

## Back to basics: verification and the Biological Weapons Convention

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Few would disagree with the assessment of the United States that ‘the biological weapons threat is real, growing, extremely complex, and extremely dangerous’,<sup>1</sup> particularly in a period when the threat of mass casualty terrorism is a serious security problem, when anthrax has been disseminated through the US postal system and when the US and its ‘coalition of the willing’ have gone to war in the name of nonproliferation and enforced disarmament. Nevertheless, the attention focused on biological weapons (BW) in 2003 and the preceding couple of years belies the lack of substantive multilateral action to deal with the BW problem.<sup>2</sup>

In her account of developments relating to the Biological Weapons Convention (BWC) in last year’s *Verification Yearbook*, Jenni Rissanen aptly summed up the events of 2002: ‘The process of attempting to strengthen the BWC has continued on a ruinous path’.<sup>3</sup> Ten years of effort initiated at the 1991 Third Review Conference of BWC states parties had come to nought, including the 1992–93 verification experts (VEREX) meetings, the 1994 Special Conference and, finally, the attempts of the Ad Hoc Group (AHG) from 1995 to 2001 to negotiate a BWC verification protocol. The principal problems with the BWC, in particular the paucity of its verification and compliance mechanisms, were well known in 1991 and remain unresolved today. Hence, 1991–2001 can be considered a lost decade for the convention.

By the end of 2002, however, the states parties to the BWC had set themselves on a new course. One year overdue, the Fifth Review Conference agreed a timetable and agenda of work for the states parties for 2003–2005.<sup>4</sup> This ‘new process’ consists of a series of expert and annual meetings in each of the three years, the outcome and conclusions of which will be considered at the Sixth Review Conference in 2006. On one level the agreement to hold annual meetings must be considered

a success after the divisions which emerged in 2001 and 2002 about how to strengthen the treaty.<sup>5</sup> At least one state party had indicated that its preference was to abandon multilateral discussions in the BWC context until 2006.<sup>6</sup> However, the new process is clearly an interim strategy, and how it will actually work, as well as what it will actually do, remained and remains unclear.

Such a minimalist outcome underlines the peripheral role being played by the BWC in tackling the current biological weapons problem. The BWC is not the centre of efforts to counter the proliferation of such weapons. Strengthening the BWC through a verification agreement is off the agenda and the negotiation of any new legally binding agreement is unthinkable for the foreseeable future. Although the next three years could provide the BWC with some kind of recovery strategy that puts it at the centre of meaningful multilateral efforts to roll back the proliferation and threat of BW, failure of the new process may well sound the death knell of the convention itself.

This chapter picks up where last year's *Verification Yearbook* chapter left off and charts the course by which the states parties reached agreement on how to proceed. It then moves on to consider and analyse what the new process might achieve through an assessment of one particular aspect of the BWC—national implementation measures. That element has been chosen as an example because it was the first topic discussed in the experts' meeting in August 2003 and was the focus of many proposals at the initial session of the Fifth Review Conference in November 2001. The final section of this chapter suggests that all is not lost on the verification front for the BWC. However, our understanding of verification will have to change significantly if there is to be any progress over the next three years. In particular, the focus must be on the basics and attention must turn to national-led verification efforts.

This is where states parties implement policies based on self-reporting with a view to increasing transparency about their actions so that other parties can informally 'verify' such information and improve their assessments of a state's compliance. National-led efforts are more informal than international-led verification based on established rules and procedures and depend on each individual state's willingness to enhance transparency. Given the paucity of established verification mechanisms and the professed support of nearly all states parties for their develop-

ment, this chapter argues that these states parties must now make the best use of what is available rather than wait for a formal system to be developed. The assumption should now be that any state that fails to take the opportunity to demonstrate its compliance should be treated with the utmost caution. States parties should use the mechanisms available to them, for example, bilateral consultations or the provisions of Article v of the BWC, as tools to encourage such other states parties to submit the necessary information in order to enhance transparency.

