



Continued turbulence over BWC verification

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Hopes that the international community could act together against the scourge of biological weapons, the daunting effects of which the world had just witnessed with the anthrax attacks in the United States, came crashing down on 7 December 2001. Diplomats at the Fifth Review Conference for the 1972 Biological Weapons Convention (BWC) walked the corridors of the Palais des Nations in Geneva in anger and disbelief after the conference became deadlocked at the last minute. The issue was all too familiar—the future of the negotiations on a verification protocol for the convention, which had been derailed just months before. A year’s suspension of the Review Conference was the only way to avoid total failure.

This chapter describes developments related to the BWC verification issue during the period August 2001–October 2002. It focuses on the aftermath of the failure of the verification protocol negotiations and on developments leading up to the Review Conference in November–December 2001. These developments occurred in a new international environment following the 11 September terrorist attacks on the US. The chapter summarises verification- and compliance-related proposals and deliberations at the Review Conference, outlines the ensuing governmental and non-governmental steps and proposals for a way forward, and looks at the prospects for the resumed session of the Review Conference, to be held in Geneva on 11–22 November 2002.

The rejection of the protocol: aftermath

The year 2001 was eventful for the 30-year-old BWC.¹ It was meant to be the year in which the convention would be improved by a new tool—a legally binding verification protocol that would strengthen it and boost confidence in its imple-

mentation. However, the decade-old process turned sour in August 2001. The Ad Hoc Group (AHG) of states parties negotiating the protocol ended its final scheduled (24th) negotiating session without agreement after the US refused to support the Chair's 'Composite Text' or even to continue negotiations on it. The US announced that it no longer saw the protocol as a useful way of tackling the biological weapons (BW) problem. The group was so divided that it was even unable to draft its report, and bitter recriminations continued until the early hours of 18 August.² The future of the AHG and the protocol looked uncertain, and diplomats hoped that the Fifth Review Conference, scheduled for three months later, would bring clarity and direction.

But then a series of events unfolded that changed the nature and scope of the debate on the protocol and the BW threat. First, on 4 September the *New York Times* reported three previously unknown US government biodefence projects which some experts argued were in violation of the BWC.³ The three secret projects involved the building, construction and testing of a model of a Soviet-designed anthrax bomblet, the construction of a mock germ factory and plans to reproduce a genetically modified, allegedly vaccine-resistant strain of anthrax that had been produced by Russian scientists in the early 1990s.⁴ Although the US Defense Department defended its work as being consistent with US treaty obligations because it was defensive in nature, the fact that the US had reportedly not been open and had not reported the work in the annual confidence-building measure (CBM) declarations to the United Nations⁵ added to suspicions that the government knew the work was questionable. Indeed, the news appeared to give additional insight into why the US had wanted to block the protocol—to avoid international scrutiny of its questionable biodefence work.⁶

Some four weeks after the 11 September terrorist attacks, another set of events unfolded that attracted worldwide attention. Heightened fears about possible chemical or biological terrorist attacks became a reality on 4 October⁷ when the death of a man from anthrax in Florida turned out to be the result of a deliberate bioterrorist attack, using the ordinary mail as a delivery system. By the time the attacks were over, more than 20 cases and five deaths were reported.⁸

There were hopes that the US would change its mind on the protocol in the light of the changed international environment and strengthened fears of BW use. These

hopes evaporated quite quickly after Avis Bolen, Assistant Secretary of State for Arms Control, told the First Committee of the UN General Assembly that 11 September had only reinforced the American view that the focus should be on BW use.⁹

Having rejected the protocol, President George W. Bush on 1 November proposed seven alternative measures, ranging from investigations of treaty violations to a code of conduct for scientists. The measures included:

- procedures for addressing compliance concerns;
- the enactment of national criminal legislation with extradition requirements;
- the improvement of international disease control and, in the event of a disease outbreak, the dispatch of expert response teams;
- the establishment of national oversight mechanisms for the security and genetic engineering of pathogenic organisms; and
- the promotion of responsible conduct in the study, use, modification and shipment of pathogenic organisms.

Bush described these measures as ‘part of a comprehensive strategy for combating the complex threats of weapons of mass destruction and terrorism’.¹⁰ Some of those involved in the protocol process, both inside and outside government, were, however, less impressed with the proposed measures, feeling that, although they could be useful in themselves, they did little for verification. Indeed, even collectively they did not add up to what the protocol would have been, and some of the measures, such as investigations, were in fact included in the proposed protocol text. Although most states were reluctant to respond to the American proposals, some privately acknowledged they would need to be greeted favourably for political reasons, particularly after the bioterrorist attacks in the us.

