620 (1988).*

Interestingly, whilst referring to the biological security regime, this paragraph also does not pick up on the recommendation made by the High Level Panel calling for a new bio-security protocol. Rather, this paragraph is developed from the High Level Panel paragraph 141 that;

*141. The Security Council should also be prepared to deploy inspection capacities for suspected nuclear and chemical violations, drawing on the capacities of IAEA and OPCW. Until multilateral negotiations yield a Biological and Toxin Weapons Convention verification mechanism, the Security Council should avail itself of the Secretary-General’s roster of inspectors for biological weapons, who should remain*

*independent and work under United Nations staff codes. This roster of inspectors should also be available to advise the Council and liaise with WHO authorities in the event of a suspicious disease outbreak, as discussed below.*

58. As already noted earlier, the Meeting of the States Parties to the BTWC at their meeting in 2004 had failed to agree on how to take forward the ideas discussed at their meeting on strengthening the Secretary-General's mechanism for investigating the alleged use of biological or toxin weapons and had been unable to agree to

*b) consideration being given by the United Nations General Assembly to reviewing the Secretary General's mechanism for investigation of cases of alleged use of biological or toxin weapons, and the Sixth Review Conference considering, inter alia, any actions that may be taken in this regard, bearing in mind that any investigation of alleged use of biological or toxin weapons would be of direct relevance to violations of Article I of the Convention;*

59. The Secretary-General's recommendation in para. 104 that his capability to investigate suspected use should *be strengthened to incorporate the latest technology and expertise* and that the Security Council should make use of that capability is welcomed. In considering how to take this forward, consideration should be given to the possible use of the capabilities of UNMOVIC<sup>18</sup> which has a trained roster of qualified inspectors who could, with an appropriate mandate, carry out the strengthened capability required by the Secretary-General. It needs to be stressed that merely updating the existing lists of available experts and laboratories, that States have advised the Secretary-General that they could make available, would **not** suffice. It is now evident from the experience gained over the past twenty years that any qualified inspectors must be trained and have experience of working as a team and further that any laboratories that may be called upon to analyse samples collected by such a team must use analytical techniques that have previously been validated through blind testing of samples. And these are the capabilities that UNMOVIC currently has and is maintaining.

61. The Secretary-General goes on to make a further recommendation in regard to how the Security Council might be better informed on all matters relevant to nuclear, biological and chemical threats:

*105. Indeed, the Security Council must be better informed on all matters relevant to nuclear, chemical and biological threats. I encourage the Council to regularly invite the Director-General of IAEA and the Director-General of the Organization for the Prohibition of Chemical Weapons to brief the Council on the status of safeguards and verification processes. And I myself stand ready, in consultation with the Director-General of the World Health Organization, to use my powers under Article 99 of the Charter of the United Nations to call to the attention of the Security Council any overwhelming outbreak of infectious disease that threatens international peace and security.*

The proposals for the Director Generals of the IAEA and the OPCW to regularly brief the Security Council on the status of safeguards and verification processes is sound. What is needed is a parallel recommendation in regard to the BTWC. Although it could be argued that there is currently no such parallel body, this has failed to recognize that the States Parties

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<sup>18</sup> Graham S. Pearson, *The Search for Iraq's Weapons of Mass Destruction*, Palgrave Macmillan, 2005, in press.

to the BTWC were on the brink of agreeing a small secretariat for the BTWC at the Third Review Conference in 1991. The institutional deficit of the BTWC has long been recognized and proposals have been put forward<sup>19</sup> as to how this might be resolved at the BTWC Sixth Review Conference in 2006. One such option would be for the Sixth Review Conference to authorize its Bureau to remain in existence between the Review Conferences and to hold regular meetings in the inter Review Conference years. Consequently, the President of successive Review Conferences could provide a parallel to the Director Generals of the IAEA and the OPCW to regularly brief the Security Council until such time as there is a parallel organization for the BTWC to the OPCW for the CWC. As has been pointed out<sup>20</sup>, such a proposal to provide an interim parallel for the BTWC is *fully within the power of the Sixth Review Conference to authorise*.

62. The ideas put forward by the Secretary-General in the final sentence of para. 105 are verging on dangerous ground. Whilst the language in paragraph 105 in regard to “*any overwhelming outbreak of infectious disease*” is unexceptional, care needs to be taken as to how the words “*that threatens international peace and security*” are interpreted. Any attempt to involve the WHO in a process related to alerting the Security Council on matters related to biological threats must be resisted as it could only harm the effectiveness of the WHO which must protect its role as the international body that assists all its member States in countering the threats posed by disease.

63. In any event, these ideas are flawed as they solely refer to the WHO and make no reference to the parallel organizations dealing with animal and plant health – the OIE and the FAO, especially as overwhelming outbreaks of animal and plant disease can have immense economic impact. There is much to be said for the ideas set out above for remedying the institutional deficit of the BTWC as any such solution could be mandated to brief the Security Council on biological threats to humans, animals and plants as the BTWC prohibits all such weapons.

