

# **Strengthening the Biological Weapons Convention**

## **Review Conference Paper No 10**

### **Preparing for the BTWC Sixth Review Conference in 2006**

## **February 2005**

**Series Editors**

**Graham S Pearson and Malcolm R Dando**

Department of Peace Studies, University of Bradford

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# PREPARING FOR THE BTWC SIXTH REVIEW CONFERENCE IN 2006

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

## Introduction

1. At the Meeting of States Parties to the Biological and Toxin Weapons Convention (BTWC) in Geneva on 6 to 10 December 2004, a number of States Parties in their statements looked forward to the Sixth Review Conference. During the informal session at which Non-Governmental Organizations were able to make statements to the Meeting of States Parties several likewise took the opportunity to look forward to the Sixth Review Conference and to propose outcomes for it to achieve.

2. In the statement<sup>1</sup> made on behalf of the Department of Peace Studies of the University of Bradford, it was concluded that that the BTWC is the **central** pillar of the regime totally prohibiting biological and toxin weapons. There is no alternative to this regime. However, the regime totally prohibiting biological and toxin weapons is the **weakest** of the regimes addressing weapons of mass destruction and, consequently, is the one **most** in need of being strengthened. The dangers that humans, animals or plants might be attacked by biological or toxin agents is of **greater** concern today with especial concern being expressed in the United States to the dangers of bioterrorism. Global peace and security demands that the effectiveness of the BTWC be strengthened and its implementation improved.

3. The Bradford statement went on to urge that the States Parties set their targets high for the Sixth Review Conference. In particular, we recommended:

- a. **A Final Declaration** that reaffirms and further extends the extended understandings agreed in previous Final Declarations;
- b. Agreement on **an interim supportive institution** to nurture and sustain the regime;
- c. Agreement to hold **annual Conferences of the States Parties** analogous to those held by the States Parties to the CWC;
- d. Agreement **to resume negotiation of a legally binding instrument** to strengthen the effectiveness and improve the implementation of the Convention.

We pointed out that it is not too early to start such preparations **now** as the benefits of a **successful outcome** to the Sixth Review Conference should be clear to all States Parties, both large and small. After all, the General Assembly resolution to pave the way for the Preparatory

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<sup>1</sup> Department of Peace Studies, University of Bradford, *Statement by Professor Graham S. Pearson*, Tuesday 7 December 2004. Available at <http://www.brad.ac.uk/acad/sbtwc>

Committee meeting and the subsequent Sixth Review Conference will need to be tabled in New York in the autumn of 2005.

4. This Review Conference Paper is the first of a series of such papers which are intended to facilitate the preparation by the States Parties for a **successful outcome** to the Sixth Review Conference in 2006. This Paper provides an overview of the issues that need to be addressed by States Parties in their preparations for the Review Conference in 2006. It starts by recalling the outcome of the earlier Review Conferences from 1980 to 1996 and then considers what happened at the Fifth Review Conference and at the subsequent annual Meetings of the States Parties against the background of developments on the international scene over the past decade.

### **The First Four Review Conferences**

5. The Biological and Toxin Weapons Convention in Article XII states:

*Five years after the entry into force of this Convention, or earlier if it is requested by a majority of Parties to the Convention by submitting a proposal to this effect to the Depositary Governments, a conference of States Parties to the Convention shall be held at Geneva, Switzerland, to review the operation of the Convention, with a view to assuring that the purposes of the preamble and the provisions of the Convention, including the provisions concerning negotiations on chemical weapons, are being realized. Such review shall take into account any new scientific and technological developments relevant to the Convention.*

#### *First Review Conference*

6. A meeting of the Preparatory Committee was held in Geneva from 9 to 18 July 1979. This elected by consensus Ambassador R. Harry Jay of Canada as Chairman and decided that he would be assisted in the performance of his duties by Ambassador M. Domokos of Hungary and Ambassador C. R. Gharekhan of India. The Preparatory Committee decided to request the Secretariat to prepare a background paper on compliance by States Parties with all their obligations under the Convention. The Preparatory Committee also decided to request the Depositary Governments to prepare a background paper on new scientific and technological developments relevant to the Convention and, in addition, to invite States Parties who wished to do so to submit their views on new scientific and technological developments relevant to the Convention. In addition, the Preparatory Committee decided to request that the Secretary of the Committee should invite the comments of States Parties on the background paper to be provided by the Depositary Governments and to compile these comments along with national contributions on the subject. The Preparatory Committee also agreed that the Review Conference would adopt a final document that would be declaratory in purpose.

7. The First Review Conference of the BTWC was held in Geneva for three weeks from 3 to 21 March 1980. Unlike the practice adopted at the Third and subsequent Review Conferences when the Chairman of the Preparatory Committee was also elected President of the Review

Conference, at the First Review Conference<sup>2</sup>, Ambassador Oscar Vaernø of Norway was elected as President with Ambassador Petar Voutov of Bulgaria as Chairman of the Committee of the Whole, Ambassador C. G. Maina of Kenya as Chairman of the Drafting Committee and Ambassador C. A. de Souza e Silva of Brazil as Chairman of the Credentials Committee. The Final Declaration was adopted by consensus at the final plenary meeting on 21 March 1980.

8. The Final Declaration<sup>3</sup> was a five page document which began with some ten preambular paragraphs and then had sections addressing each of the Articles of the Convention in turn. The language used started the process of extending the understandings between the States Parties which at subsequent Review Conferences has contributed to the strengthening of the prohibitions enshrined in the Convention.

9. There had been a wide divergence of views over whether any further Review Conference should be convened, and if so after how long an interval. Article XII required only one. After intensive negotiations the First Review Conference reached agreement on majority requisition as the condition for a Second Review Conference and narrowed the disagreement over the interval to the formula "not earlier than 1985 and, in any case, not later than 1990." Agreement on 1986 as the date of the Second Review Conference was not reached until late in 1984 but it was an achievement of the First Review Conference to launch a continuing review process at all. It was to become a vital element in the evolution of the BTWC.

#### *Second Review Conference*

10. The Preparatory Committee for the Second Review Conference was held in Geneva from 28 April to 2 May 1986. This agreed that its Bureau would be composed of Mr. F. Gajda of Hungary, Ambassador A. S. Gonsalves of India and Ambassador M. Huslid of Norway and that each member of the Bureau would chair the meetings of the Preparatory Committee in rotation. The Preparatory Committee authorized the Bureau to handle technical and other matters in the period before the Review Conference was convened. The Preparatory Committee also requested, as had happened prior to the First Review Conference, the preparation of background papers by the Secretariat on the compliance by States Parties with all their obligations under the Convention and on new scientific and technological developments relevant to the Convention.

11. The Second Review Conference was held in Geneva for three weeks from 8 to 26 September 1986. As at the First Review Conference, the President, Ambassador Winfried Lang of Austria, was elected at the Second Review Conference<sup>4</sup> as were the Chairman of the Committee of the Whole, Ambassador M. Vejvoda of Czechoslovakia, the Chairman of the Drafting Committee,

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<sup>2</sup> United Nations, Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, *Final Document*, BWC/CONF.I/10, Geneva, 1980. Available at <http://www.opbw.org>

<sup>3</sup> United Nations, Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, *Final Declaration*, BWC/CONF.I/10/II, pp. 6-10 Geneva, 1980. Available at <http://www.opbw.org>

<sup>4</sup> United Nations, Second Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, *Final Document*, BWC/CONF.II/13, Geneva 1986. Available at <http://www.opbw.org>

Ambassador R. Butler of Australia, and the Chairman of the Credentials Committee, Ambassador D. D. Afande of Kenya. The Final Declaration was adopted by consensus at the final plenary meeting on 26 September 1986.

12. The Final Declaration<sup>5</sup> was a ten page document which again began with some twelve preambular paragraphs and then with sections addressing each of the Articles of the Convention in turn. The language used built on the foundations laid in the Final Declaration to the First Review Conference and developed the text. It continued the process of reaffirming and extending the understandings between the States Parties which at successive Review Conferences has contributed significantly to the strengthening of the prohibitions enshrined in the Convention.

