

Report on Wilton Park Conference WP1046

PROSPECTS FOR THE 2011 BTWC REVIEW CONFERENCE

Friday 24th – Sunday 26th September 2011

Fourteen months remain before States Parties to the Biological Weapons Convention will gather in Geneva to review the operation of the convention, with a view to assuring that the purposes of the preamble and the provisions of the convention are being realised. This will be the seventh such Review and there appears to be an emerging understanding that this Conference will represent an important turning point in the history of the convention. The shadow of the failed Protocol negotiations and the failure of the 2001 Review Conference to agree a final declaration have now lifted. The Sixth Review Conference in 2005 not only agreed an agenda and a final report, but also adopted a programme of work programme for the intervening years which has helped to rebuild state party confidence in the treaty and has created an important space for communication between States Parties and other stakeholders such as international organisations, non governmental organisations and life scientists. The expectation is that the upcoming Review Conference will build upon these successes and something new will emerge ensuring that the Biological Weapons Convention remains relevant in the face of considerable pressures such as advancing science and technology and the changing nature of biological threats.

To achieve a ‘successful’ Review Conference requires careful planning. The task of any Review Conference is to review the operation of the agreement so as to ensure that its purposes are being met, or if they are not being met to agree collective action which will steer implementation back on track. What a Review Conference is not is a moment to resolve all known problems or rectify all known deficiencies and so it is important not to have unrealistic expectations about what can be achieved or unintentionally overload the Conference period such that success is not achievable. What constitutes ‘success’ therefore needs to be thought about before the Conference begins: is success to be measured in terms of what the Review Conference itself achieves? Might success be viewed in terms of what the Conference begins?

In terms of the latter success criterion, concrete proposals for action need to be developed. These proposals ought to be ambitious because they will be directing work in the post 2011 period but they must also have a realistic chance of gaining consensus agreement. In this respect preparations for the Review Conference have reached a critical juncture: where ‘agreeing that something needs to be done’

moves from vague discussion into designing concrete proposals for presentation. This applies to States Parties as well as civil society groups who wish to propose action. Entering this final stage of preparation necessitates continuous critical reflection about what the norm and the Convention actually need to remain robust over the next decade. Proposals are likely to emphasise both organic and evolutionary growth as well as new designs and structures for operation and implementation. . Whilst disagreement and arguments about proposals are bound to occur, it will be vital to view them with an open mind so that opportunities to strengthen the convention can be seized upon.

Proposed areas for action

During the course of the meeting consensus that ‘something needs to be done’ emerged around a list of topics. This list included: confidence-enhancing measures; the future of the Implementation Support Unit and the intersessional work program; issues relating to co-operation and assistance; and issues relating to verification and compliance. The breadth of topics - from the seemingly straightforward to the highly complex - reflects the idea that no area of the Convention should be immune from discussion. Indeed, none of the proposed areas of action considered at the meeting could be bounded such that it did not impinge on other areas of the convention. Thus, when designing proposals, it is not only important to consider adequate resourcing but also to view their impact upon other areas of the convention. In addition it is necessary to consider whether the full range of actors required for the proposal has been engaged.

On confidence enhancing measures

Enhancing confidence that all members of the BWC are in compliance with the convention can be achieved in a variety of ways. Two principle measures discussed at this meeting were the confidence building measures and national implementation.

Confidence building measures were first agreed at the Second Review Conference in 1986 “in order to prevent or reduce the occurrence of ambiguities, doubts and suspicions and in order to improve international co-operation in the field of peaceful biological activities”. The CBMs were elaborated at a meeting of scientific and technical experts in 1987, and were modified and considerably expanded by the Third Review Conference in 1991. They have not been modified since¹, so they are currently the only permanent transparency mechanism in the BWC. As such the CBMs have a heavy burden placed on them with some viewing them erroneously as a sufficient replacement for a conversation on compliance.