#### *High Level Panel Recommendations in A/59/565*

64. Although some of the High Level Panel’s recommendations have been incorporated into the Secretary-General’s progress report on 21 March 2005, it needs to be recalled that his report limited consideration to items on which he believed action is both vital and achievable in the coming months. As the first opportunity at which the States Parties to the BTWC can consider the recommendations made by the High Level Panel is at the Sixth Review Conference in 2006, this Review Conference Paper considers each of these recommendations from the point of view of the States Parties at the Review Conference.

65. It is worth noting at the outset that the Sixth Review Conference will need to be seen to have given consideration to the recommendations of the High Level Panel. It is recommended, as already proposed in Review Conference Paper No. 10<sup>21</sup>, that the General

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<sup>19</sup> Nicholas A. Sims, *Remedies for the Institutional Deficit of the BTWC: Proposals for the Sixth Review Conference*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 12, March 2005. Available at <http://www.brad.ac.uk/acad/sbtwc>

<sup>20</sup> Nicholas A. Sims, *Remedies for the Institutional Deficit of the BTWC: Proposals for the Sixth Review Conference*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 12, March 2005, p.10. Available at <http://www.brad.ac.uk/acad/sbtwc>

<sup>21</sup> Graham S. Pearson & Nicholas A. Sims, *Preparing for the BTWC Sixth Review Conference in 2006*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 10, February 2005. Available at <http://www.brad.ac.uk/acad/sbtwc>

Assembly resolution to be considered in autumn 2005 concerning the Sixth Review Conference should indeed contain a preambular paragraph along the lines of:

*Bearing in mind* the recommendations of the Secretary-General's High Level Panel on Threats, Challenges and Change relating to the Biological and Toxin Weapons Convention.

Although it was suggested earlier that this might be upgraded to an operational paragraph should the General Assembly or the high level plenary session on 14 – 16 September 2005 accept the recommendations of the High Level Panel as incorporated into the Secretary-General's comprehensive report of March 2005, it is evident that such upgrading will not be appropriate given the way in which the recommendations have been incorporated into the Secretary-General's report of March 2005.

66. The High Level Panel considerations and recommendations relating to biological and toxin weapons are considered in turn here from the point of view of the Sixth Review Conference.

67. In regard to *infectious diseases*, the High Level Panel in para. 68 urged that *International donors, in partnership with national authorities and local civil society organizations, should undertake a major new global initiative to rebuild local and national public health systems throughout the developing world.* It went on in para. 69 to recommend that *Members of the World Health Assembly should provide greater resources to the WHO Global Outbreak Alert and Response Network to increase its capacity to cope with potential disease outbreaks.* Both of these recommendations apply more directly to the World Health Assembly and should be considered at the next annual meeting of the Assembly in 2005. Insofar as the BTWC Sixth Review Conference is concerned, these considerations of the High Level Panel in regard to infectious disease will be one of the factors being born in mind by States Parties considering language for the Article X section of the Final Declaration. However, in considering language for the Final Declaration, the BTWC States Parties would be encouraged to broaden any language to cover animal and plant health as well as human health systems. It may also be drawn upon in considering language for the Article VII section of the Final Declaration as Article VII addresses the provision of assistance:

#### **Article VII**

*Each State Party to this Convention undertakes to provide or support assistance, in accordance with the United Nations Charter, to any Party to the Convention which so requests, if the Security Council decides that such Party has been exposed to danger as a result of violation of the Convention.*

Again, any language for the Final Declaration should be broadened to cover animal and plant disease outbreaks as well as human disease outbreaks.

68. The point made in para. 70 in regard to the possible need for cooperation between the WHO and the Security Council in establishing effective quarantine measures *in extreme cases of threat posed by a new emerging infectious disease or intentional release of an infectious agent* is unlikely to be considered either by the World Health Assembly or the Sixth Review Conference because of the danger such proposals pose to the neutrality and effectiveness of the WHO. However, as noted above, there is a sounder argument to be made

in regard to overwhelming outbreaks of infectious disease without regard to their source – and without jeopardizing the neutrality and the effectiveness of the WHO.

69. In regard to ***the threats we face***, the potential danger of biological weapons is recognised by the High Level Panel both in the opening sentence of para. 114 and in the body of para. 115 whilst para. 116 rightly calls for urgent prevention. The call for urgent prevention in para. 116 is likely to find a resonance in the statements made by the States Parties in the opening plenary session of the Sixth Review Conference urging that the Final Declaration should incorporate effective steps to strengthen the prevention regime for biological and toxin weapons.