The Fifth Review Conference

Ninety-one states convened in Geneva for the convention’s Fifth Review Conference on 19 November 2001. While the conference addressed a multiplicity of issues, including advances in science and technology, bioterrorism, compliance, export controls, scientific and technological co-operation, and universality, the derailed protocol negotiations emerged as the dominant theme. Much was at stake, not only the future of the protocol but also the credibility of the convention itself.

The President of the Review Conference, Ambassador Tibor Tóth, reminded delegations that their ‘action or lack of action [would] shape the future of the biological weapons prohibition regime much beyond the Fifth Review Conference’,¹¹ while UN Secretary-General Kofi Annan urged them ‘to come together, overcome [their] differences, and take these next crucial steps in history of this landmark Convention’.¹²

What followed next, however, made ‘coming together’ more difficult. Delivering the American statement, Under Secretary for Arms Control and International Security John Bolton accused four states parties—Iraq, Iran, North Korea and Libya—plus Sudan (a non-state party) and Syria (a signatory) of operating clandestine BW programmes. He added that there were also others that the US could have named, and which it would be ‘contacting privately’.¹³ Iran, Iraq and Libya angrily rejected the American accusations as groundless.

The naming of names—an unusual diplomatic proceeding—took many delegates and observers by surprise. The accusations exacerbated the already tense and bitter atmosphere left over from the AHG’s 24th session. Some suspected that the US was seeking to divert attention away from its rejection of the protocol and perhaps avoid questions about its own previously unknown biodefence activities.

Bolton also attacked the draft protocol, saying that the US would continue to reject such ‘flawed texts’ ‘recommended to us simply because they are the product of lengthy negotiations or arbitrary deadlines’ but which were ‘not in the best interest of the United States and many countries represented here today’.¹⁴ Others generally regretted the AHG’s inability to conclude its work, or even to draft a procedural report, in time for the Review Conference.

As for the way forward, approaches varied greatly. Some delegations wanted to reconvene the AHG. Ironically, China, Cuba, Iran, Indonesia, Libya and Pakistan—which in 2001 were among those states resisting attempts to propel the AHG process into a final phase by moving talks from the heavily bracketed ‘Rolling Text’ to the Chair’s compromise ‘Composite Text’—were now (together with Russia, which kept a low profile throughout the AHG negotiations) among those most eager to reconvene the negotiations.¹⁵ Others, including many Western countries, resigned themselves to the very remote possibility that the AHG could be reconvened in the near future, and spoke more vaguely of the importance of multilaterally agreed and legally binding measures.

For many states, ranging from Iran to the Rio Group,¹⁶ and the European Union (EU), the AHG's mandate was untouchable. The EU, for example, considered it 'essential' that the group's mandate remain 'fully in force' and be 'successfully implemented' but stopped short of saying that the AHG should be reconvened.¹⁷ Generally, there was a willingness, particularly on the part of Western countries and 'moderate' members of the Non-Aligned Movement (NAM), to move on and try to accomplish what was realistically achievable in current circumstances, but without abandoning the AHG altogether. Positions on the future of the group were so diametrically opposed that it was felt better to let the question lie dormant than allow the reawakened controversy to wreck the review process. There was also general willingness to consider some of the American proposals.

Bolton stressed the importance of national implementation measures, including arrangements to enhance criminal extradition agreements with respect to BW offences and legislation making it a criminal offence for persons to engage in activities prohibited by the BWC. Furthermore, he argued, countries should: adopt and implement regulations restricting access to dangerous micro-organisms, as well as on domestic and international transfers; report internationally any releases or adverse events that could affect other countries; and sensitise scientists to the risks of genetic engineering, explore national oversight of high-risk experiments and establish a code of conduct for scientists working with pathogens. Furthermore, the US was seeking the elaboration of a mechanism for international investigations of suspicious outbreaks of disease or alleged BW incidents. It also advocated a voluntary cooperative mechanism for clarifying and resolving compliance concerns by mutual consent.

Under Secretary Bolton further proposed that countries adopt and implement strict biosafety procedures, based on World Health Organization (WHO) or equivalent national guidelines; support the WHO's global disease surveillance and response capabilities; and develop a capacity for rapid emergency medical and investigative assistance in the event of a serious outbreak of infectious disease. The US believed this range of measures to restrict access, strengthen international disease detection tools and provide assistance in the event of an outbreak would 'enhance collective security and collective well-being'.¹⁸

With hopes dimming for agreement on the resumption of negotiations on a protocol in the AHG, and in view of ongoing and rapid advances in biotechnology, many

countries, including Australia, Canada, Japan, Norway and South Korea, and the EU, argued that states parties needed to meet more frequently. There was talk of annual meetings of states parties, preparatory committee meetings for the next Review Conference in 2006 and expert meetings.