13. The Second Review Conference in its Final Declaration decided in the section on Article V to hold an ad hoc meeting of scientific and technical experts from States Parties to finalize the modalities for the exchange of information and data in regard to measures to be implemented on the basis of mutual cooperation, soon to be called confidence-building measures, in order to prevent or reduce the occurrence of ambiguities, doubts and suspicions. This ad hoc meeting<sup>6</sup> was held in Geneva from 31 March to 15 April 1987 and agreed the modalities for the exchange of information and data to implement the agreed confidence-building measures.

#### *Third Review Conference*

14. The Preparatory Committee for the Third Review Conference was held in Geneva from 8 to 12 April 1991. This elected Ambassador Roberto Garcia Moritan of Argentina as Chairman and Ambassador Juraj Králik of the Czech and Slovak Federal Republic and Ambassador Hendrik Wagenmakers of the Netherlands as Vice-Chairmen. It was, however, evident that following intensive negotiations regarding the election of officers for the Preparatory Committee and the Third Review Conference, the understanding was reached that, unlike at previous Review Conferences, the Chairman of the Preparatory Committee would also serve as President of the Review Conference. It was also agreed that at the Third Review Conference, the Credentials Committee would be chaired by a representative of the Western Group, the Committee of the Whole would be chaired by a representative of the Western Group and that the Drafting Committee would be chaired by a representative of the Group of Eastern European States.

15. As at the Second Review Conference, the Preparatory Committee authorized the Bureau to handle technical and other matters in the period before the Review Conference was convened. The Preparatory Committee also requested, as had happened prior to the Second Review Conference, the preparation of background papers by the Secretariat on the compliance by States Parties with all their obligations under the Convention and on new scientific and technological

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<sup>5</sup> United Nations, Second Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, *Final Declaration*, BWC/CONF.II/13/II, Geneva 1986. Available at <http://www.opbw.org>

<sup>6</sup> United Nations, Ad Hoc Meeting of Scientific and Technical Experts from 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, 31 March-15 April 1987, BWC/CONF.II/EX/2, 21 April 1987. Available at <http://www.opbw.org>

developments relevant to the Convention. In addition, a report would be provided, not later than four months prior to the convening of the Third Review Conference, by the UN Secretary-General on the implementation of the confidence-building measures agreed to at the Second Review Conference. The Preparatory Committee also decided to recommend as the provisional agenda for the Third Review Conference the agenda for the Second Review Conference with the addition of a new item “*Consideration of issues identified in the review of Article XII contained in the Final Declaration of the Second Review Conference, and possible follow-up action.*” This new item reflected the fact that the language in the section on Article XII had been developed at the Second Review Conference from that at the First Review Conference as shown in the table.

<p>Convention (Article XII)</p>	<p><i>Five years after the entry into force of this Convention, or earlier if it is requested by a majority of Parties to the Convention by submitting a proposal to this effect to the Depositary Governments, a conference of States Parties to the Convention shall be held at Geneva, Switzerland, to review the operation of the Convention, with a view to assuring that the purposes of the preamble and the provisions of the Convention, including the provisions concerning negotiations on chemical weapons, are being realized. Such review shall take into account any new scientific and technological developments relevant to the Convention.</i></p>
<p>First Rev Con 1980</p>	<p><i>The Conference welcomes the spirit of co-operation in which this Review Conference was conducted, and believes that such conferences constitute an effective method of reviewing the operation of the Convention with a view of ensuring that its purposes and provisions are being realized, in particular with respect to any new scientific and technological developments relevant to the Convention.</i></p> <p><i>The Conference decides that a second Review Conference shall be held in Geneva at the request of a majority of States Parties not earlier than 1985 and, in any case, not later than 1990.</i></p> <p><i>Any information provided by States Parties on scientific and technological developments relevant to the Convention, and on its implementation, shall be made available periodically to States Parties, in particular through the United Nations Centre for Disarmament.</i></p>

<p>Second Rev Con 1986</p>	<p><i>The Conference decides that a Third Review Conference shall be held in Geneva at the request of a majority of States Parties not later than 1991.</i></p> <p><i>The Conference, noting the differing views with regard to verification, decides that the Third Review Conference shall consider, <u>inter alia</u>:</i></p> <ul style="list-style-type: none"> <li>- <i>the impact of scientific and technological developments relevant to the Convention,</i></li> <li>- <i>the relevance for effective implementation of the Convention of the results achieved in the negotiations on prohibition of chemical weapons,</i></li> <li>- <i>the effectiveness of the provisions in Article V for consultation and co-operation and of the co-operative measures agreed in this Final Declaration, and</i></li> <li>- <i>in the light of these considerations and of the provisions of Article XI, whether or not further actions are called for to create further co-operative measures in the context of article V, or legally binding improvements to the Convention, or a combination of both.</i></li> </ul>
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The new agenda item consequently provided a valuable link to the outcome of the Second Review Conference and its decision as to what should be considered *inter alia* by the Third Review Conference.

16. The Third Review Conference was held in Geneva for three weeks from 9 to 27 September 1991. As already had been agreed at the Preparatory Committee, the Third Review Conference<sup>7</sup> elected Ambassador Roberto Garcia Moritan of Argentina as President. In addition, Ambassador H. Wagenmakers of the Netherlands was appointed Chairman of the Committee of the Whole, Ambassador T. Tóth of Hungary Chairman of the Drafting Committee and Ambassador W. Lang of Austria Chairman of the Credentials Committee. The Final Declaration was adopted by consensus at the final plenary meeting on 27 September 1991.

17. The Final Declaration<sup>8</sup> was a fifteen page document together with a twenty-three page Annex on Confidence-Building Measures. This Annex reflected the achievement of an enhanced and expanded programme of Confidence-Building Measures by the Third Review Conference. The Final Declaration began with a Solemn Declaration with some seven points, then a single preambular paragraph followed by sections addressing each of the Articles of the Convention in turn. The language used built on the foundations laid in the Final Declaration of the First Review

<sup>7</sup> United Nations, Third Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Geneva, 9 – 27 September 1991, *Final Document*, BWC/CONF.III/23, Geneva 1992. Available at <http://www.opbw.org>

<sup>8</sup> United Nations, Third Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Geneva, 9 – 27 September 1991, *Final Declaration*, BWC/CONF.III/23/II, Geneva 1992. Available at <http://www.opbw.org>

Conference and the cumulative development of the text in the Final Declaration of the Second Review Conference. It continued the process of reaffirming and extending the understandings between the States Parties which at successive Review Conferences has contributed significantly to the strengthening of the prohibitions enshrined in the Convention. Although the new agenda item “*Consideration of issues identified in the review of Article XII contained in the Final Declaration of the Second Review Conference, and possible follow-up action*” had been included, the Final Declaration had the same format as in previous years and did not have a separate section addressing the new agenda item. The language in the Article XII section of the Final Declaration had further developed from that agreed at the Second Review Conference:

<p>Third Rev Con 1991</p>	<p><i>The Conference decides that a Fourth Review Conference shall be held in Geneva at the request of a majority of States Parties not later than 1996.</i></p> <p><i>The Conference decides that the Fourth Review Conference shall consider, <u>inter alia</u>:</i></p> <ul style="list-style-type: none"> <li>- <i>The impact of scientific and technological developments relevant to the Convention;</i></li> <li>- <i>The relevance of the provisions of the chemical weapons convention on the effective implementation of the biological and toxin weapons Convention;</i></li> <li>- <i>The effectiveness of coordinated confidence-building measures as agreed in this Final Declaration;</i></li> <li>- <i>The report of the Ad Hoc Group of Governmental Experts on Verification, as well as the conclusions of a special conference, if it is convened earlier;</i></li> <li>- <i>The requirement for, and the operation of, the requested allocation by the United Nations Secretary-General of staff resources and other requirements to assist the effective implementation of the relevant decisions of the Third Review Conference, and in particular of the confidence-building measures;</i></li> </ul> <p><i>- In the light of these considerations and of the provisions of Article XI, whether or not follow-up action is called for to create further cooperative measures in the context of Article V or legally binding improvements to the Convention, or a combination of both.</i></p> <p><i>The Review Conference recommends that conferences of States Parties to review the operation of the Convention should be held at least every five years.</i></p>
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The agenda item on consideration of issues identified in the review of Article XII had consequently provided a valuable link to the outcome of the Third Review Conference and its decision as to what should be considered *inter alia* by the Fourth Review Conference.