70. Insofar as ***meeting the challenge of prevention***, the High Level Panel's recognition in para. 117 that multilayered action is required:

*117. Multilayered action is required. The first layer of an effective strategy to prevent the proliferation of nuclear, radiological, chemical and biological weapons should feature global instruments that reduce the demand for them. The second layer should contain global instruments that operate on the supply side — to limit the capacity of both States and non-State actors to acquire weapons and the materials and expertise needed to build them. The third layer must consist of Security Council enforcement activity underpinned by credible, shared information and analysis. The fourth layer must comprise national and international civilian and public health defence.*

will also find resonance in the statements made by the States Parties in the opening plenary session of the Sixth Review Conference. It is to be hoped that the High Level Panel's language will help States Parties focus attention on the various layers and on what action can be taken by the Review Conference to strengthen the various elements which together provide an effective counter to the threat of biological and toxin weapons. Indeed the perception of a multilayered approach may be very helpful in providing an overall structure embracing all the individual actions that are being pursued both within the BTWC and without the BTWC.

71. In regard to ***better strategies to reduce demand***, the High Level Panel in para. 126 relating to biological weapons says:

*126. Verification of the Chemical Weapons Convention should also be further strengthened, and the long-standing impasse over a verification mechanism for the Biological and Toxin Weapons Convention, which has undermined confidence in the overall regime, should be overcome. States parties to the Biological and Toxin Weapons Convention should without delay return to negotiations for a credible verification protocol, inviting the active participation of the biotechnology industry. States parties to the Biological and Toxin Weapons Convention and the Chemical Weapons Convention must increase bilateral diplomatic pressure to universalize membership. [Emphasis in original]*

There are two points that need to be addressed here – first the resumption without delay of negotiations for a credible verification protocol and second increasing diplomatic pressure to universalize membership of the Convention.

72. Considering universality first, it is recognized that there has long been exhortations by the States Parties to the BTWC that more should be done to encourage universality. It should be noted that the First Review Conference in April 2003 of the Chemical Weapons Convention agreed in its report that an action plan should be developed and implemented to achieve universal adherence to the CWC. Review Conference Paper No. 13<sup>22</sup> sets out in some detail what this action plan entails and how it is being implemented by the States Parties and the Organization for the Prohibition of Chemical Weapons. It is evident based on past experience that an exhortation by the Review Conference is unlikely to be effective in promoting universality. The OPCW's experience shows that for an action plan to be effective, the States Parties to the BTWC will need at the Sixth Review Conference to address how best to provide for a mechanism, such as an interim secretariat, that could carry out the work necessary to facilitate the implementation of such an action plan. As already noted, the setting up of such an interim secretariat<sup>23</sup> is well within the authority of the Sixth Review Conference. The States Parties to the BTWC are strongly recommended at the Sixth Review Conference to agree an Action Plan for the universality of the BTWC and to set up an interim secretariat to facilitate implementation of the Action Plan.

73. The other recommendation calling for the long-standing impasse over a verification mechanism for the Biological and Toxin Weapons Convention to be overcome and for the States Parties without delay to return to negotiations for a credible verification protocol merits serious consideration. There is no value in continuing recriminations about why the negotiations of the Ad Hoc Group came to an end in July 2001. Rather, a fresh start needs to be made.

74. It needs to be recalled that the mandate agreed by the States Parties at the Special Conference<sup>24</sup> in September 1994 was the following:

*the Conference, determined to strengthen the effectiveness and improve the implementation of the Convention and recognizing that effective verification could reinforce the Convention, decides to establish an Ad Hoc Group, open to all States Parties. The objective of this Ad Hoc Group shall be to consider appropriate measures, including possible verification measures, and draft proposals to strengthen the convention, to be included, as appropriate, in a legally binding instrument, to be submitted for the consideration of the States Parties.*

The essence was thus *to strengthen the effectiveness and improve the implementation of the Convention*. The question that needs to be addressed now is whether this objective – to strengthen the effectiveness and improve the implementation of the Convention – would be agreed by all States Parties to the BTWC. It is hard to imagine that any State Party would object to such an objective and it is argued that all States Parties would indeed agree to this.

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<sup>22</sup> Scott Spence, *Achieving Effective Action on Universality and National Implementation: The CWC Experience*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 13, April 2005. Available at <http://www.brad.ac.uk/acad/sbtwc>

<sup>23</sup> Nicholas A. Sims, *Remedies for the Institutional Deficit of the BTWC: Proposals for the Sixth Review Conference*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 12, March 2005, p.10. Available at <http://www.brad.ac.uk/acad/sbtwc>

<sup>24</sup> United Nations, Special Conference of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, *Final Report*, BWC/SPCONF/1, Geneva 19-30 September 1994. Available at <http://www.opbw.org>

75. Having agreed this objective, the next step is to consider how best the States Parties can achieve this objective starting from the Sixth Review Conference in 2006. By recognizing the common agreement to the objective, the onus is put onto **all** States Parties to address how best to move forward to achieve this. It also needs to be recognized that the Sixth Review Conference is not the occasion on which to address the details of how best to achieve this objective as there is a great deal of substantive business that needs to be accomplished during the three weeks of the Review Conference. The Final Declaration of the Sixth Review Conference should include in its Article V section language along the lines of:

*The Conference reaffirmed the importance of strengthening the effectiveness and improving the implementation of the Convention and agreed that the States Parties would meet in 2007 to consider how best to achieve this objective.*

It would be up to the Meeting of States Parties in 2007 to consider how best to achieve the objective of strengthening the effectiveness and improving the implementation of the Convention. The temptation to draw language from the High Level Panel's report should be resisted as the aim at the Sixth Review Conference in 2006 is to move forward and avoid acrimony. Language as suggested above would be effective in moving the process forward and would be an effective response to the High Level Panel recommendation.