Despite the many statements on the protocol and the AHG, proposals as to their fate were few, coming mainly from the NAM and the EU. Both regretted the failure to complete the negotiations, but they differed in their approach to the future. The NAM wanted the conference to recognise 'the particular importance of strengthening the Convention through multilateral negotiations for a legally binding Protocol' and to reaffirm that the AHG's 1994 mandate 'remains valid and determines any future work', stressing the importance of restarting and continuing the group's work.¹⁹ The EU wanted the conference to recognise the role of verification in the strengthening of the convention but, unlike the NAM, did not call for the protocol negotiations to be completed or for the AHG to be reconvened.²⁰ For its part, the US did not mention the protocol or the AHG in any of its original proposals to the committee, holding its position on these crucial questions until the last day.

As the conference progressed, the question of the protocol and the AHG became increasingly interlinked with the question follow-up meetings. With little prospect that states parties would continue to be able to meet regularly in the AHG format, some states wanted to ensure that they would not have to wait for another five years to meet again. Proposals focused on annual meetings and preparatory committee meetings for the Sixth Review Conference, as well as meetings of expert groups. Australia, Canada and New Zealand wanted 'more frequent meetings of states parties to take action on the implementation of the Convention and Review Conference commitment, to reinforce compliance and to strengthen accountability'.²¹ Japan supported 'a strong follow-up mechanism by convening inter-sessional meetings of states parties to discuss measures to strengthen the BWC including new proposals put forward during this Conference'.²² The US submitted a modest proposal, suggesting that states parties meet between the fifth and the sixth Review conferences to consider and assess progress in the implementation of 'the new measures' adopted at the Fifth Review Conference, as well as to consider any additional steps or mechanisms.²³ Although this is not made clear from its proposal, the US apparently only envisaged one meeting.

The most detailed proposal came from the EU. It wanted annual meetings of states parties, beginning as early as in 2002, 'to explore further means and mechanisms to strengthen the convention' prior to the next Review Conference. At their first meeting, states parties could establish 'open-ended governmental expert groups to examine and elaborate on further means and mechanism to strengthen the Convention'. The EU further proposed that the President of the Review Conference hold informal open-ended meetings prior to the 2002 meeting to facilitate the implementation of the Review Conference decisions and to explore additional measures to further strengthen the convention.²⁴

The EU proposal was generally well received, with many, including 'moderate' NAM states (among them Brazil and Chile), regarding it as an honest attempt to find common ground and give the convention a short-term boost. Some countries, however, including China, Cuba and Libya, reportedly complained that the proposal made no mention of the AHG. The US was reserved in expressing its view on the European suggestions but was clearly concerned that the establishment of expert groups might be an avenue for reopening the protocol negotiations.

Ambassador Tóth, who had also chaired the AHG, produced a compromise closely modelled on the EU's thinking. Tóth envisaged annual meetings of states parties to check progress made in implementing measures adopted at the conference and to multilaterally study, elaborate and negotiate further measures to strengthen the convention through a legally binding document. At these annual meetings, states parties could decide to set up subsidiary bodies for this purpose or to convene further meetings. The annual meetings would be prepared by an open-ended General Committee. Before they took place, the president and states parties would hold informal open-ended meetings to facilitate the implementation of the conference decisions and to look into possible additional measures.

The issue of non-compliance

The controversial issue of non-compliance received much attention during the final days and hours of the conference. Early on, the US sought tough wording on the question, wanting the conference to call on non-compliant states parties to comply fully and terminate their offensive BW programmes. It further wanted the conference to agree that any non-compliance could undermine confidence in the convention.