18. The Third Review Conference in its Final Declaration in the section on Article V declared that, *determined to strengthen the effectiveness and improve the implementation of the Convention and recognising that effective verification could reinforce the Convention*, it had decided to establish an Ad Hoc Group of Governmental Experts *to identify and examine potential verification measures from a scientific and technical viewpoint*. This Group was to meet for the period 30 March to 10 April 1992 and then to hold additional meetings to complete its work as soon as possible, preferably before the end of 1993. The Review Conference also decided that the report of the Group should be circulated to all States Parties and that if a majority of States Parties asked for the convening of a conference to examine the report then the Depositary Governments would convene such a conference at which any further action would be decided. The conference would be preceded by a preparatory committee.

19. **Analysis.** The Third Review Conference in 1991 was a particularly effective Review Conference which demonstrated what the States Parties can achieve during a three week meeting. It was the last “full” Review Conference as will be seen in the following sections in that the Fourth Review Conference in 1996 was shortened, for understandable reasons, to two weeks and the Fifth Review Conference failed to agree a Final Declaration and had to be suspended for a year. Consequently, in looking ahead to the Sixth Review Conference the preparations for and the outcome of the Third Review Conference provide the best prior model.

20. It should also be noted that the Third Review Conference in its decision to establish an Ad Hoc Group of Governmental Experts, which subsequently became known as VEREX, and agreement that a conference requested by a majority of States Parties to consider the report of VEREX would decide on further action – the Special Conference in 1994 – effectively set up a parallel process to that in which the five yearly Review Conferences were held. The reason for this was that the States Parties wished to see more rapid progress taken towards strengthening the effectiveness and improving the implementation of the Convention and did not want to delay consideration of the report of VEREX until the Fourth Review Conference in 1996.

#### *Fourth Review Conference*

21. As already noted, the Third Review Conference established VEREX and provided for the eventuality of a conference to examine its report. Accordingly, a Special Conference of the States Parties in September 1994 examined the VEREX report and agreed that a new Ad Hoc Group should be established *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*. This Ad Hoc Group started its meetings in January 1995 so that the Fourth Review Conference and its Preparatory Committee took place against a background of continuing Ad Hoc Group meetings and it was for this reason that the time allotted to the Review Conference was reduced from the usual three weeks to two weeks.

22. The Preparatory Committee for the Fourth Review Conference planned to meet in Geneva from 9 to 12 April 1996. In fact, it met and completed its work on two days, 9 and 10 April 1996. This elected Ambassador Sir Michael Weston of the United Kingdom as Chairman and Ambassador Jorge Berguño of Chile and Ambassador Tibor Tóth of Hungary as Vice-Chairmen. As at the Third Review Conference, the Preparatory Committee authorized the Bureau to handle technical and other matters in the period before the Review Conference was convened.

23. The Preparatory Committee also requested, as had happened prior to the Third Review Conference, the preparation of background papers by the Secretariat on the compliance by States Parties with all their obligations under the Convention and on new scientific and technological developments relevant to the Convention. In regard to the latter, the Preparatory Committee said that this information should cover the applications being made of such developments and their relevance to various aspects of the Convention. In addition, the Preparatory Committee decided to ask the UN Secretary-General to prepare a background information document providing, in summary tabular form, data on the participation of States Parties in the agreed confidence-building measures since the last Review Conference.

24. Insofar as the agenda was concerned the Preparatory Committee agreed to recommend as the provisional agenda for the Fourth Review Conference the agenda for the Third Review Conference with the addition of a new item “*Consideration of the work of the Ad Hoc Group established by the Special Conference in 1994.*” This new item ensured that the Review Conference included consideration of the work being carried out following the decision of the Special Conference.

25. The Fourth Review Conference was held in Geneva for two weeks from 25 November to 6 December 1996. At its first meeting, the Fourth Review Conference<sup>9</sup> elected Ambassador Sir Michael Weston of the United Kingdom as President. In addition, Ambassador Jorge Berguño of Chile was appointed Chairman of the Committee of the Whole, Ambassador Tibor Tóth of Hungary Chairman of the Drafting Committee and Mrs Maria Francisca Arias Castaño of Colombia Chairman of the Credentials Committee. The Final Declaration was adopted by consensus at the final plenary meeting on 6 December 1996.

26. The Final Declaration<sup>10</sup> was a sixteen page document. The Final Declaration began with a Solemn Declaration with some nine points, then a single preambular paragraph followed by sections addressing each of the Articles of the Convention in turn. Finally, a new section was included entitled *Consideration of the work of the Ad Hoc Group established by the Special Conference in 1994* which related to the new agenda item with the same title. The language used built on the cumulative development of the text through the Final Declarations of the first three Review Conferences. It continued the process of reaffirming and extending the

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<sup>9</sup> United Nations, Fourth Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Geneva, 27 November – 6 December 1996, *Final Document*, BWC/CONF.IV/9, Geneva 1996. Available at <http://www.opbw.org>

<sup>10</sup> United Nations, Fourth Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Geneva, 25 November – 6 December 1996, *Final Declaration*, BWC/CONF.IV/9/II, Geneva 1996. Available at <http://www.opbw.org>

understandings between the States Parties which at successive Review Conferences has contributed significantly to the strengthening of the prohibitions enshrined in the Convention. The language in the Article XII section of the Final Declaration had again further developed from that agreed at the Third Review Conference:

<p>Fourth Rev Con 1996</p>	<p><i>1. The Conference decides that a Fifth Review Conference shall be held in Geneva at the request of a majority of States Parties, or in any case, not later than 2001.</i></p> <p><i>2. The Conference decides that the Fifth Review Conference shall consider, <u>inter alia</u>:</i></p> <ul style="list-style-type: none"> <li><i>- The impact of scientific and technological developments relating to the Convention;</i></li> <li><i>- The relevance of the provisions of, and the implementation of the Chemical Weapons Convention on the effective implementation of the Biological and Toxin Weapons Convention, duly taking into account the degree of universality attained by such conventions at the time of the Fifth Review Conference;</i></li> <li><i>- The effectiveness of confidence-building measures as agreed at the Second and Third Review Conferences;</i></li> <li><i>- The conclusions of a Special Conference, to which the Ad Hoc Group shall submit its report, including a legally-binding instrument to strengthen the Biological and Toxin Weapons Convention, which shall be adopted by consensus, to be held as soon as possible before the commencement of the Fifth Review Conference; and further action as appropriate;</i></li> <li><i>- The requirement for, and the operation of, the requested allocation by the United Nations Secretary-General of staff resources and other requirements to assist the effective implementation of the relevant decisions of the Fourth Review Conference;</i></li> </ul> <p><i>3. The Review Conference recommends that conferences of States Parties to review the operation of the Convention should be held at least every five years.</i></p>
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Consequently, the agenda item on consideration of issues identified in the review of Article XII had again provided a valuable link to the outcome of the Fourth Review Conference and its decision as to what should be considered *inter alia* by the Fifth Review Conference.

## **Fifth Review Conference**

27. The Fifth Review Conference and its Preparatory Committee again took place against a background of continuing Ad Hoc Group meetings at a time when it was hoped that the Ad Hoc Group would soon complete its negotiation of a legally binding instrument which would then be considered by a further Special Conference. The Preparatory Committee met in Geneva from 25 to 27 April 2001 during the twenty-third session of the Ad Hoc Group which met in Geneva from 23 April to 11 May 2001.

28. The Preparatory Committee elected Ambassador Tibor Tóth of Hungary as Chairman of the Preparatory Committee. It also elected Ambassador Markku Reimaa of Finland and Ambassador Munir Akram of Pakistan as Vice Chairmen of the Preparatory Committee. As at previous Review Conferences, the Preparatory Committee authorised the Bureau to handle technical and other matters in the period before the Review Conference was convened.