76. It needs, however, to be emphasized that adopting such an approach in 2006 to the issue of how best to *strengthen the effectiveness and improve the implementation of the Convention* should not be regarded as meaning that nothing should be done at the Sixth Review Conference. Indeed, far from this, as the Final Declaration should at least reaffirm the comprehensive nature of the prohibitions, an interim supportive institution should be established, which could then take forward action plans for universality and for national implementation measures, and various other steps taken to strengthen the Convention regime.

77. In regard to ***better strategies to reduce supply***, it was noted above that para. 134 made a specific recommendation in regard to withdrawals from the Nuclear Non-Proliferation Treaty in that *A State's notice of withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons should prompt immediate verification of its compliance with the Treaty, if necessary mandated by the Security Council.* Although the High Level Panel did not extend this idea to either the BTWC or the CWC, both of these have Articles which provide a right of withdrawal from them. Article XIII (2) of the BTWC states that:

*(2) Each State Party to this Convention shall in exercising its national sovereignty have the right to withdraw from the Convention if it decides that extraordinary events, related to the subject matter of the Convention, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other States Parties to the Convention and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.*

The Sixth Review Conference should consider including language in its Final Declaration in the section on Article XIII that, in the event of a State Party giving notice of its withdrawal from the BTWC, might encourage the immediate verification of its compliance with the Convention, if necessary mandated by the Security Council.

78. The High Level Panel report has three paragraphs relating to nuclear, biological and chemical weapons. Para. 133 relates to the reinforcement of international legal provisions against the illicit trafficking of nuclear, biological and chemical weapons and materials through the ongoing negotiations at the International Maritime Organization (IMO) to amend the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation. The Final Declaration of the BTWC Sixth Review Conference should consider including language in the Article III section which takes note of these ongoing negotiations and encourages their timely completion.

79. Para. 135 recommends *Urgent short-term action is needed to defend against the possible terrorist use of nuclear, radiological, chemical and biological weapons. High priority must be accorded to consolidating, securing, and when possible eliminating potentially hazardous materials, and implementing effective export controls.* Again, this should be addressed in the Final Declaration of the BTWC Sixth Review Conference in the Article III section by language which reinforces that in the corresponding section in the Final Declaration of the Fourth Review Conference in 1996 in which *The Conference affirms that Article III is sufficiently comprehensive to cover any recipient whatsoever at international, national or subnational levels.* Additional language should be added in the Article III section of the Final Declaration to give high priority to *consolidating, securing, and when possible eliminating potentially hazardous materials, and implementing effective export controls.*

80. Para. 136 addresses Security Council resolution 1540 (2004) and recommends that the implementation committee of the resolution should establish permanent liaison with the IAEA, OPCW and the Nuclear Suppliers Group.

*136. The Security Council, acting under its resolution 1540 (2004), can offer States model legislation for security, tracking, criminalization and export controls, and by 2006 develop minimum standards for United Nations Member State implementation. To achieve that goal, the implementation committee of Council resolution 1540 (2004) should establish a permanent liaison with IAEA, OPCW and the Nuclear Suppliers Group.*

The omission of parallel permanent liaison to a secretariat of the BTWC would appear to be simply because there was, at the time of the meetings of the High Level Panel, no such secretariat. It is extremely unlikely that the High Level Panel did not see the need for *model legislation for security, tracking, criminalization and export controls* in regard to biological materials as SCR 1540 (2004) certainly embraces biological as well as nuclear and chemical materials.

81. It would therefore be recommended that the BTWC Sixth Review Conference in 2006 should establish an interim secretariat, as already mentioned earlier and proposed elsewhere<sup>25</sup>, and should also address in its Final Declaration the minimum standards to be developed by 2006 for United Nations Member State implementation in accordance with SCR 1540 (2004).

82. The High Level Panel report in this section has a paragraph relating specifically to biological weapons:

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<sup>25</sup> Nicholas A. Sims, *Remedies for the Institutional Deficit of the BTWC: Proposals for the Sixth Review Conference*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 12, March 2005, p.10. Available at <http://www.brad.ac.uk/acad/sbtwc>

*137. States parties to the Biological and Toxin Weapons Convention should also negotiate a new bio-security protocol to classify dangerous biological agents and establish binding international standards for the export of such agents. Within a designated time frame, States parties to the Convention should refrain from participating in such biotechnology commerce with non-members. [Emphasis in original]*