### Concluding the Fifth Review Conference

If 2001 represented the nadir of the BWC's life so far—because of the failure of the convention's Ad Hoc Group to agree on a legally binding protocol, the increasing awareness of the BW threat resulting from the anthrax attacks in the US and the suspension of the Fifth Review Conference on its final day—2002 offered at least some hope of recovery. During January–March 2002, most states parties were still reeling from the attempt by the US to terminate the AHG. By July any attempt to reconvene the Review Conference from the point where it had broken off—in the last stages of negotiations on the Final Declaration—had been effectively abandoned. A new American position indicated that the US could no longer support even a limited process before 2006 and that it wanted the resumed session of the Review Conference simply to meet in order to agree that the Sixth Review Conference be held no later than 2006.<sup>7</sup> Whether or not the new American position could be taken at face value or simply as a hard-line negotiating tactic to force a new deal on the BWC based on US preferences, is still unclear. However, the position was unsustainable given the rhetoric about Iraq and other states' alleged BW programmes, as well as other weapons of mass destruction (WMD) capabilities and ambitions.

In early September the Western Group made clear to the US that it could not accept its new proposal, which by this point had found its way into the public domain. This unified line adopted by the remaining members of the Western Group against the American proposal, together with attempts to seek a satisfactory and convincing answer to the question why the US had abandoned even its minimal position of November 2001, allowed the Western Group to coalesce in a search for alternative solutions and attempt to roll back the American position.

Those states that were truly committed to the BWC were not quite ready to give up and, more importantly, the president of the conference, Ambassador Tibor Tóth of Hungary, was willing and able to outline some ideas around which a compromise might be formed. Feasible ideas for taking the BWC forward that had emerged during the last quarter of 2001 and the first half of 2002 were thrown into the melting pot by Ambassador Tóth.<sup>8</sup> The outcome of that exercise was released to states parties at the end of October. As recounted in other assessments of the Review Conference, the proposal, made on a take-it-or-leave-it basis, was an attempt at a minimal working compromise which all could support.<sup>9</sup> The resumed session of the Fifth Review Conference was therefore a low-key affair, with all the key business undertaken in private meetings and regional groups. On 14 November the Fifth Review Conference agreed to adopt a programme of work put forward by Tóth, and the new process was begun.<sup>10</sup>

Under this work programme the conference decided to hold annual meetings of its states parties, commencing in 2003 and continuing until the Sixth Review Conference (which must be convened by the end of 2006), 'to discuss, and promote common understanding and effective action on' the following specific issues:

- (a) national measures to implement the prohibitions set forth in the convention, including penal legislation;
- (b) national mechanisms related to the security and oversight of pathogenic microorganisms and toxins;
- (c) international capabilities to respond to, investigate and mitigate the effects of alleged use of biological or toxin weapons or suspicious outbreaks of disease;
- (d) national and international institutional efforts related to the surveillance, detection, diagnosis and combating of infectious diseases affecting humans, animals and plants; and
- (e) codes of conduct for scientists.

The annual meetings of states parties will reach any conclusions or results by consensus and will in each case be preceded and prepared by a two-week meeting of experts. Items (a) and (b) were to be considered in 2003, (c) and (d) in 2004, and (e) in 2005. Although the meetings of experts will prepare factual reports describing their work, only the Sixth Review Conference can decide on any further action.

### **The new process: what can it deliver?**

What the new process actually delivers depends on how states parties interpret and implement the decision itself and what happens at the Sixth Review Conference. Nevertheless, there is considerable scope for progress. Like the convention itself the decision has within it a number of latent possibilities.

First, the annual meetings are 'to discuss, and promote common understanding and effective action on' the five issues under consideration. This is not, therefore, intended to be just a talking shop. Concrete work is required in the form of diplomatic effort in all three areas: participants will have to discuss issues, rather than talk past each other; find a method of achieving (and recording) their common understandings; and agree on formal guidance, recommendations or decisions which support effective action and provide additional authority to implement certain activities at the national or any other level. Second, although the requirement for consensus could stymie the process, the flexibility inherent in 'any conclusions or results' permits a wide range of options to be explored and leaves the actual outcome—what 'effective action' might actually constitute—up to the states parties themselves. The depth of the new process is potentially greater than might appear, even though all understand that it will not negotiate or agree any legally binding commitments.