29. The Preparatory Committee also requested, as had happened prior to the Fourth Review Conference, the preparation of background papers by the Secretariat on the compliance by States Parties with all their obligations under the Convention and on new scientific and technological developments relevant to the Convention. In regard to the latter, the Preparatory Committee said, as had happened prior to the Fourth Review Conference, that this information should cover the applications being made of such developments and their relevance to various aspects of the Convention. In addition, the Preparatory Committee decided to ask the UN Secretary-General to prepare a background information document providing, in summary tabular form, data on the participation of States Parties in the agreed confidence-building measures since the last Review Conference.

30. Insofar as the agenda was concerned, the Preparatory Committee agreed to recommend as the provisional agenda for the Fifth Review Conference the agenda for the Fourth Review Conference. The item added for the Fourth Review Conference entitled “*Consideration of the work of the Ad Hoc Group established by the Special Conference in 1994*” was again included so as to ensure that the Review Conference included consideration of the work being carried out following the decision of the Special Conference.

31. The Fifth Review Conference was held in Geneva for three weeks from 19 November to 7 December 2001. At its first meeting, the Fifth Review Conference<sup>11</sup> elected Ambassador Tibor Tóth of Hungary as President. In addition, Ambassador Markku Reimaa of Finland was appointed Chairman of the Committee of the Whole, Ambassador Munir Akram of Pakistan Chairman of the Drafting Committee and Ambassador Ali-Ashgar Soltanieh of the Islamic Republic of Iran Chairman of the Credentials Committee.

32. In a novel development, that had no precedent at previous Review Conferences, based on a request by the Conference to the President, the Chairman of the Drafting Committee and the

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<sup>11</sup> United Nations, Fifth Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Geneva, 19 November – 7 December 2001 and 11 – 22 November 2002, *Final Document*, BWC/CONF. V/17, Geneva 2002. Available at <http://www.opbw.org>

Chairman of the Committee of the Whole, the Chairman of the Drafting Committee was assisted in his work by Facilitators in the following areas:

- Solemn Declaration: Ambassador David Broucher (United Kingdom of Great Britain and Northern Ireland);
- Use: Minister Counsellor Alfredo Labbé (Chile);
- Legislation/Criminalization: Ambassador Gustavo Albin (Mexico);
- Safety: Ambassador Volker Heinsberg (Germany);
- Investigations: Ambassador Rakesh Sood (India);
- Assistance: Ambassador Christopher Westdal (Canada);
- Disease Surveillance: Ambassador Ali-Asghar Soltanieh (Iran);
- Confidence-Building Measures: Ambassador Hubert de la Fortelle (France);
- Cooperation (other than on disease and assistance): Minister Counsellor F. S. Duque Estrada Meyer (Brazil);
- Follow-up/Ad Hoc Group: President of the Conference.

33. Although Ambassador Tibor Tóth of Hungary as the President of the Fifth Review Conference said in a subsequent press conference that the Final Declaration had been 95 per cent agreed on the final day, 7 December 2001, the United States on the final afternoon, a couple of hours before the Review Conference was due to conclude, proposed language for the Final Declaration which included the following:

*3. The Conference takes note of the work of the Ad Hoc Group, and decides that the Ad Hoc Group and its mandate are hereby terminated and replaced with the process elaborated in paragraphs 1 and 2.*

The process elaborated in paragraphs 1 and 2 related to annual meetings of the States Parties between the Fifth and Sixth Review Conferences to:

*(a) consider and assess progress by States Parties in implementing the new measures adopted at the Fifth Review Conference; and*

*(b) consider new measures or mechanisms for effectively strengthening the BWC*

34. This proposal by the United States was received with shock and anger not only because of its proposed termination of the Ad Hoc Group and its mandate but also because of its unexpected introduction less than two hours before the Review Conference was scheduled to end thereby jeopardizing the whole Review Conference and the progress towards agreement on a Final Declaration<sup>12</sup>. In order to avoid complete failure of the Review Conference, the States Parties agreed to adjourn and reconvene in Geneva from 11 to 22 November 2002.

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<sup>12</sup> Graham S. Pearson, *The Biological and Toxin Weapons Convention*, Report from Geneva, Quarterly Review no 17, *CBW Conventions Bulletin No.54*, December 2001. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

*The resumed Fifth Review Conference*

35. The Fifth Review Conference resumed in Geneva on 11 November 2002. In his opening remarks, the President tabled a proposal, which was not open for negotiation, for a series of one week annual meetings of the States Parties prepared by two week meetings of experts to be held in 2003, 2004 and 2005. At the end of the first of the two scheduled weeks for the resumed Review Conference the States Parties agreed<sup>13</sup>:

*(a) To hold three annual meetings of the States Parties of one week duration each year commencing in 2003 until the Sixth Review Conference, to be held not later than the end of 2006, to discuss, and promote common understanding and effective action on:*

- i. the adoption of necessary national measures to implement the prohibitions set forth in the Convention, including the enactment of penal legislation;*
- ii. national mechanisms to establish and maintain the security and oversight of pathogenic microorganisms and toxins;*
- 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;*
- 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;*
- v. the content, promulgation, and adoption of codes of conduct for scientists.*

*(b) All meetings, both of experts and of States Parties, will reach any conclusions or results by consensus.*

*(c) Each meeting of the States Parties will be prepared by a two week meeting of experts. The topics for consideration at each annual meeting of States Parties will be as follows: items i and ii will be considered in 2003; items iii and iv in 2004; item v in 2005. The first meeting will be chaired by a representative of the Eastern Group, the second by a representative of the Group of Non-Aligned and Other States, and the third by a representative of the Western Group.*

*(d) The meetings of experts will prepare factual reports describing their work.*

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

The Final Document was agreed on Friday 14 November 2002. There was no Final Declaration. No attempt was made at the resumed session to reach agreement on a Final Declaration despite this having been 95 per cent agreed close to the end of the 2001 session and despite continued

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<sup>13</sup> United Nations, Fifth Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Geneva, 19 November – 7 December 2001 and 11 – 22 November 2002, *Final Document*, BWC/CONF. V/17, Geneva 2002, paragraph 18. Available at <http://www.opbw.org>

encouragement from non-governmental commentators<sup>14</sup>. Consequently the opportunity to continue to strengthen the Convention through reaffirmation and further extension of the understandings agreed at previous Review Conferences was missed<sup>15</sup>.

## Analysis

36. Review Conferences have thus been held at about five year intervals in 1980, 1986, 1991, 1996 and 2001/2002. These have been chaired in rotation by representatives from the Group of Eastern European States, the Group of Non-Aligned and Other States and the Western Group as summarized in the table below.

Review Conference	Date	Presidency
First	3 to 21 March 1980	President Ambassador Oscar Vaernø (Norway) Chairman of the Committee of the Whole Ambassador Petar Voutov (Bulgaria) Chairman of the Drafting Committee Ambassador C. G. Maina (Kenya) Chairman of the Credentials Committee Ambassador C. A. de Souza e Silva (Brazil)
Second	8 to 26 September 1986	President, Ambassador Winfried Lang (Austria) Chairman of the Committee of the Whole, Ambassador M. Vejvoda (Czechoslovakia) Chairman of the Drafting Committee Ambassador R. Butler (Australia) Chairman of the Credentials Committee, Ambassador D. D. Afande (Kenya)
Third	9 to 27 September 1991	President Ambassador Roberto Garcia Moritan (Argentina) Chairman of the Committee of the Whole Ambassador H. Wagenmakers (the Netherlands) Chairman of the Drafting Committee Ambassador T. Tóth (Hungary) Chairman of the Credentials Committee Ambassador W. Lang (Austria)

<sup>14</sup> Graham S. Pearson & Nicholas A. Sims, *The Resumed Fifth BTWC Review Conference: Maximizing the Benefits from the Final Declaration*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 9, October 2002. Available at <http://www.brad.ac.uk/acad/sbtwc>

<sup>15</sup> Graham S. Pearson, *The Biological and Toxin Weapons Convention Review Conference*, Report from Geneva, Quarterly Review no 18, *CBW Conventions Bulletin No.58*, December 2002. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

Fourth	25 November to 6 December 1996	President Ambassador Sir Michael Weston (United Kingdom) Chairman of the Committee of the Whole Ambassador Jorge Berguño (Chile) Chairman of the Drafting Committee Ambassador Tibor Tóth (Hungary) Chairman of the Credentials Committee Mrs Maria Francisca Arias Castaño (Colombia)
Fifth	19 November to 7 December 2001 & 11 to 22 November 2002	President Ambassador Tibor Tóth (Hungary) Chairman of the Committee of the Whole Ambassador Markku Reimaa (Finland) Chairman of the Drafting Committee Ambassador Munir Akram (Pakistan) Chairman of the Credentials Committee Ambassador Ali-Ashgar Soltanieh (Islamic Republic of Iran)

37. Consequently, for the Sixth Review Conference, the President can be expected to be from the Group of Non-Aligned and Other States, the Chairman of the Committee of the Whole from the Group of Eastern European States, the Chairman of the Drafting Committee from the Western Group and the Chairman of the Credentials Committee from the Western Group.