It is noted that para. 137 relates specifically to biological agents and that there is no parallel relating to chemical agents other than the recognition of the steps that the Security Council can take under SCR 1540 (2004). It can be deduced that the absence of a parallel recommendation relating to chemical weapons is because the CWC includes provisions that limit the transfer of Schedule 1 chemicals only to another State Party – after prior notification of the Technical Secretariat – and also limit transfer of Schedule 2 chemicals only to another State Party – and require the provision of an end-use certificate. Although the CWC requires that five years after entry into force of the Convention, consideration shall be given to other measures regarding transfers of Schedule 3 chemicals to States not Party to the Convention, the First Review Conference of the CWC in April 2003 simply noted that *The question of whether there is a need for other measures in relation to transfers of Schedule 3 chemicals to States not Party remains under consideration in the Council.*

83. The idea of a new bio-security protocol was first proposed by the Monterey Institute of International Studies as a convention either consistent with the BTWC, or, if need be, outside the BWC. It has, however, to be recognized that this proposal stemmed from the rejection by the United States in July 2001 of the Ad Hoc Group negotiations towards a legally binding instrument to strengthen the BTWC. As it was realized that the US national requirements for ‘select agents’ were more stringent than those in many other countries at that time, moving towards an internationally negotiated bio-security protocol or convention was seen as a possible way of making progress in the short term.

84. It is now some four years later and fresh consideration needs to be given to this proposal. First, of all, it is not immediately obvious that a bio-security regime is necessarily a part of the BTWC regime as it has to be noted that the Convention on Biological Diversity<sup>26</sup> and the Cartagena Protocol on Biosafety<sup>27</sup> have significantly improved world standards relating to biosafety and risk assessment of biological activities. It could therefore be argued that considerations relating to the security of biological materials might appropriately be addressed in the Convention on Biological Diversity forum.

85. In addition, in the context of the BTWC, the case for a separate *bio-security protocol* to the BTWC is by no means proven. If the High Level Panel recommendation that the States Parties to the BTWC should without delay return to negotiation of a credible verification protocol is seen as being one of its most important recommendations – which it is – then it has to be recognized that much of what might be in a bio-security protocol was already in the legally-binding instrument being negotiated<sup>28</sup> by the BTWC States Parties from 1995 to 2001 and there is no merit in considering a separate bio-security protocol until such time as the

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<sup>26</sup> United Nations Environment Programme, *The Convention on Biological Diversity*. Available at <http://www.biodiv.org/convention/articles.asp>

<sup>27</sup> United Nations Environment Programme, *Cartagena Protocol on Biosafety*. Available at <http://www.biodiv.org/biosafety/protocol.asp>

<sup>28</sup> Jez Littlewood, *The Biological Weapons Convention: A Failed Revolution*, Ashgate, Aldershot, 2005.

negotiations of a legally binding instrument to *strengthen the effectiveness and improve the implementation* of the Convention have been completed. There would be no advantage – and much confusion – in trying to establish two parallel sets of negotiations both involving the States Parties to the BTWC.

86. It is therefore recommended that the BTWC Sixth Review Conference should simply subsume any consideration of this High Level Panel recommendation into its consideration of the recommendation relating to *States parties to the Biological and Toxin Weapons Convention should without delay return to negotiations for a credible verification protocol* as addressed above.

87. In regard to *better enforcement capability*, the High Level Panel said that the links between the IAEA and OPCW and the Security Council must be strengthened and that *The Directors-General of IAEA and OPCW should be invited by the Security Council to report to it twice-yearly on the status of safeguards and verification processes, as well as on any serious concerns they have which might fall short of an actual breach of the Treaty on the Non-Proliferation of Nuclear Weapons and the Chemical Weapons Convention*. As already noted, this recommendation whilst addressing the IAEA and the OPCW excludes any parallel consideration of the BTWC. Whilst there may currently not be any OPBW or even an interim supportive institution for the BTWC, this is something that could be remedied relatively easily by the States Parties to the BTWC at the 2006 Sixth Review Conference. It is regretted that the High Level Panel has not recommended that the President of the Review Conference or head of a future secretariat for the BTWC should also report twice-yearly to the Security Council on the status of verification processes as well as on any serious concerns they have which might fall short of an actual breach of the BTWC. Although it might be argued that there are currently no verification processes under the BTWC, the opportunity could still be taken at the present time to report on the status of the annual confidence-building measure submissions by the States Parties and at a later stage to report on any eventually agreed verification or compliance measures. It is recommended that the BTWC Sixth Review Conference should indeed establish an interim supportive institution that could *inter alia* be called upon to provide regular reports to the Security Council to parallel those proposed for the IAEA and the OPCW. As proposed earlier, one option would be for the Sixth Review Conference to authorize its Bureau to remain in existence between the Review Conferences and to hold regular meetings in the inter Review Conference years. Consequently, the President of successive Review Conferences could provide a parallel to the Director Generals of the IAEA and the OPCW to regularly brief the Security Council until such time as there is a parallel organization for the BTWC to the OPCW for the CWC.