One factor which will influence the success or failure of the new process will be whether or not states parties approach it with the objective of developing new commitments additional to those already in existence or seek to improve the implementation of existing commitments. In an ideal situation, where states parties were collectively more reform-minded, both additional commitments and improving existing implementation would be on the agenda, but the BWC is in a far from ideal situation. New commitments that bind all states parties would require negotiation at some level and that is currently off the agenda. To convince sceptics that the BWC has a meaningful role to play, it is necessary to concentrate on its basic and fundamental provisions. States parties must get the basics right before they can move forward.

Nicholas Sims has made a persuasive argument that, in the current political climate, what is needed is not so much new commitments as the implementation of existing ones: 'What is needed in the BWC review process is the more systematic and reliable

implementation of the decisions of past Review Conferences'.<sup>11</sup> Even though the new process is not formally part of a review process, it is here that the first experts' meeting in August 2003 was able to make an impact. By focusing its efforts on an assessment of existing obligations, how their fulfilment might be improved and how the modalities of implementation might be developed, the experts' meeting was able to identify the means by which particular obligations in the BWC could be strengthened. It is a practical approach, but it also assuages the concerns of those who are reluctant to agree to new commitments and fear that attempts to introduce them will be attempts to develop a protocol by stealth.

### *National implementation measures*

What this means in practice is best illustrated by considering the first of the five topics under discussion, national measures to implement the convention, and in fact only one subset of issues under that topic. Article IV of the BWC requires states to 'take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition or retention of' biological and toxin weapons within their own territory, in territory under their jurisdiction or anywhere under their control.<sup>12</sup> Such measures are to be undertaken in accordance with the constitutional provisions of the state party, and are therefore subject to some variance. There is no single model or solution, but the requirement for national implementation measures is neither ambiguous nor voluntary; it is a clear legal obligation.

Historically, few states parties appear to have actually fulfilled this requirement, but the benefits of knowing which states have enacted the necessary measures and how they have done so were recognised immediately. Hence, at the First Review Conference in 1980, states parties were invited to submit their legislation or other regulatory measures to the United Nations as background information.<sup>13</sup> Similar invitations were made at the second and third review conferences, and in 1991 an additional confidence-building measure (CBM) was added, asking states parties to provide an annual declaration on legislation, regulations and other measures adopted to implement the BWC.<sup>14</sup> The scope and importance of national measures were further underlined in 1991 when each state party was invited to consider the application of such measures to actions taken anywhere in the world by its nationals.<sup>15</sup>

The evolution of Article IV and the cumulative nature of the process of strengthening it are illustrated in table 1, which summarises the politically binding commitments

states parties have already agreed to. In the context of the new process it is significant that states parties have repeatedly urged the adoption and implementation of national measures and called continuously for information about national legislation and regulations pertaining to the BWC to be submitted. Yet, as the documentation of the fourth and fifth review conferences reveals, the rate of return for all the CBM declarations is abysmal.<sup>16</sup> Taking the declaration on national regulations, CBM Form E, as an example, in 2001, of the then 143 states parties to the BWC, 109 submitted no information, five submitted a declaration with 'nothing to declare', 20 had 'nothing new to declare', and only nine submitted a full declaration. Hence, 29 states parties indicated that they had implemented Article IV, while the other 114 implied that they had no national legislation or regulations to report. In 2002, of 146 states parties, 113 submitted no information, four indicated 'nothing to declare', 18 responded 'nothing new to declare' and only 11 submitted a full declaration.

If these returns are indicative of the real state of play, then 80 percent of states parties have not fulfilled their obligations under Article IV of the BWC. Putting it another way, 80 percent of states parties may be assumed to be in non-compliance because they have not provided evidence of their compliance. While this is (deliberately) a very harsh assessment of the CBM returns, it is illustrative of the work states parties need to undertake to ensure that existing commitments are realised. It is in this area that the new process can make—and is already making—a constructive contribution to the BWC.

Those who follow the BWC closely know that the actual situation is not as dire as the above analysis of the CBM returns would imply. VERTIC's project on national implementation legislation for the BWC has revealed that 95 states parties have some kind of national implementation measures in place (63 percent).<sup>17</sup> Moreover, at the meeting of experts in August 2003, 45 of the 66 working papers submitted by states parties provided information on their national legislation, and, in the 'Information Repository' CD-ROM prepared by the BWC Secretariat, 63 states parties plus the European Union provided information on over 440 measures taken, including legislation, to implement the BWC.