Several proposals were put forward to improve the current CBM process. These included improving the currently low participation in the CBM process, making the CBMs a topic of the next programme of intersessional work and refocusing the content of the forms. The low rate of participation is a

¹ The Sixth Review Conference in 2006 agreed on various improvements to the mechanisms for submission and distribution.

criticism often levied against the CBM process as it calls into question their value. Whilst in general the level of participation needs to be improved, it was asked whether simply increasing the numbers of returns would provide the necessary levels of confidence that all states parties were in compliance with the aims and objectives of the Convention. If it was thought that it would, then a number of measures were suggested which might improve participation, such as rewarding reporting or removing obstacles to reporting. If simply increasing the numbers of States Parties that returned CBMs was not thought to inspire the necessary levels of confidence, then might improving the analysis of the information once collected raise levels of confidence?

Given the limitations of what can be done during a Review Conference, the second and third proposals suggested the need for a period of dedicated time to discuss the purpose of the CBM process and the content of the current forms. This time would allow critical reflection: is the process of CBMs, in their current state, for example, enough to fulfil the purpose they were designed for, namely to prevent or reduce the occurrence of ambiguities, doubts and suspicions and in order to improve international co-operation in the field of peaceful biological activities ? If not, what is needed to fulfil that purpose? Are there alternatives to the system which might be considered, for example dedicated compliance reports? If the issue of CBMs was made part of the next intersessional process it was thought essential that the Meeting of States Parties be given decision-making powers so that action could be taken before the eighth Review Conference in 2016.

Concerning the content of the information provided it was thought that the current CBMs might be refocused. As mentioned the contents of the forms have not been modified since the Third Review Conference in 1991 where it was agreed that they should focus on seven parts:

CBM A Part 1: Exchange of data on research centres and laboratories;

CBM A Part 2: Exchange of information on national biological defence research and development programmes

CBM B: Exchange of information on outbreaks of infectious diseases and similar occurrences caused by toxins

CBM C: Encouragement of publication of results and promotion of use of knowledge

CBM D: Active promotion of contacts

CBM E: Declaration of legislation, regulations and other measures

CBM F: Declaration of past activities in offensive and/or defensive biological research and development programmes

CBM G: Declaration of vaccine production facilities

It was proposed that the contents of these forms could be changed so that the information elicited would allow (1) better assessment about whether a State Party had the ability to control work performed in its borders, (2) provide more nuanced signals about actual and latent capability within a particular state and (3) provide information relating to specific topics such as dissemination. So for

example CBM forms might be changed to include pertinent information on biosafety and biosecurity legislation and regulations and details of any codes of conduct in place, thereby linking the CBM process more directly with national implementation obligations; similarly more information could be provided on BL4 facilities and mass production capabilities as well as information on aerosol work.

On national implementation it was noted that whilst much work has already been done during the last two intersessional processes, much work remains. This reflects the iterative approach which is required to attend many of the topics that have already been discussed during the intersessional process and suggests the need for increasing the sustainability of assistance and resources. As is the case in this area, assistance can be given by non governmental actors who can work alone or be bought into open networks with States Parties.

At the most basic level there remains gaps in the national implementing legislation of some States Parties to the Convention which needs to be rectified. During work already performed to assist in national implementation it has been found that there is a need for better understanding of the drivers of national implementation so that awareness of the BWC can be associated with hooks such as food security and fulfilment of the obligations attached to UNSCR 1540. Sub-regional and national workshops have been successfully used to raise awareness of the BWC. These help particularly in overcoming linguistic barriers and can be used to support national champions of the BWC and national authorities. Additionally it has been found that there is a need for better understanding of States Parties own understanding of the needs for national implementation so that regulators don't talk past one another and co-ordination between regulatory agencies can be improved. Understanding of concepts such as the 'general purpose criterion' needs to be improved so that incorporating them into implementing legislation can be improved.

On the issue of verification-compliance

Whilst the issues of compliance and verification are closely related, the two are quite different especially in terms of standards of evidence and attitudes. However in order for States to have confidence that the obligations of the convention are being met they need both: confidence that other members of the treaty are in compliance, through for example the provision of information, and the ability, if needed, to verify compliance. Verification can therefore be seen as a spectrum of activity which includes measures such as information checking as well as challenge inspections.