38. It is also evident that the First, Second and Third Review Conferences in 1980, 1986 and 1991 respectively were each for three weeks and each concluded with a Final Declaration which reviewed each Article of the Convention in turn and successfully strengthened the Convention through the extended understandings agreed by the States Parties in these Final Declarations. The Fourth Review Conference in 1996 was for two weeks as it was held during the period when the Ad Hoc Group was meeting to negotiate a legally binding instrument to strengthen the effectiveness and improve the implementation of the Convention. The shorter duration of the Fourth Review Conference was consequently intended to avoid the Fourth Review Conference covering areas currently being addressed by the Ad Hoc Group. It did, however, conclude with a Final Declaration in which the language used built on the cumulative development of the text through the Final Declarations of the first three Review Conferences. It continued the process of reaffirming and extending the understandings between the States Parties which at successive Review Conferences has contributed significantly to the strengthening of the prohibitions enshrined in the Convention. The Fifth Review Conference in 2001 and adjourned to 2002 followed the failure of the Ad Hoc Group to reach agreement on a legally binding instrument and the Fifth Review Conference failed to agree a Final Declaration.

39. Consequently the Sixth Review Conference to be held in 2006 is the first opportunity for the States Parties to carry out a comprehensive review of the operation of the Convention since the Third Review Conference in 1991. It follows that a **whole week** should be allowed for the Preparatory Committee to agree on an Agenda to recommend to the Sixth Review Conference and that the Review Conference itself should be allocated **three weeks** so that it can carry out the necessary comprehensive review.

## Annual Meetings of States Parties

40. As agreed at the resumption of the Fifth Review Conference, one week annual meetings of the States Parties have been held in 2003 and 2004 and are planned for 2005. These have been prepared, as agreed, by two week meetings of experts.

### *First Annual Meeting*

41. The first Annual Meeting and its preparatory meeting of experts were chaired by a representative of the Eastern European States, Ambassador Tibor Tóth of Hungary. These considered the topics:

*i. the adoption of necessary national measures to implement the prohibitions set forth in the Convention, including the enactment of penal legislation;*

*ii. national mechanisms to establish and maintain the security and oversight of pathogenic microorganisms and toxins;*

Although the mandate agreed by the Fifth Review Conference was for the meetings *to discuss, and promote common understanding and effective action* on the topics assigned to the meetings, it became clear that whilst the States Parties were very willing to exchange information on national measures and mechanisms, there was a reluctance to identify *common understandings* and an even greater reluctance to agree any *effective action*. It was evident that States Parties wished to leave any decisions on further action to the Sixth Review Conference as the language in the mandate that *The Sixth Review Conference will consider the work of these meetings and decide on any further action* was interpreted as meaning that *effective action* could not be agreed at the annual meetings. It was apparent that some States Parties saw the mandate as excluding negotiation. Nevertheless, it seems probable that many States Parties will have used the exchange of information at the annual meetings as a basis for taking *national* action to strengthen their national measures and mechanisms.

42. The first Meeting of Experts was held in Geneva for two weeks from 18 to 29 August 2003. It produced a report which contained as an Annex all the statements, presentations and contributions made available to the Chairman by States Parties, in the languages of submission. The Meeting of States Parties was then held in Geneva for the week from 10 to 14 November 2003. In its report<sup>16</sup>, it agreed the following statement of substance:

*At the Meeting of States Parties, States Parties noted that notwithstanding the differing legal and constitutional arrangements among the 151 States Parties to the Convention, States have adopted similar basic approaches and share common principles. The States Parties stressed the need for undertaking activities at the national level in keeping with*

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<sup>16</sup> United Nations, 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, First Meeting, Geneva, 10 – 14 November 2003, *Report of the Meeting of States Parties*, BWC/MSP/2003/4 (Vol.1), 24 November 2003, Part II. Available at <http://www.opbw.org>

*their obligations and responsibilities to strengthen and implement the Convention. The States Parties agreed, to that end, on the value of the following:*

*To review, and where necessary, enact or update national legal, including regulatory and penal, measures which ensure effective implementation of the prohibition of the Convention, and which enhance effective security of pathogens and toxins.*

*The positive effect of cooperation between States Parties with differing legal and constitutional arrangements. States Parties in a position to do so may wish to provide legal and technical assistance to others who request it in framing and/or expanding their own legislation and controls in the areas of national implementation and biosecurity.*

*The need for comprehensive and concrete national measures to secure pathogen collections and the control of their use for peaceful purposes. There was a general recognition of the value of biosecurity measures and procedures, which will ensure that such dangerous materials are not accessible to persons who might or could misuse them for purposes contrary to the Convention.*

*States Parties considered that agreement on the value of these measures discussed at the Meeting constitutes an essential effort to facilitate more effective implementation and enforcement of the Convention, as well as providing a basis for review of progress at the 2006 Review Conference.*

43. It is evident that whilst the Chairman had circulated a non-paper seeking agreement on a number of specific measures to be undertaken urgently by States Parties on which progress was to be reported to the Sixth Review Conference, it was not possible to obtain agreement to this. In an assessment<sup>17</sup> at the time, it was noted that the States Parties had set a standard in their 2003 meeting which was far too low. For the meetings in 2004 under the chairmanship of South Africa, it was urged that the States Parties should demonstrate a more effective outcome through the promotion of *common understanding and effective action*. Such an improved outcome should be facilitated by the four month period, twice as long as in 2003, between the Meeting of Experts and the Meeting of States Parties.

44. The assessment went on to note that, unfortunately, it seemed that the States Parties have been unable to move on beyond the difficulties encountered at the Fifth Review Conference in 2001 and 2002. It was also evident that the States Parties were failing to recognise that the annual meetings are an **inter Review Conference** process and consequently the States Parties were failing to put their achievements into the context of the Review Conference process. Rather, States Parties appeared to be focussing solely on the substance of the topics in the decision of the Fifth Review Conference and to regard consideration of them in the broader context of the Review Conference as a distraction. Regrettably, the disappointingly restrictive

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<sup>17</sup> Graham S. Pearson, *The Biological Weapons Convention New Process*, Report from Geneva, Quarterly Review no 20, *CBW Conventions Bulletin* No.62, December 2003. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

interpretation of the “*effective action*” language in its mandate and distinct lack of ambition observed at the earlier Meeting of Experts was confirmed by the Meeting of States Parties in 2003. This meant that efforts needed to be started in 2004 in order to prepare for an effective and successful Review Conference in 2006 at which there needed to be a comprehensive review of all aspects of the Convention as was last carried out in 1991. It was argued that such a comprehensive review was vital if there was indeed to be recovery and strengthening of the Biological and Toxin Weapons Convention through a return to the cumulative development of extended understandings and to avoid the Convention becoming ever more peripheral in the policy frameworks States Parties use to ensure the prevention and prohibition of biological weapons and combat proliferation.