The proposal was met with resistance, and not only by the countries accused of cheating. A number of states reportedly feared that the suggestion could undermine the BWC by acknowledging the operation of clandestine BW programmes, especially if no action was taken in response within the framework of the convention. To address non-compliance, the US wanted a clarification procedure based on 'mutual consent' and an international investigation procedure for 'suspicious disease outbreaks and/or alleged biological incidents.' Under this procedure, states could request an investigation by an international team, commissioned by the UN Secretary-General. Investigated states parties would be required to provide access to the site of an outbreak, but the investigation area would remain under the control of the state being investigated.²⁵

The EU also stressed the need to deal 'effectively and promptly' with compliance issues and proposed the establishment of an investigation mechanism 'under an appropriate international body to investigate suspicious outbreaks of disease, alleged use and suspicious facilities', thereby seeking to extend investigations to facilities.²⁶ Many NAM states, notably Iran, advocated a third approach, proposing that any alleged breach be dealt with within the framework of a comprehensive, legally binding instrument. Furthermore, Iran and Libya, expressing offence at American accusations and concerned about possible abuse, wanted the conference to ask states to refrain from making arbitrary and baseless allegations and from taking any unilateral and discriminatory action. Iran urged that countries insist that any complaint about non-compliance should 'include factual and concrete evidences and documents confirming its validity'.²⁷ Towards the end of the conference, the consultations on investigations revealed no significant bridging of differences. On non-compliance, some negotiating room seemed to be opening after the Americans softened their demands.

The conference adjourns

However, the whole, seemingly 'make or break', issue of compliance suddenly became irrelevant when, less than two hours before the conference was scheduled to close, the American delegation tabled drastic new language on the AHG and follow-up action. Apparently conceding fresh ground, the proposal suggested that the conference decide to hold annual meetings, starting in November 2002, to 'consider and assess progress by states parties in implementing the new measures

adopted at the Fifth Review Conference' and to 'consider new measures or mechanisms for effectively strengthening the BWC'. The annual meetings, moreover, could be allowed to establish expert groups, although these would not be allowed to 'negotiate measures'. In exchange the US demanded the termination of the AHG's mandate.²⁸

Countries from all regional groups expressed dismay and disappointment at the American attempt to bury the AHG and at its jeopardizing the conference by introducing an obviously controversial proposal at such a late stage. The heated corridor discussions revealed a general sense that the American action was a deliberate last-minute attempt to derail the conference. One convincing theory is that it was the Defense Department which had insisted that the follow-up mechanism could only be offered in return for the scrapping of the AHG and the irretrievable collapse of the protocol negotiations.

The solution to the chaos on the floor was to adjourn the conference until 11 November 2002. Left over from the three weeks of deliberations, in the words of Tóth, was a final declaration that was '95 percent ready'.²⁹

Post-conference developments

There were already signs in December 2001 and January 2002 that some key players were preparing the ground for the resumption of Review Conference and considering how to tackle the BW threat. On 10 December the EU launched a new initiative exploring 'the implications of the terrorist threat on the non-proliferation, disarmament and arms control policy of the EU'.³⁰ The initiative resulted in a list of 42 'concrete measures', adopted by the EU on 15 April 2002.³¹ The list has been characterised as 'an ambitious step in the development of an EU arms control, disarmament and non-proliferation agenda'.³²

The EU promised to support the universality of multilateral instruments, including the BWC, work for their effective implementation, support international organisations and reinforce them. Detailed plans included: lobbying for the removal of reservations by states to the 1925 Geneva Protocol;³³ strict application of national implementation legislation; timely, consistent and full implementation of reporting obligations (CBMs); and the creation of the necessary conditions for their translation and processing so that they could be placed in usable databases. On the reinforcement of

multilateral instruments, however, the absence of any mention of the protocol, and even more the use of the vague term ‘strengthening’ of the BWC, appeared striking, given the EU’s consistent and strong support for the process. The document merely stated that the EU would work towards the successful conclusion of the Review Conference. The EU did, however, subsequently issue a political declaration with Latin American and Caribbean leaders in May 2002 in which they underlined their ‘conviction that the [BWC] is best enhanced by the adoption of a legally binding instrument to oversee the [BWC] prohibition’.³⁴ Attached to the EU document was also a promise to consider the adoption of common positions and joint actions—a particularly opportune idea, especially with regard to the BWC, since the EU’s latest joint position dated back to 1999.

The United Kingdom, a BWC depositary and an active protocol negotiator, released a Green Paper on 29 April 2002 to try to give new momentum to the debate on strengthening the convention.³⁵ Calling the failure to conclude the protocol ‘undoubtedly a disappointment’, the paper proposed 11 such measures, to be pursued at both the national and the international levels. On the unresolved question of the protocol itself, the paper offered no proposals, stating only that ‘given the failure of the AHG to reach consensus . . . and the failure of the 2001 Review Conference to identify a way forward, it is important to remain flexible on how the international community might best tackle the pressing need to strengthen the Convention’.