The issue of verification has been previously discussed in the BWC context and resulted in more than six years of negotiations towards a legally binding instrument that was to strengthen the treaty by establishing verification or other compliance-promoting procedures. The draft Protocol was subsequently rejected in 2001. Some States Parties still wish to return to working towards a legally binding verification measure; other States Parties have expressed a fierce commitment not to reengage in this process. In order to have a meaningful discussion about verification these competing tensions have to be resolved or put to one side.

The environment in which discussions about verification and compliance now occur is very different from the environment of those previous discussions. The global diffusion of knowledge, material and equipment associated with life science research and commerce means that more people in more places are acquiring at least some of the basic expertise, materials and equipment that are necessary to pursue development of biological weapons. Given the global ubiquity of much of the material and equipment, the biological challenge to security is moving away from a material-and-equipment-based threat and towards a knowledge-based risk. Any discussion of verification has to accommodate these changes.

If discussions regarding verification are to progress it will be necessary to ensure that all parties understand what the terms ‘verification’ and ‘compliance’ mean and how they are being used. Being open about how one understands and uses terminology will enable the determination about what, in the future, will constitute compliance. Without being able to answer this first order question, it will not be possible to determine what information is needed to demonstrate compliance as well as other second order questions such as: how is compliance be promoted and enforced? Can tools already developed be strengthened or used in new ways, for example consultative measures or the United Nations Secretary Generals investigative mechanism? Do all aspects of the convention require the same level of compliance or might flexibility be promoted? Who will collect and analyse information regarding State Party compliance and will there be equity in access to that information? In returning to these basic questions it may be possible to overcome the competing tensions in the verification debate. However the components of any future verification regime will remain the same: the need for information and a consultation and investigation mechanism which is robust and inspires State Party confidence.

On co-operation and assistance

Article X of the BWC, on the exchange of equipment, materials and scientific and technological information for the use of biological agents and toxins for peaceful purposes, has traditionally divided States Parties along north/south lines, but the relationship between the co-operation and assistance aspects and security aspirations is evolving and the Article X debate is being reframed in a manner which is allowing many of the obstacles which previously prevented meaningful discussions to be removed. In part this is because of the work being done to improve national implementation of the BWC which is promoting a sense that there are internal control mechanisms to ensure that the technology exchanged will be used for peaceful purposes only. Supplier states have begun to work with recipient states to assist in building capacity in this area.

Despite this progress, Article X remains a potentially divisive topic for the upcoming Review Conference. Consequently it is important to find a way to discuss Article X related issues. This is likely to require some conceptual level thinking: what is meant by ‘co-operation’ and ‘assistance’? Are the terms being used in the same way by all parties? Are categories such as ‘developed’ and ‘developing’ world useful given the global location of bio-industries? Even after such work, it may be

necessary to be ‘forgiving’ about how terminology is used so as to disentangle the political undertones of this debate from what is trying to be achieved.

As with other topics proposed for consideration at the Review Conference, there is a need to go beyond the open-ended language of the final document and be specific in what can be done within the BWC context.

On the issue of science and technology

Essential to ensuring that the BWC remains robust in the next decade is the ability to adequately identify and address rapid advancements in science and technology which are occurring in areas relevant to the convention. Whilst consensus appears to be emerging around the view that the current system of reviewing science once every five years is no longer adequate, a cautionary note was made against underestimating the skill set needed to scan and track relevant mature and emerging scientific and technological trends and then analyse their potential for the Convention. The convergence of life science research with other scientific disciplines such as information technology and mathematics and the increasing specialisation of areas means that the skills required to perform an adequate review of all areas of science and technology relevant to the BWC cannot be found in a single person or small team. Deeper engagement with the scientific community is needed so that their insights can be better utilised.

As a result of the intersessional topics, much of the recent attention directed towards engaging with the scientific community has focused on codes of conduct and education and awareness raising, especially with the life science community in academic settings. This is important, and like national implementation much has been done with more needing to be done including reaching out to scientists in non academic settings and reaching out to other categories of professional scientist.