### *Second Annual Meeting*

45. The second Annual Meeting and its preparatory meeting of experts were chaired by a representative of the Non-Aligned and Other States, Peter Goosen of South Africa. These considered the topics:

*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;*

*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;*

46. The second Meeting of Experts was held in Geneva for two weeks from 19 to 30 July 2004. In a useful step forward, it produced a report including an Annex prepared by the Chairman listing considerations, lessons, perspectives, recommendations, conclusions and proposals drawn from the presentations, statements, working papers and interventions made by delegations on the topics under discussion at the Meeting. It was noted that the Chairman's view was that the paper could assist delegations in their preparations for the Meeting of States Parties in December 2004 and in its consideration of how best to “*discuss, and promote common understanding and effective action on*” the two topics in accordance with the decision of the Fifth Review Conference.

47. The Meeting of States Parties was then held in Geneva for the week from 6 to 10 December 2004. In its report<sup>18</sup>, it agreed the following statement of substance:

*18. On the mandate to discuss, and promote common understanding and effective action on strengthening and broadening national and international institutional efforts and existing mechanisms for the surveillance, detection, diagnosis and combating of*

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<sup>18</sup> United Nations, 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, *Report of the Meeting of States Parties*, BWC/MSP/2004/3, 14 December 2004. Available at <http://www.opbw.org>

*infectious diseases affecting humans, animals, and plants, the States Parties recognised that:*

- a) infectious disease outbreaks can be contained and suppressed through early-detection, immediate response and co-operation and support at the national and international level;*
- b) strengthening and broadening national and international surveillance, detection, diagnosis and combating of infectious disease may support the object and purpose of the Convention;*
- c) the primary responsibility for surveillance, detection, diagnosis and combating of infectious diseases rests with States Parties, while the WHO, FAO and OIE have global responsibilities, within their mandates, in this regard. The respective structures, planning and activities of States Parties and the WHO, FAO and OIE should be co-ordinated with and complement one another;*
- d) scientific and technological developments have the potential to significantly improve disease surveillance and response.*

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

- a) supporting the existing networks of relevant international organisations for the surveillance, detection, diagnosis and combating of infectious diseases and acting to strengthen the WHO, FAO and OIE programmes, within their mandates, for the continued development and strengthening of, and research into, rapid, effective and reliable activities for the surveillance, detection, diagnosis and combating of infectious diseases, including in cases of emergencies of international concern;*
- b) improving, wherever possible, national and regional disease surveillance capabilities, and, if in a position to do so, assisting and encouraging, with the necessary agreement, other States Parties to do the same;*
- c) working to improve communication on disease surveillance, including with the WHO, FAO and OIE, and among States Parties.*

*20. On the mandate to discuss, and promote common understanding and effective action on 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, 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.*

22. *The States Parties further considered that in pursuing the above understandings and actions, States Parties could, according to their respective circumstances, consider the considerations, lessons, perspectives, recommendations, conclusions and proposals drawn from the presentations, statements, working papers and interventions made by delegations on the topics under discussion at the Meeting of Experts, as contained in the Annex II of the Report of the Meeting of Experts (BWC/MSP/2004/MX/3), as well as the synthesis of these considerations, lessons, perspectives, recommendations, conclusions and proposals contained in BWC/MSP/2004/L.1, which are attached to this report as Annexes II and III. These annexes were not discussed or agreed upon and consequently have no status.*

23. *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).*

48. As noted in an assessment<sup>19</sup> at the time, this outcome was considerably more substantive than that of the comparable Meeting in 2003. The structure of the substance setting out the elements that States Parties recognized – the common understandings – and then setting out what the States Parties agreed upon – the effective action – was a significant step forward. In addition, the clear linkage of the outcome (in paragraph 23 quoted above) to the Sixth Review Conference with its call for States Parties to inform that Conference of “*any actions, measures or other steps that they may have taken*” is a valuable linkage which should facilitate the work of the Sixth Review Conference in 2006.

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<sup>19</sup> Graham S. Pearson, *The Biological Weapons Convention Meeting of States Parties*, Report from Geneva, Quarterly Review no 22, *CBW Conventions Bulletin No.66*, December 2004. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

### *Third Annual Meeting*

49. The third Annual Meeting and its preparatory Meeting of Experts in 2005 will be chaired by a representative of the Western Group, Ambassador John Freeman of the United Kingdom. These will be considering the topic:

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

The two week Meeting of Experts will be held in Geneva from 13 to 24 June 2005 and the one week Meeting of States Parties in Geneva from 5 to 9 December 2005. It is expected that the outcome in 2005 should be at least comparable to if not better than that achieved in 2004.

### **Preparing for the Sixth Review Conference in 2006**

#### *First Committee and General Assembly Resolution*

50. The Final Document of the resumed Fifth Review Conference included the decision that *the Sixth Review Conference would be held in Geneva in 2006, and would be preceded by a Preparatory Committee*. Traditionally these events are subject to prior consultation and agreement on dates and other modalities recorded in a UN resolution. Such a resolution also serves to authorise the provision of conference services by the UN Secretary-General. Consequently, in 2005 it would be expected that a resolution will be submitted to the First Committee and subsequently to the General Assembly that might be similar in purpose to that adopted in 2000. The resolution 55/40, adopted without a vote in the First Committee on 31 October 2000 and again without a vote in the General Assembly on 20 November 2000, was introduced into the First Committee by Hungary on 19 October 2000. It had 62 sponsors and two additional sponsors.

51. Resolution 55/40 had six preambular paragraphs and seven operative paragraphs. It was, however, clearly drafted at a time when expectations were high that the negotiations of the Ad Hoc Group would soon be successfully completed and several paragraphs are directly related to the work of the Ad Hoc Group. Consequently, resolution 55/40 does not provide a suitable model for the situation in 2005.

52. Examination of the resolution 50/79, which prepared the way for the Fourth Review Conference in 1996, adopted without a vote on 12 December 1995 shows that this was drafted following the outcome of VEREX and of the Special Conference in 1994 which established the Ad Hoc Group so resolution 50/79 also does not provide a suitable model for the situation in 2005.

53. It is thus necessary to go back to resolution 45/57B adopted without a vote on 4 December 1990 to find a suitable model, albeit somewhat dated, for a resolution which envisages a comprehensive review, not one overshadowed by concurrent negotiations in a **parallel process** (see paragraph 20 above of this Review Conference Paper) or, as in 1995, the earlier stages of such a process. Resolution 45/57B was as follows:

***Implementation of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction and preparations for the Third Review Conference of the Parties to the Convention***

*The General Assembly,*

*Recalling its resolution 2826 (XXVI) of 16 December 1971, in which it commended the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction,*

*Taking note of the confidence-building measures agreed upon by the Second Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, held at Geneva from 8 to 26 September 1986, for further strengthening the authority of the Convention and for enhancing confidence among States,*

*Acknowledging that the Final Declaration of the Second Review Conference expressed the need to give further consideration to, inter alia, the implementation of the Convention in all its aspects,*

*Confirming the common interest in strengthening the authority and the effectiveness of the Convention to promote confidence and co-operation among Member States as well as the necessity to comply with the obligations set forth in the Convention,*

*1. Notes that, at the request of the States parties, a Third Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (biological) and Toxin Weapons and on Their Destruction will be held at Geneva in 1991, that, following appropriate consultations, a preparatory committee for that Conference has been formed, open to all parties to the Convention, and that the committee will meet at Geneva from 8 to 12 April 1991;*

*2. Requests the Secretary-General to render the necessary assistance and to provide such services as may be required for the Third Review Conference and its preparation;*

*3. Recalls in that regard the decision taken at the Second Review Conference that the Third Review Conference should consider, inter alia, the issues set out in article XII of the Final Declaration of the Second Review Conference;*

*4. Reiterates its call upon all States parties to the Convention to participate in the exchange of information and data agreed to in the Final Declaration of the Second Review Conference and to provide such information and data in conformity with the standardized procedure to the Secretary-General on an annual basis and not later than 15 April;*

5. *Also recalls its request in resolution 44/115 C of 15 December 1989 that the Secretary-General should render the necessary assistance and should provide such services as may be required for the implementation of the relevant parts of the Final Declaration of the Second Review Conference;*

6. *Further recalls its request in resolution 44/115 C that the Secretary-General should circulate to the States parties to the Convention not later than four months prior to the convening of the Third Review Conference a report on the implementation of these confidence-building measures;*

7. *Calls upon all States that have not ratified or acceded to the Convention to do so without delay, thus contributing to the achievement of universal adherence to the Convention and to the strengthening of international confidence.*

54. In addition, it should be noted that there were resolutions submitted to the First Committee and subsequently to the General Assembly in both 2003 and 2004 which were adopted without a vote. These were A/RES/58/72 adopted in January 2004 and A/RES/59/110 adopted in December 2004 which recalled the decision taken by the Fifth Review Conference to hold annual meetings and were both initiated by Hungary.