The 11 measures proposed were:

- investigations of possible non-compliance;
- assistance in the event of a threat of the use or the actual use of BW;
- national criminal legislation;
- the setting up of a Scientific Advisory Panel;
- revised CBMS;
- a new convention on the physical protection of dangerous pathogens;
- a new convention criminalising the violation by individuals in the prohibitions of the CWC and the BWC;
- increased disease surveillance efforts;
- codes of conduct;
- universal membership of the BWC; and

- the withdrawal of the 1925 Geneva Protocol reservations. Many of the proposals were familiar from the 2001 Review Conference and overlapped with other countries' proposals, including that of the US.³⁶

From the verification point of view, the most interesting were the proposals for revised CBMS and investigations. The Green Paper proposed revisiting the CBMS to see whether there is 'room for improving their scope or level of detail to ensure more useful annual returns'. There had been several proposals on CBMS at the 2001 Review Conference, by South Africa in particular.³⁷ In this connection, the UK raised the possibility of voluntary visits to facilities agreed between participating states parties. Independent experts welcomed the proposal but also pointed out that, in order to make real progress, the CBM returns should be collated and translated by a small secretariat and made available to states parties.³⁸ Curiously, the Green Paper made no mention of the idea of making some CBMS mandatory, as proposed by the EU in 2001. The omission stood in contrast to the recognition that the fact that the CBMS have been politically but not legally binding 'has had an adverse effect on their success'.³⁹

The British paper also called for the creation of an investigation process for allegations of non-compliance, including misuse of facilities, unusual outbreaks of disease and alleged use of BW. It proposed that this could be done either by expanding and revising the existing procedures for the UN Secretary-General to investigate alleged use⁴⁰ or by creating a free-standing or combined international agreement that also covered other relevant topics such as assistance in the event of attack. Unlike the American proposal in November 2001, the British proposal wanted investigations to cover facilities as well. However, it is unclear whether the British proposal would authorise investigations in states parties that withheld their consent (under the existing investigation procedures the state party to be investigated must agree). Some analysts have argued that it is unlikely that states parties would agree to extend the procedures in terms of either scope (facilities) or circumstances (in the event of refusal). Hence they have maintained that the second option, negotiation of an international agreement, would be more viable.⁴¹

In general, the Green Paper was received well. Although it offered few new ideas, it was an honest attempt to propose ways to strengthen the BWC, steer states into constructive action and facilitate a positive outcome for the resumed Review

Conference. Nevertheless, even keeping realities in mind, the fact that the paper failed to reiterate the UK's support for a comprehensive, legally binding multilateral verification regime has been met with some disappointment.⁴²

Meanwhile, the US was making it clear it was not going to back down on the protocol or the AHG. Instead, it tried to convince others to drop the talks and focus on enforcing compliance.⁴³ Under Secretary Bolton returned in January 2002 to Geneva and reiterated to the Conference on Disarmament—the birthplace of many multilateral arms control and disarmament agreements—that his government would ‘flatly oppose flawed diplomatic arrangements that purport to strengthen the BWC but actually increase the spectre of biological warfare by not effectively confronting the serious problem’.⁴⁴ Just days later, the compliance issue was tackled at the highest level when President Bush accused Iran, Iraq and North Korea of attempting to acquire weapons of mass destruction and called them and their terrorist allies the ‘axis of evil’.⁴⁵ But it was clear that the US was also concerned about other countries, including Russia, one of the BWC depositaries. In April, the US administration decided against certifying that Russia was in compliance with its obligations under the BWC, thus hampering the implementation of the Defense Department’s Cooperative Threat Reduction (CTR) programme aimed at reducing the threat from Russia’s weapons of mass destruction complex.⁴⁶

Prospects for the resumed Review Conference in November 2002 looked unpromising after Tóth’s consultations on 2–4 September 2002 in Geneva. The US had further toughened its stance: now it would even oppose the follow-up meetings between the fifth and sixth review conferences that it had itself proposed in November 2001. It now wanted a brief convening of the conference that would agree to hold the Sixth Review Conference in 2006. This meant that the US was ready to give up the adoption of the draft final declaration, which included its own proposals for strengthening the convention that it had been advocating as an alternative to the protocol as well the follow-up process that would have monitored their implementation and proposed new measures. The change in the American position was sure to further complicate the conclusion of the conference, denying many others their minimum position.

One proposal on how to bring the conference to a conclusion came from South Africa on 2 October 2002. It proposed, as Tóth had explored in his presidential

consultations in the summer, that states parties conclude the conference rapidly, without raising the divisive issues that would prevent agreement and without mentioning the AHG and the protocol. Furthermore, states parties would agree to hold annual meetings and establish expert groups that would meet annually to deal with specific issues. South Africa additionally proposed strengthening the UN Secretariat to assist in this work.