However, engaging with the science community in order to utilise their knowledge of advancing science and technology would require a different approach than has been employed as well as outreach to a wider scientific audience than life science. One lesson learnt through work on codes of conduct and education that can be taken across is the importance of framing scientist participation in terms of ‘social responsibility’ rather than referencing biological weapons. Assisting in the review of relevant science and technology should be similarly framed.

Several proposals emerged which States Parties might consider including the topics of reviewing science and technology being made into a special intersessional topic with a meeting either occurring either at the mid-point of the five years or each year, scientists directly feeding into these reviewing meetings, and the implementation support unit receiving and co-ordinating input from the science community. Questions were raised as to the specifics of the form this review might take with some referencing models of scientist participation occurring in other policy areas, for example the relationship between the OPCW and the International Union of Pure and Applied Chemistry. It was noted that many options for the different forms of scientific review that are already tabled, would

require direct participation of scientists, and as such consideration of the current status of civil society at the intersessional meetings would be required so that their contribution can be formally recognised.

On the intersessional work program and Implementation Support Unit

At the resumed Fifth Review Conference, States Parties agreed to hold an intersession program of work. Following assessment at the Sixth Review Conference in 2006 the intersessional work program was renewed for 2007-2010 and an Implementation Support Unit for the Convention was established to provide administrative support to meetings as well as comprehensive implementation and universalisation of the Convention and the exchange of confidence-building measures.

The intersessional process has been widely regarded as a success and should continue. However several limitations of the current format were highlighted so that States Parties might consider reforming the process at the upcoming Review Conference. These include inability of the Meetings of States Parties to take decisions and the current inflexible process of selecting topics for the meetings several years in advance.

Regarding the future of the intersessional process it was thought that there needs to be a re-examination of the decision-making ability of the Meeting of States Parties and a re-examination of the separation between the Meetings of Experts and the Meeting of States Parties, which currently means that the two groups examine different issues. One proposal was to combine both types meetings into a longer meeting session; another introduced the idea of creating topical working groups, populated by both States Parties and civil society that would run in parallel with the annual meetings. The working groups could produce reports that would be presented to the Meeting of States Parties for consideration. Another proposal suggested deciding core subjects for the intersessional process in advance, but building-in flexibility so that new topics could be proposed or topics not previously agreed upon could be reconsidered. Core subjects might include national implementation, codes of conduct, universality as well as confidence building measures.

If there is to be a substantial change in the work of the intersessional meetings it was suggested that the mandate and workload of the Implementation Support Unit (ISU) be revisited. This suggestion echoed more general suggestions that the ISU be made into a permanent mechanism but came with the cautionary note that the current mandate is flexible and any revisiting might unintentionally restrict the work currently performed by the ISU. The ISU has become a focal point of the BWC, acting as conduit of information and facilitator of information exchange. This includes acting as an interface between States Parties and civil society actors including the private sector. Currently staffed by three people, it was proposed that the unit be enlarged and given additional resources so that, for example, it can increase its networking activities.

Conclusion

To reiterate, the meeting reached general concurrence that something had to be done on these issues if the Review Conference was to have a worthwhile outcome, but there was little clear consensus about *what* needed to be done. Thus there were criteria for success but no targets. This is not necessarily a problem, since the Review is still a year away. It is perhaps sufficient – and encouraging – that there may be some clarity now on where to put in a real effort over the next year.

The 2011 Review Conference thus looks increasingly complex. The 2006 sense of possible regime failure is not there, which can be liberating, but also daunting because it means that success can be harder to define and consequently harder to achieve. The 2006 Review rebuilt the consensus in the BTWC; the 2011 Review will have to think about what to do with that consensus, who to include within it, and how it may be enhanced. In short, there is still a great deal at stake next year; rather than whether there will be a BTWC, it is about what kind of BTWC and how robust it will be. The consensus on securing the BTWC future appears to be quite robust – the vision of how the BTWC works and how it should develop remains less clear.

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