55. In considering what might usefully be included in a resolution to be adopted by the First Committee and then by the General Assembly in 2005, the basic approach followed in resolution 45/57B is borne in mind whilst drawing upon the language included in appropriate paragraphs of the later resolutions 55/40 and 59/110. Consequently, it is proposed that the draft resolution to be put to the First Committee and General Assembly in autumn 2005 might take the following form, in which the origins of text in resolutions and other documents is shown in square brackets for ease of reference:

***Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction*** [55/40]

*The General Assembly* [55/40]

*Recalling* its previous resolutions relating to the complete and effective prohibition of bacteriological (biological) and toxin weapons and to their destruction, [55/40][59/110]

*Noting with satisfaction* that there are one hundred and fifty-three States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, including all of the permanent members of the Security Council, [55/40 & 59/110 updated by BWC/MSP/2004/INF.2]

*Bearing in mind* its call upon all States parties to the Convention to participate in the implementation of the recommendations of the Review Conferences, including the exchange of information and data agreed to in the Final Declaration of the Third Review Conference of the Parties to the Convention on the Prohibition of the Development,

Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, and to provide such information and data in conformity with standardized procedure to the Secretary-General on an annual basis and no later than 15 April, [55/40][59/110]

*Welcoming* the reaffirmation made in the Final Declaration of the Fourth Review Conference that under all circumstances the use of bacteriological (biological) and toxin weapons and their development, production and stockpiling are effectively prohibited under article I of the Convention, [55/40][59/110]

*Recalling* the decision reached at the Fifth Review Conference to hold three annual meetings of the States parties of one week's duration each year commencing in 2003 until the Sixth Review Conference and to hold a two-week meeting of experts to prepare for each meeting of the States parties, [59/110]

1. *Notes with satisfaction* the increase in the number of States parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, reaffirms the call upon all signatory States that have not yet ratified the Convention to do so without delay, and calls upon those States that have not signed the Convention to become parties thereto at an early date, thus contributing to the achievement of universal adherence to the Convention; [55/40][59/110]

2. *Welcomes* the information and data provided to date, and reiterates its call upon all States parties to the Convention to participate in the exchange of information and data agreed to in the Final Declaration of the Third Review Conference of the Parties to the Convention; [55/40][59/110]

3. *Recalls* the decision reached at the Fifth Review Conference<sup>4</sup> to discuss and promote common understanding and effective action: in 2003 on the two topics of the adoption of necessary national measures to implement the prohibitions set forth in the Convention, including the enactment of penal legislation, and national mechanisms to establish and maintain the security and oversight of pathogenic micro-organisms and toxins; in 2004 on the two topics of 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 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 in 2005 on the topic of the content, promulgation and adoption of codes of conduct for scientists; [59/110]

4. *Notes* that, at the request of the States parties, the Sixth Review Conference of the Parties to the Convention will be held at Geneva from [insert three weeks date] 2006, and that, after appropriate consultation, a Preparatory Committee for that Conference, open to all States parties to the Convention, was established and will meet at Geneva from [insert one week date] 2006; [55/40]

5. *Requests* the Secretary-General to render the necessary assistance and to provide such services as may be required for the Sixth Review Conference and the preparations for it; [developed from 45/57B and 55/40]

6. *Decides* to include in the provisional agenda of its sixty-first session the item entitled “Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction”. [59/110]

56. It should also be noted that the report<sup>20</sup> of the UN Secretary-General’s High Level Panel on Threats, Challenges and Change was issued on 2 December 2004 and that this included two recommendations specifically relating to the Biological and Toxin Weapons Convention:

*27. 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.*

*34. States Parties to the Biological and Toxin Weapons Convention should negotiate a new bio-security protocol to classify dangerous biological agents and establish binding international standards for the export of such agents.*

As the first opportunity for the States Parties to the BTWC to consider these recommendations will be at the Sixth Review Conference in 2006, there would be benefit in referring to this Panel’s recommendations in the General Assembly resolution concerning the Sixth Review Conference to be considered in autumn 2005 as this would facilitate preparation by the States Parties for consideration of the substance.

57. On 6 May 2004 the General Assembly decided<sup>21</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 November 2004 in the Secretary-General’s report<sup>22</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*

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<sup>20</sup> United Nations General Assembly, *Note by the Secretary-General*, A/59/565, 2 December 2004.

<sup>21</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>22</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.

*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>23</sup> that the high level plenary meeting of the sixtieth session would be held on 14 to 16 September 2005 in New York.

58. It is therefore suggested that the General Assembly resolution to be considered in autumn 2005 concerning the Sixth Review Conference might 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,

This preambular paragraph could be upgraded to an operational paragraph should the General Assembly at or after its high level plenary session accept the recommendations of the High Level Panel as incorporated into the Secretary-General's comprehensive report in March 2005 on the Millennium Declaration.

59. Whilst the most recent resolutions relating to the BTWC have all been initiated by Hungary, this may have reflected the interest of the representative of Hungary, Ambassador Tibor Tóth, who has been appointed Executive Secretary at the head of the Provisional Technical Secretariat of the Comprehensive Test Ban Treaty Organization (CTBTO) in Vienna from August 2005. Should Hungary not decide to continue to initiate the resolution in the First Committee, it will fall to the representatives of the Depositary Governments to ensure that an appropriate resolution is initiated. In any event, the representatives of the Depositary Governments can be expected to be consulting other States Parties to determine suitable dates in 2006 for the Preparatory Committee meeting and for the Review Conference itself, taking into account the availability of UN meeting rooms and conference facilities for all the diplomatic gatherings due to be accommodated in Geneva in 2006.

#### *Preparatory Committee*

60. As already noted, a full week should be allocated for the meeting of the Preparatory Committee. The normal practice of the Preparatory Committee has been to agree to recommend to a Review Conference who should preside over the Review Conference as well as to recommend the distribution of the posts of Chairmen and Vice-Chairmen of its subsidiary bodies among the various Groups. This history was tabulated above (in paragraph 36) from which it was concluded that, for the Sixth Review Conference, the President can be expected to be from the Group of Non-Aligned and Other States, the Chairman of the Committee of the Whole from the

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<sup>23</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.

Group of Eastern European States, the Chairman of the Drafting Committee from the Western Group and the Chairman of the Credentials Committee from the Western Group.

61. The Preparatory Committee also can be expected to give consideration to the following questions relating to the organization of the Review Conference:

- (a) Date and duration;
- (b) Provisional agenda;
- (c) Draft Rules of Procedure;
- (d) Background documentation;
- (e) Publicity;
- (f) Final document(s).

62. The **date and duration** are likely to have already been determined by consultation among the States Parties if the Depositary Governments have identified a three week period for the holding of the Sixth Review Conference prior to the initiation of the resolution for the First Committee.