The proposal was a sound one in the prevailing circumstances: avoiding the controversial questions of the AHG and the protocol would give a chance for agreement. The adoption of a future-oriented plan would show common political will to tackle the threat of BW multilaterally and establish measures that all had signed up to. Annual meetings would maintain pressure on member states to implement them, and expert meetings would keep the regime responsive to new developments. Furthermore, a strengthened UN Secretariat would help nurture the work. However, it looked uncertain at the time of writing whether this could be achieved. Regrettably, there were also no signs that, in the event of a profound split, the majority of the states parties would take decisive action to defend the convention, including resorting to the unusual step of voting.

Civil society responds

The various negative developments in 2001 and 2002 have had at least one positive result—more active and focused involvement by civil society in the BW debate. Troubled by the lack of multilateral progress, setbacks to the BWC and the violation of the norm against the use of BW, a group of eight non-governmental organisations (NGOs) working on BW issues began in late 2001 to consider how they could help to support and strengthen the BW regime.⁴⁷ Innovative models of civil society contributions in other areas, such as corruption, human rights, small arms, landmines and the environment, had demonstrated the value and effectiveness of independent monitoring and reporting. The group decided to explore the adoption of civil society-based monitoring in the biological weapons context. Aware of the challenges but convinced of the usefulness of such a project, the group formed the BioWeapons Prevention Project (BWPP) in early 2002.⁴⁸

The BWPP plans to monitor and report on the state of the norm around the world. It will regularly and systematically gather information on relevant political, security,

scientific, technical and legal developments at the national, regional and international levels, collecting data from a wide range of sources. The BWPP will be an independent monitor which tracks how governments and other entities are working to reduce the BW threat and implementing their political and legal obligations under treaties that codify the norm—the annual submission of CBM declarations being one example. The BWPP's findings will be published in an annual publication. The BWPP was officially launched during the resumed session of the BW Review Conference on 11 November 2002.

Conclusion

Although the anthrax attacks in the US should have awoken the world to the dangers of BW, the process of attempting to strengthen the BWC has continued on a ruinous path. In just one year many difficult concessions were made: when the protocol talks were derailed, there was talk about at least reiterating or preserving the AHG's mandate. When there was little hope for that, thoughts turned to at least ensuring that states parties met regularly within the context of the convention, in annual meetings. On the eve of the continued session of the conference, even that looked uncertain.

At the same time, non-compliance with the multilaterally unverified BWC received much attention. Yet action did not seem any closer. Although the US talked about non-compliance, it was less clear what it was proposing as concrete action, within the parameters of the BWC and international law in general. From a prevention point of view, its proposals for national criminal legislation, extradition agreements and assistance to victims appear to be too little, too late. Voluntary clarification mechanisms and investigation procedures which do not cover facilities and give control over the investigated area to the investigated party are inadequate.⁴⁹ To address non-compliance seriously, more stringent measures are needed. Indeed, the US's talk about non-compliance—an important question that undoubtedly warrants serious consideration—inadvertently strengthened the case for an effective verification mechanism: with it in place there would be less room for loose accusations and polemics and instead a means of investigating allegations and taking collective, legitimate action against proven violators.

A failure to jointly, effectively and in a sustained manner strengthen the convention will send a wrong message to those states that contemplate cheating or are

already cheating: it will show that the international community is divided and helpless in the face of BW proliferation and that the BWC is becoming obsolete. Such a message will undermine the norm and prohibition, create uncertainty and, in some cases, even serve as an invitation to BW development and possession. The risk of the 30-year old treaty remaining the weakest of the three treaties that underpin the weapons of mass destruction prohibition regime is ever greater—at a time when the threat from biological weapons seems most acute. The consequences of passivity and inaction might not be seen for several years but may reveal themselves in highly destructive ways. Repair of the regime might be too late then: that time is now.