88. In addition, the High Level Panel urged that

*Until multilateral negotiations yield a Biological and Toxin Weapons Convention verification mechanism, the Security Council should avail itself of the Secretary-General's roster of inspectors for biological weapons, who should remain independent and work under United Nations staff codes. This roster of inspectors should also be available to advise the Council and liaise with WHO authorities in the event of a suspicious disease outbreak, as discussed below.*

It was noted above that this had been developed by the Secretary-General in his report of 21 March 2005 to:

*104. Further efforts are needed to bolster the biological security regime. The capability of the Secretary-General to investigate suspected use of biological agents, as authorized by the General Assembly in its resolution 42/37, should be strengthened to incorporate the latest technology and expertise; and the Security Council should make use of that capability, consistent with Security Council resolution 620 (1988).*

The Secretary-General's recommendation in para. 104 that his capability to investigate suspected use should *be strengthened to incorporate the latest technology and expertise* and that the Security Council should make use of that capability is welcomed. In considering how to take this forward, consideration should be given to the possible use of the capabilities of UNMOVIC<sup>29</sup> which has a trained roster of qualified inspectors who could, with an appropriate mandate, carry out the strengthened capability required by the Secretary-General. It needs to be stressed that merely updating the existing lists of available experts and laboratories, that States have advised the Secretary-General that they could make available, would **not** suffice. It is now evident from the experience gained over the past twenty years that any qualified inspectors must be trained and have experience of working as a team and further that any laboratories that may be called upon to analyse samples collected by such a team must use analytical techniques that have previously been validated through blind testing of samples.

89. The BTWC Sixth Review Conference will be giving consideration to this because one of the topics considered at the annual Meeting of States Parties in 2004 was:

*iii. enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease;*

and the Final Report<sup>30</sup> of the Meeting of States Parties in December 2004 included:

*States Parties are encouraged to inform the Sixth Review Conference of, inter alia, any actions, measures or other steps that they may have taken on the basis of the discussions at the 2004 Meeting of Experts and of the outcome of the 2004 Meeting of States Parties in order to facilitate the Sixth Review Conference's consideration of the work undertaken at the meetings in 2004 and of a decision on any further action in accordance with paragraph 18 (e) of the decision adopted at the Fifth Review Conference (BWC/CONF.V/17).*

The consideration given by the 2006 Sixth Review Conference will depend on what steps have been taken in the General Assembly in autumn 2005 to take steps to address the recommendation made by the Secretary-general in his progress report of 21 March 2005.

90. The idea put forward by the High Level Panel that *This roster of inspectors should also ... liaise with WHO authorities in the event of a suspicious disease outbreak* should not be taken forward as it puts into jeopardy the neutrality and the core role of the World Health Organization. The WHO must continue to be seen as the intergovernmental organization

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<sup>29</sup> Graham S. Pearson, *The Search for Iraq's Weapons of Mass Destruction*, Palgrave Macmillan, 2005, in press.

<sup>30</sup> United Nations, *Report of the Meeting of States Parties*, Meeting of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Second Meeting, Geneva, 6 - 10 December 2004, BWC/MSP/2004/3, 14 December 2004. Available at <http://www.opbw.org>

that helps its member States cope with outbreaks of infectious disease however caused. A parallel argument applies equally to the OIE and the FAO in regard to animal and plant disease outbreaks.

91. In regard to *better public health defences*, the High Level Panel made a number of statements:

*142. Scientific advancements in biotechnology and the ubiquity of facilities capable of producing biological agents circumscribe prospects for the elimination of biological weapons and complicate verification efforts. But unlike nuclear weapons, many (though not all) biological agents can be countered by vaccinations and effective responses (including rapid diagnosis, quarantines and treatment). Well prepared societies may thus be able to avoid the worst-case scenarios of biological attacks.*

*143. However, at present, international aid for infectious disease monitoring, detection and response is lacking, security planning and spending are poorly coordinated with health-care policies and budgets, and there is insufficient understanding that an inevitable, new biological future makes active bio-defence the most viable option against the likelihood of attack.*

As noted above, para. 142 makes the statement that *unlike nuclear weapons, many (though not all) biological agents can be countered by vaccinations and effective responses (including rapid diagnosis, quarantines and treatment)*. This is a surprising statement – which is in sharp contrast to the much more accurate assessment of biological weapons made in the earlier section on *the threats we face*, notably in para. 114 and 115 which recognize that *“deliberate outbreaks of infectious disease could prove equally if not more lethal than a nuclear detonation.”* Medical countermeasures such as vaccines and effective responses are only available for very few of the known biological agents and even there the vaccines are not regarded as being suitable for much of the civil population. It is considered that the High Level Panel was unduly optimistic and incorrect in its judgments expressed in the last two sentences of para. 142.

92. As already noted earlier, the High Level Panel is likely to have recognized the benefits that building public health defences can bring to improving the well-being of people around the globe in all countries – and that building public health defences also helps to counter the threat posed by biological weapons. It would, however, have been better if the High Level Panel report had clearly stated the benefits of building public, animal and plant health defences around the world and recognized that such enhanced public, animal and plant health defences would also counter the threat from biological weapons. Rather than jeopardizing the neutrality of the WHO through suggesting the linkage to the Security Council, it would have been prudent if the High Level Panel had recognized that strengthening the capabilities of the WHO, OIE and FAO would improve the information available to all the Member States to counter human, animal and plant disease outbreaks. It would then be open for individual Security Council members to have judged whether a particular outbreak merited consideration by the Security Council for whatever reason.