63. The **provisional agenda**, because there was no Final Declaration following the Fifth Review Conference, is likely to be developed from that recommended for the Fifth Review Conference by its Preparatory Committee which was as follows:

#### *ANNEX I*

##### *DRAFT PROVISIONAL AGENDA FOR THE FIFTH REVIEW CONFERENCE*

- 1. Opening of the Conference by the Chairman of the Preparatory Committee*
- 2. Election of the President*
- 3. Adoption of the agenda*
- 4. Submission of the final report of the Preparatory Committee*
- 5. Adoption of the Rules of Procedure*
- 6. Election of the Vice-Presidents of the Conference and Chairmen and Vice-Chairmen of the Committee of the Whole, the Drafting Committee and the Credentials Committee*
- 7. Credentials of representatives to the Conference*
  - (a) Appointment of the Credentials Committee*
  - (b) Report of the Credentials Committee*
- 8. Confirmation of the nomination of the Secretary-General*
- 9. Programme of work*
- 10. Review of the operation of the Convention as provided for in its Article XII*
  - (a) General debate*
  - (b) Articles I-XV*
  - (c) Preambular paragraphs and purposes of the Convention*
- 11. Consideration of issues identified in the review of Article XII contained in the Final Declaration of the Fourth Review Conference, and possible follow-up action*
- 12. Work done to strengthen the Convention in accordance with the decision of the 1994 Special Conference*

13. *Other matters, including the question of future review of the Convention*
14. *Report of the Committee of the Whole*
15. *Report of the Drafting Committee*
16. *Preparation and adoption of the final document(s)*

64. It is probable that agenda items 1 to 11 would be unchanged as would agenda items 13 to 16. Agenda item 11 would provide the link between the outcome of the Fourth Review Conference and its decision as to what should be considered *inter alia* by the next Review Conference. Two questions that would need to be considered by the Preparatory Committee would be whether it was necessary or desirable to include in the provisional agenda for the Sixth Review Conference the decision of the Fifth Review Conference to hold annual meetings of the States Parties during the period between the Fifth and Sixth Review Conferences and secondly whether it was necessary or desirable to retain agenda item 12:

*12. Work done to strengthen the Convention in accordance with the decision of the 1994 Special Conference*

65. Insofar as the decision of the Fifth Review Conference is concerned, the key requirement is that the Sixth Review Conference should *inter alia* consider the outcome of the annual meetings and whether any further action is required. There would therefore be merit in inclusion in the provisional agenda for the Sixth Review Conference of the following additional item to appear after agenda item 11 as follows:

*11bis. Consideration of issues identified in accordance with the decision of the Fifth Review Conference*

66. The question relating to agenda item 12 of the Fifth Review Conference is much more contentious. There is little doubt that the majority, if not all, of the States Parties would indeed support, in principle if not in specific terms, the requirement to strengthen the Convention and the objective agreed in the Final Declaration of the 1994 Special Conference as a mandate for the new Ad Hoc Group which it established:

*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.*

It is, however, equally true that it was a failure to agree on language in regard to agenda item 12 in the Final Declaration of the Fifth Review Conference that led to the adjournment of that Review Conference. The mandate derived from the 1994 Special Conference is now one among several competing approaches to the strengthening of the Convention. To emphasise its unique significance or authority may no longer be productive.

67. Although an option would be to omit agenda item 12 from the provisional agenda for the Sixth Review Conference and to leave the question of the strengthening of the Convention to the consideration of Article V in the review of the operation of the Convention, this would serve

simply to postpone the agenda issue to the Sixth Review Conference itself, and might hinder adequate preparation for addressing the substance of the question. It also needs to be recalled that the report<sup>24</sup> of the UN Secretary-General's High Level Panel on Threats, Challenges and Change was issued on 2 December 2004 and that this included two recommendations specifically relating to the Biological and Toxin Weapons Convention:

*27. 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.*

*34. States Parties to the Biological and Toxin Weapons Convention should negotiate a new bio-security protocol to classify dangerous biological agents and establish binding international standards for the export of such agents.*

68. The first opportunity for the States Parties to the BTWC to consider these recommendations will be at the Sixth Review Conference in 2006. It is thus evident that the Sixth Review Conference will need to address the substance of the issue in agenda item 12. Accordingly, States Parties need to prepare for this and it would be better to include an appropriate item in the provisional agenda along the lines of:

*12. Work done to strengthen the Convention in accordance with the decision of the 1994 Special Conference*

which might be made more open-ended and forward looking and perhaps, more widely acceptable, by updating the item to read:

*12. Work to strengthen the Convention*

69. The **draft rules of procedure** are likely to be the same as in 2001. The Preparatory Committee can be expected to recommend as the draft Rules of Procedure of the Sixth Review Conference the Rules of Procedure of the Fifth Review Conference, as contained in document BWC/CONF.V/17.

70. The **background documentation** required is likely to be the same as requested in 2001 although the opportunity should be taken **in addition** to specifically invite the States Parties to provide information to the Secretariat regarding actions taken by the States Parties following the annual meetings of the States Parties held in accordance with the decision of the Fifth Review Conference. The requirement for background documentation would thus be for four documents to be compiled by the Secretariat this time:

1. Background information document providing, in summary tabular form, data on the participation of States Parties in the agreed Confidence-Building Measures since the last Review Conference.

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<sup>24</sup> United Nations General Assembly, *Note by the Secretary-General*, A/59/565, 2 December 2004.

2. Background information document on compliance by States Parties with all their obligations under the Convention, compiled from information provided by them.
3. Background information on new scientific and technological developments relevant to the Convention and covering the applications being made of such developments and their relevance to various aspects of the Convention, compiled from information provided by the States Parties.
4. Background information document on actions taken by States Parties following the annual meetings of the States Parties held in accordance with the decision of the Fifth Review Conference, compiled from information provided by them.

71. In regard to **publicity** for the Review Conference, it would be expected that, as at the Fifth Review Conference, the Preparatory Committee would decide to request the Secretariat to issue press releases for the meetings of the Review Conference.

72. Finally, in regard to **final document(s)** of the Review Conference, it would be expected that, as at the Fifth Review Conference, the Preparatory Committee would decide to include an appropriate item in the provisional agenda of the Conference. Although this would not, in itself, commit the Conference to a Final Declaration, it is our view that a Final Declaration, derived from a comprehensive review, is vital for a successful outcome to the Sixth Review Conference, and that its centrality to maximising the benefits of the review process must be reaffirmed for the process to recover.

## **Conclusions**

73. It is timely **now** to start preparing for the Sixth Review Conference in 2006. The Group of Non-Aligned and Other States need to consider who should be the President and likewise the other Groups need to consider their nominations for the Vice-Chairmen of the Preparatory Committee and for the various posts in the Review Conference itself – in particular, the chairmanships of the subsidiary bodies.

74. A resolution needs to be put forward to the First Committee at the next session of the General Assembly following consultation as to when the Preparatory Committee should meet in Geneva and as to when the Review Conference itself should meet in Geneva in 2006. The Preparatory Committee needs to meet for a week and the Review Conference for three weeks to enable a comprehensive review of all Articles of the Convention to be carried out.

75. It is suggested that the Preparatory Committee should recommend a provisional agenda for the Sixth Review Conference along the following lines:

### *DRAFT PROVISIONAL AGENDA FOR THE SIXTH REVIEW CONFERENCE*

- 1. Opening of the Conference by the Chairman of the Preparatory Committee*
- 2. Election of the President*

3. *Adoption of the agenda*
4. *Submission of the final report of the Preparatory Committee*
5. *Adoption of the Rules of Procedure*
6. *Election of the Vice-Presidents of the Conference and Chairmen and Vice-Chairmen of the Committee of the Whole, the Drafting Committee and the Credentials Committee*
7. *Credentials of representatives to the Conference*
  - (a) *Appointment of the Credentials Committee*
  - (b) *Report of the Credentials Committee*
8. *Confirmation of the nomination of the Secretary-General*
9. *Programme of work*
10. *Review of the operation of the Convention as provided for in its Article XII*
  - (a) *General debate*
  - (b) *Articles I-XV*
  - (c) *Preambular paragraphs and purposes of the Convention*
11. *Consideration of issues identified in the review of Article XII contained in the Final Declaration of the Fourth Review Conference, and possible follow-up action*
12. *Consideration of issues identified in accordance with the decision of the Fifth Review Conference*
13. *Work to strengthen the Convention*
14. *Other matters, including the question of future review of the Convention*
15. *Report of the Committee of the Whole*
16. *Report of the Drafting Committee*
17. *Preparation and adoption of the final document(s)*

76. Key issues that the States Parties need to consider in preparation for the Review Conference are:

- What would constitute a successful outcome to the Review Conference and how best to secure it,
- What their response should be to the recommendations made to the BTWC States Parties by the UN Secretary-General's High Level Panel on Threats, Challenges and Change, and
- What the States Parties need to do to strengthen the Convention bearing in mind that the BTWC is currently the weakest of all the Conventions countering weapons of mass destruction.