Even so, if a non-governmental organisation (NGO) had not sought information or the Secretariat had not initiated such a request on behalf of the states parties, much of the most basic information on national implementation would still be

<b>Table 1 Article IV measures in BWCRC final declarations</b>					
	<b>1st 1980</b>	<b>2nd 1986</b>	<b>3rd 1991</b>	<b>4th 1996</b>	<b>5th 2001</b>
<i>Noted</i> requirement to take any necessary measures	–	–	–	–	–
<i>Called</i> upon states parties which have not taken necessary measures to do so immediately	–	–	–	–	–
<i>Invited</i> states parties to submit their legislation and regulations to UN for consultation	–	–	–	–	–
<i>Noted</i> the importance of legislative, administrative and other measures designed to guarantee compliance within the territory of a state party and in territory under its jurisdiction or control		–	–	–	–
<i>Noted</i> the importance of legislation regarding the physical protection of laboratories etc., to prevent unauthorised access to or removal of agents, toxins or materials		–	–	–	–
<i>Noted</i> the importance of education and the inclusion in textbooks of the prohibitions relating to BW		–	–	–	–
<i>Invited</i> states parties to consider the application of its necessary measures to apply, if possible, to actions taken anywhere by its nationals			–	–	–
<i>Welcomed</i> agreement on an additional CBM on 'Declaration of legislation, regulations and other measures'			–	–	–
<i>Invited</i> states parties to provide any useful information on their measures			–	–	–
<i>Welcomed</i> regional measures, e.g., the 1991 Mendoza Declaration			–	–	–
<i>Reaffirmed</i> the commitment of states parties to take necessary national measures				–	–
<i>Recognised</i> the need to ensure that legislation and regulations exclude the use of biological/toxin weapons in terrorist or criminal activity				–	–
<i>Reaffirmed</i> that use of BW under all circumstances is effectively prohibited by the convention				–	–
<i>Encouraged</i> the adoption without delay of measures to prevent terrorists from acquiring agents, toxins, equipment and information that could be used for BW*					–
<i>Stressed</i> the importance of efforts by industry and the scientific community to develop codes of conduct and/or ethical standards for work relevant to the BWC and its prohibitions*					–
<i>Called</i> for the adoption of measures to establish protection of agents and toxins which the state party believes to be dangerous and relevant to the BWC, including regulations on their possession, acquisition, handling and transfers, and enforcement of such measures by penal measures*					–
<i>Urged</i> the provision of appropriate legal assistance in criminal proceedings, and enhancement of the ability to prosecute and extradite individuals where appropriate*					–
* Although no Final Declaration was agreed at the 2001 Fifth Review Conference, the final draft indicated no outstanding disagreement over Article IV measures. These have therefore been included here to demonstrate the potential for continued evolution of the article's implementation.					



unknown, 23 years after the First Review Conference requested states parties to circulate information to others via the UN. Putting it simply, most states parties did not fulfil their politically binding obligations under successive review conferences or submit CBM returns on national implementation measures.<sup>18</sup>

Through the documentation submitted at the first experts' meeting, the new process has already gone a long way towards rectifying this particular deficiency. The first meeting of the new process has in fact galvanised states parties into making an effort to fulfil existing politically binding commitments and, by providing a forum for reviewing and discussing them, improvements in implementation have already been achieved. The existence of such a forum allowed states parties to focus on concrete and politically uncontentious issues.

Although the above assessment covers only Article IV, the approach is applicable to most elements of the new process. By first identifying what politically binding agreements have already been made in the final declarations for each of the five areas—and elements of agreement do exist for each of the five areas under discussion between 2003 and 2005, as table 1 shows—states parties can take concrete steps to fulfil them. Therefore, handled correctly, the new process can deliver significant practical benefits. Whether or not it will fulfil that promise remains to be seen, but in August 2003 it did get off to a good start.<sup>19</sup> Things might go awry in November 2003 when the states parties need to undertake a political assessment of the technical work done in August in order to devise 'effective action'. Problems may also arise in 2004 and 2005, but if real engagement with this process continues it could provide a feasible framework within which to take the BWC forward, albeit only in small steps.