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Endnotes

- ¹ 10 April 2002 was the 30th anniversary of the BWC's opening for signature.
- ² On the Composite Text and the AHG's 24th session, see Marie Chevrier, 'The Biological Weapons Convention: the protocol that almost was', in Trevor Findlay and Oliver Meier (eds), *Verification Yearbook 2001*, The Verification Research, Training and Information Centre (VERTIC), London, December 2001, pp. 79–97.
- ³ Judith Miller, Stephen Engelberg and William Broad, 'us germ warfare research pushes treaty limits', *New York Times*, 4 September 2001, p. A1.
- ⁴ Judith Miller, Stephen Engelberg and William Broad, *Germ: The Ultimate Weapon*, New York: Simon & Schuster, 2001. See also Peter Eisler, 'us, Russia tussle over deadly anthrax sample', *USA Today*, 19 August 2002, available at www.usatoday.com/news/acovmon.htm.
- ⁵ The CBM declarations are not available publicly. However, diplomatic sources say that the us did not report on the biodefence work in question in its annual declarations to the UN. Private communications with the author.
- ⁶ 'News chronology, 4 September', *CBW Conventions Bulletin*, issue 54, December 2001, p. 34. On the us biodefence programmes see *SIPRI Yearbook 2002: Armaments, Disarmament and International Security*, Oxford University Press, Oxford, 2002, pp. 678–683.
- ⁷ 'News chronology, 4 October', *CBW Conventions Bulletin*, issue 54, December 2001, p. 44.
- ⁸ 'Public health dispatch: update: cutaneous anthrax in a laboratory worker . . . Texas, 2002', 7 June 2002, available at www.cdc.gov/mmwr/preview/mmwrhtml/mm5122a4.htm.
- ⁹ Statement by Avis Bohlen, us Assistant Secretary of State for Arms Control, First Committee, UN General Assembly, New York, 10 October 2001.
- ¹⁰ The White House, Office of the Press Secretary, 'Strengthening the international regime against biological weapons', Statement by President George Bush, 1 November 2001. See also Judith Miller, 'us seeks changes in germ war pact', *New York Times*, 1 November 2001, p. A1.
- ¹¹ Opening remarks of Tibor Tóth, President of the Fifth Review Conference and Ambassador of Hungary, Fifth Review Conference of the BWC, Geneva, 19 November 2001.
- ¹² Statement by Jayantha Dhanapala, Under Secretary-General for Disarmament Affairs, on behalf of the UN Secretary-General Kofi Annan, Fifth Review Conference of the BWC, Geneva, 19 November 2001.
- ¹³ Statement by John Bolton, us Under Secretary of State for Arms Control and International Security, Fifth Review Conference of the BWC, Geneva, 19 November 2001.
- ¹⁴ Statement by John Bolton, 19 November 2001.
- ¹⁵ These countries expressed their views about the Composite Text in BWC/AD HOC GROUP/WP.45I, 4 May 2001.
- ¹⁶ The Rio Group is a body for political consultation and coordination. It consists of Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, the Dominican Republic, Uruguay, Venezuela and Guyana.
- ¹⁷ Statement by Jean Lint, Ambassador of Belgium, on behalf of the EU, Fifth Review Conference of the BWC, Geneva, 19 November 2001.
- ¹⁸ Statement by John Bolton, 19 November 2001.
- ¹⁹ 'The work of the Ad Hoc Group to the Biological Weapons Convention', Working paper by NAM and other states, BWC/CONF.V/COW/WP.13, 26 November 2001.
- ²⁰ 'Proposals', Working paper of the European Union, BWC/CONF.V/COW/WP.23, 27 November 2001.
- ²¹ Working paper of Australia, Canada and New Zealand, BWC/CONF.V/COW/WP.30, 27 November 2001.
- ²² Working paper of Japan, BWC/CONF.V/COW/WP.14, 26 November 2001.
- ²³ 'Proposals', Working paper of the United States, BWC/CONF.V/COW/WP.17, 26 November 2001.