93, Insofar as the concepts in paragraphs 142 and 143 are concerned, the BTWC Sixth Review Conference will address these as another topic addressed by the annual Meeting of States Parties in 2004 was:

*iv. strengthening and broadening national and international institutional efforts and existing mechanisms for the surveillance, detection, diagnosis and combating of infectious diseases affecting humans, animals, and plants;*

and the outcome will again be considered by the 2006 Review Conference which may take a decision on any further action to be taken. In addition, the Final Declaration of the Review Conference can be expected to address this topic in its Article X section.

94. In addition, the idea in paragraph 143 of *an inevitable, new biological future* could with advantage be addressed through the proposal made by the United Kingdom in its contribution to the Background Paper<sup>31</sup> on New Scientific and Technological Developments for the Fifth Review Conference in 2001 that:

*18. Throughout the various studies and consultations carried out by the UK to inform this review, it has been clear that the rate of change in science and technology fields relevant to the BTWC has been much greater than in the previous five year period, that is between the third and fourth Review Conferences. A number of advances in scientific knowledge and its applications could be of consequence for the provisions of the BTWC. Given the accelerating pace in science and technology, the UK wonders whether it is prudent to maintain a five year gap between such assessments under the BTWC. The UK suggests that the upcoming Review Conference consider establishing a mechanism for States Parties to work together on a more frequent basis to conduct such scientific and technical reviews and to consider any implications at the necessary level of expertise.*

It has been argued that the BTWC Sixth Review Conference should establish such a mechanism<sup>32</sup> as five years is simply too long an interval over which to leave the implications of change unexamined. A practical mechanism for organising this collective scrutiny would be to commission a Scientific Advisory Panel to prepare a report each year for an Annual Meeting of the States Parties to the BTWC. There has long been a persuasive case in any event for the States Parties to create a Scientific Advisory Panel. They need to equip the BTWC with such a Panel in the interests of acquiring an early warning capacity for monitoring scientific threats to their treaty regime.

95. In addition the High Level Panel moved into dangerous ground in its statement that suggests linking the WHO investigators and the Security Council:

*144. Given the potential international security threat posed by the intentional release of an infectious biological agent or an overwhelming natural outbreak of an infectious disease, there is a need for the WHO Director-General, through the Secretary-General, to keep the Security Council informed during any suspicious or*

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<sup>31</sup> United Nations, *Background Paper on New Scientific and Technological Developments Relevant to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction*, Fifth Review Conference of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Geneva, 19 November - 7 December 2001, BWC/CONF.V/4/Add. 1, 26 October 2001. Available at <http://www.opbw.org>

<sup>32</sup> Nicholas A. Sims, *Remedies for the Institutional Deficit of the BTWC: Proposals for the Sixth Review Conference*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 12, March 2005. Available at <http://www.brad.ac.uk/acad/sbtwc>

*overwhelming outbreak of infectious disease. In such an event, the Security Council should be prepared to support the work of WHO investigators or to deploy experts reporting directly to the Council, and if existing International Health Regulations do not provide adequate access for WHO investigations and response coordination, the Security Council should be prepared to mandate greater compliance. In the event that a State is unable to adequately quarantine large numbers of potential carriers, the Security Council should be prepared to support international action to assist in cordon operations. **The Security Council should consult with the WHO Director-General to establish the necessary procedures for working together in the event of a suspicious or overwhelming outbreak of infectious disease.** [Emphasis in original]*

96. As already noted above, the suggestion that there is a need for the WHO Director-General, through the Secretary-General, to keep the Security Council informed during any suspicious or overwhelming outbreak of infectious disease is flawed as expressed. Throughout the past decade, it has become increasingly evident that the effectiveness of the World Health Organization rests on its political neutrality and the widespread recognition that its purpose is to provide assistance to its member States when they are faced with outbreaks of disease. The ability of the WHO to carry out its primary mission will be jeopardized if there should be any suggestion that the Director-General of the WHO is going to keep the Security Council informed *during any suspicious or overwhelming outbreak of infectious disease*. It is considered that the High Level Panel has failed to recognize the dangers that its proposals in para. 144 present to the primary mission of the WHO. It is also noted that the Secretary-General appears to have recognized this danger as the approach put forward in his progress report of 21 March 2005:

*And I myself stand ready, in consultation with the Director-General of the World Health Organization, to use my powers under Article 99 of the Charter of the United Nations to call to the attention of the Security Council any overwhelming outbreak of infectious disease that threatens international peace and security.*

appears to try to avoid these dangers. Nevertheless, this approach put forward by the Secretary-General is potentially controversial. Whilst the language in regard to “*any overwhelming outbreak of infectious disease*” is unexceptional, care needs to be taken as to how the words “*that threatens international peace and security*” are interpreted. Article 99 of the Charter of the United Nations states that:

*The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.*

97. It is far from clear that Article 99 was intended to enable the Secretary-General to bring to the attention of the Security Council any event that is catastrophic or overwhelming – such as the 26 December 2004 tsunami – as something being catastrophic does not automatically bring it within the category of “*any matter which in his opinion may threaten the maintenance of international peace and security.*”

98. Any attempt to involve the WHO in a process related to alerting the Security Council on matters related to biological threats must be resisted as it could only harm the effectiveness of the WHO which must protect its role as the international body that assists all its member States in countering the threats posed by disease. As noted earlier, rather than jeopardizing

the neutrality of the WHO through suggesting a linkage to the Security Council, it would have been prudent if the High Level Panel had recognized that strengthening the capabilities of the WHO, OIE and FAO would improve the information available to all the Member States to counter human, animal and plant disease outbreaks. It would then be open for individual Security Council members to have judged whether a particular outbreak merited consideration by the Security Council for whatever reason.

99. There is, however, an argument for the WHO, OIE and FAO through the Secretary-General to inform the Security Council in the event of an overwhelming outbreak of disease, without regard to its cause, in humans, animals or plants as such an outbreak may well merit urgent international action to mobilize aid and take steps to contain the outbreak that could be considerably facilitated by the Security Council. It is considered that it would have been much better in para. 144 to delete any mention of “suspicious or” and have extended the liaison to the Director-Generals of the WHO, OIE and FAO as appropriate.

## **Conclusions**

100. The Secretary-General’s High Level Panel on Threats, Challenges and Change is to be commended for a wide-ranging report which has covered an extremely broad canvas. It has, nevertheless, to be appreciated that the High Level Panel although aware of the tensions in the areas addressed was not expert in every area and, consequently, its conclusions and recommendations have to be considered into the context of the actual developments in any of the particular fields that it covers.

101. This Review Conference Paper has considered the conclusions and recommendations reached by the High Level Panel that have relevance to biological weapons from the point of view of the Sixth Review Conference of the BTWC in 2006 which will be the first opportunity at which the States Parties to the BTWC will be able to address these conclusions and recommendations. It is concluded that the Sixth Review Conference will need to consider the conclusions and recommendations made by the High Level Panel and it is recommended that the General Assembly resolution relating to the 2006 BTWC Review Conference should include a preambular paragraph referring to the Secretary-General’s High Level Panel.

102. In addition, this Review Conference Paper examines the conclusions and recommendations that have relevance to biological weapons developed by the Secretary-General from the High Level Panel report in his progress report of 21 March 2005 in preparation for the high-level summit session of the General Assembly on 14 – 16 September 2005. This consideration is again from the point of view of the States Parties to the BTWC.

103. Many of the High Level Panel’s conclusions and recommendations have merit but it is regretted that the High Level Panel in a number of areas omitted inclusion of parallel recommendations for the BTWC to those included for the NPT and the CWC especially as a strong argument has been made for the Sixth Review Conference to establish an interim supportive institution that could fulfil such parallel recommendations. It is also concluded that the wording of some of the recommendations that suggest involvement of the WHO with the Security Council in regard to any suspicious outbreak are verging on dangerous ground which could jeopardize the central role of the WHO. There is, however, a case for the WHO, OIE and FAO being able through the Secretary-General to alert the Security Council

in the event of overwhelming outbreaks of human, animal or plant disease, regardless of its cause, to facilitate the mobilization of aid and the containment of the outbreak.

104. A central conclusion of the High Level Panel report in regard to *Meeting the challenge of prevention* is that:

*117. Multilayered action is required. The first layer of an effective strategy to prevent the proliferation of nuclear, radiological, chemical and biological weapons should feature global instruments that reduce the demand for them. The second layer should contain global instruments that operate on the supply side — to limit the capacity of both States and non-State actors to acquire weapons and the materials and expertise needed to build them. The third layer must consist of Security Council enforcement activity underpinned by credible, shared information and analysis. The fourth layer must comprise national and international civilian and public health defence.*

The BTWC Sixth Review Conference has a major opportunity to strengthen the regime countering biological and toxin weapons through endorsement of a strong Final Declaration which addresses all of these multilayered actions. As was pointed out in Review Conference Paper No. 11<sup>33</sup>, success is rarely accidental, so those seeking a positive outcome in 2006 will have to plan for it.<sup>34</sup> The States Parties to the BTWC are urged to start preparing **now** for the Sixth Review Conference in 2006 and achieving a successful outcome.

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<sup>33</sup> Jez Littlewood, *What Would Be a Successful Outcome for the BTWC Sixth Review Conference in 2006?*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 11, March 2005. Available at <http://www.brad.ac.uk/acad/sbtwc>

<sup>34</sup> Graham S. Pearson & Nicholas A. Sims, *Preparing for the BTWC Sixth Review Conference in 2006*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 10, February 2005. Available at <http://www.brad.ac.uk/acad/sbtwc>