- ²⁴ Informal in-room paper on Article XII of the EU, 3 December 2001.
- ²⁵ 'Proposals', Working paper of the United States, BWC/CONF.V/COW/WP.17, 26 November 2001.
- ²⁶ 'Proposals', Working paper of the European Union, BWC/CONF.V/COW/WP.23, 27 November 2001.
- ²⁷ Iranian proposal under Article VI, BWC/CONF.V/COW/WP.I, 30 November 2001.
- ²⁸ Informal in-room paper on Article XII of the United States, 7 December 2001 (around 1600 hours).
- ²⁹ Tibor Tóth, Ambassador of Hungary, President of the Conference and Chair of the AHG, press conference after the Fifth Review Conference of the BWC, Geneva, 7 December 2001. The draft declaration, as it was on the morning of 7 December, is available on the Acronym Institute's website at www.acronym.org.uk/dd/dd62/62bwapp.htm.
- ³⁰ Decision by the Council of the European Union, Conclusions of the 2397th Council meeting, General Affairs, 15078/01 (Presse 460), Brussels, 10 December 2001.
- ³¹ Decision by the Council of the European Union, Conclusions of the 2421st Council meeting, General Affairs, 7705/02 (Presse 91), Luxembourg, 15 April 2002, pp. II–VI.
- ³² Daniel Feakes, 'The emerging European disarmament and non-proliferation agenda on chemical and biological weapons', *Disarmament Diplomacy*, no. 65, July/August 2002, www.acronym.org.uk/dd/dd65/65op2.htm.
- ³³ 'In signing and/or ratifying the Geneva Protocol, over 40 states entered reservations. These upheld the right to employ chemical weapons against non-parties to the Protocol, or in response to the use of these weapons by a violating party, or even against allies of the violator that had not committed a violation. See Jozef Goldblat, *Arms Control: The New Guide to Negotiations and Agreements*, Sage Publications for the Peace Research Institute Oslo (PRIO) and the Stockholm International Peace Research Institute (SIPRI), Thousand Oaks, Calif., London and New Delhi, 2002, p. 136. Many states parties have withdrawn their reservations.
- ³⁴ 'The Madrid commitment', Political Declaration, European Union–Latin America and Caribbean Summit, 8802/02 (Presse 133), 17 May 2002.
- ³⁵ United Kingdom, Secretary of State for Foreign and Commonwealth Affairs, *Strengthening the Biological and Toxin Weapons Convention: Countering the Threat from Biological Weapons*, The Stationery Office, London, April 2002 (Cm 5484).
- ³⁶ For an analysis of the UK Green Paper see Graham Pearson, 'Return to Geneva: the United Kingdom Green Paper', Strengthening of the Biological Weapons Convention, Review Conference Paper no. 6, University of Bradford, June 2002. For an analysis of the UK Green Paper, states parties' statements and working papers submitted at the Review Conference, see 'Return to Geneva: a comprehensive list of measures', Strengthening of the Biological Weapons Convention, Review Conference Paper no. 6, University of Bradford, August 2002. Both are available at www.brad.ac.uk/acad/sbtwc/.
- ³⁷ See 'Strengthening confidence-building measures', Working paper by South Africa, BWC/CONF.V/COW/WP.I, 16 November 2001.
- ³⁸ Graham Pearson, 'Return to Geneva: the United Kingdom Green Paper', p. 14.
- ³⁹ *Strengthening the Biological and Toxin Weapons Convention: Countering the Threat from Biological Weapons*, p. 10.
- ⁴⁰ UN Security Council Resolution 620 (1988) encouraged the UN Secretary-General to carry out prompt investigations in response to allegations of use of BW. Further detail to these procedures was elaborated in United Nations, 'Chemical and bacteriological (biological) weapons: report of the Secretary-General', UN document A/44/561, 1989.
- ⁴¹ Graham Pearson 'Return to Geneva: the United Kingdom Green Paper', pp. 10–11.
- ⁴² 'VERTIC's response to the UK Green Paper', VERTIC, London, 3 September 2002.
- ⁴³ Greig Seigle, 'BWC: US pushing countries to drop negotiations', *Global Security Newswire*, 15 January 2002, available at www.nti.org/d_newswire/issues/2002/1/15/4s.html.

⁴⁴ Statement by John Bolton, US Under Secretary of State for Arms Control and International Security, Conference on Disarmament, Geneva, 24 January 2002.

⁴⁵ President George Bush, State of the Union Address to Congress, Washington, DC, 29 January 2002.

⁴⁶ 'News chronology, 8 April', *CBW Conventions Bulletin*, issue 56, June 2002, p. 39. See also Philipp C. Bleek, 'Bush refuses to certify Russian chem-bio compliance', *Arms Control Today*, May 2002.

⁴⁷ The founding group consists of the British American Security Information Council (BASIC), UK; the Centre for Conflict Resolution (CCR), South Africa; the Department of Peace Studies, University of Bradford, UK; the Federation of American Scientists (FAS), US; the Harvard Sussex Program (HSP), Science and Technology Policy Research, University of Sussex, UK; the International Network of Engineers and Scientists for Global Responsibility (INES), Germany; the Sunshine Project, USA–Germany; and the Verification Research, Training and Information Centre (VERTIC), UK.

⁴⁸ For more information on the BWPP, see www.bwpp.org.

⁴⁹ See the US proposals at the Fifth Review Conference in [BWC/CONF.V/COW/WP.17](http://www.bwc.org/CONF.V/COW/WP.17), 26 November 2001.