### **The implications for verification**

Although there are many different definitions and interpretations of what actually constitutes 'verification', the three general purposes were reiterated in the *Verification Yearbook 2000* as:<sup>20</sup>

- detecting non-compliance;
- deterring parties that might be tempted not to comply; and
- providing compliant parties with the opportunity to demonstrate their compliance convincingly.

Under a well-constructed verification regime, such as that provided for in the 1993 Chemical Weapons Convention (CWC), all three purposes can be achieved. Although the high-level political focus is usually on detecting non-compliance and on the deterrence aspect of the particular verification system, the day-to-day success of verification is built on the requirement for states parties to demonstrate their compliance convincingly to an organisation or other states parties, as they do under the nuclear safeguards agreements of the International Atomic Energy Agency (IAEA) or to the Organisation for the Prohibition of Chemical Weapons (OPCW). All are aware that the BWC does not have an elaborate verification system, and there will be no opportunity to develop one in the near future. Verification of certain aspects of the BWC, however, is not impossible, and the convention already has rudimentary provisions that could be used to deal with concerns about non-compliance or with non-compliance itself (Articles V and VI).<sup>21</sup> Together with the extended interpretations of what procedures and mechanisms are available to states parties, as recorded in the final declarations of successive review conferences, basic improvements to verification of the BWC could be made immediately. This would require a change in thinking and a revised approach to the treaty.

### *A new approach*

To engender a new approach to verification of the BWC, states parties should use the new process to provide themselves with the opportunity to review their own implementation and demonstrate their compliance to others both continuously and convincingly. States parties would have to interpret their obligations under the BWC and the subsequent politically binding obligations contained in the final declarations of the review conferences as an instruction which requires them to submit information to other states parties in order to demonstrate their compliance.

This is not a great leap forward or a fundamental change of approach. Existing agreement and practice since 1980 are that at each review conference states parties may submit information to the UN outlining their fulfilment of the obligations contained in the BWC.<sup>22</sup> In addition, the CBMS incorporate this approach—the submission of information on relevant activities to other states parties. The difference rests on interpretation—states parties should now initiate the submission of information themselves instead of being requested to do so by consensus agreement—and on the periodicity of the submissions, because all relevant information would

be submitted annually rather than at five-year intervals under the review conference formula or only on the basis of the CBM requirements. At one level this would simply be a self-initiated use of the consultation and clarification procedures inherent in Article v of the BWC, albeit a progressive interpretation and one that would effectively require a national authority in each state party to take charge of BWC implementation.

The opportunity to submit information is inherent in the new process and has already been taken up by many states parties at the first experts' meeting. Any state party that now fails to avail itself of the opportunity to enhance transparency and offer evidence of its compliance should be considered as being potentially in non-compliance. From here on, such states should be treated with the utmost caution and, in some cases, suspicion.

This is not to say that every state party which does not submit information is in non-compliance. The technical or financial difficulties of fulfilling existing obligations may be a legitimate explanation for a number of small or least developed states failing to do so. Such an approach would require those states that are able and willing to submit information to recognise their responsibilities and offer implementation assistance to those which cannot do so for technical or financial reasons. However, most states parties could meet their politically binding commitments and submit information without excessive effort. The paucity of submissions indicates their failure to take such commitments seriously and, by extension, their failure to take the BWC seriously.

Implementation assistance, diplomatic liaison or correspondence, démarches where appropriate, regional and co-ordinated pressure, the application or withdrawal of technical assistance or benefits of peaceful co-operation, and the use of Article v as a standard consultation process—all present themselves as tools to encourage submission by a greater number of states parties.

To fulfil these basic requirements, each state party should deliver to the BWC Secretariat in Geneva copies of all their legal provisions, regulations and administrative arrangements as well as any measures they have implemented nationally and internationally through which they give effect to the provisions of the BWC for each of the five areas identified for consideration in the new process. Only with such information can a meaningful discussion and common understanding be fostered. The submission of information is the starting point, not the end point

of an effective new process. It would allow states parties to demonstrate their compliance with the BWC. The current mandate is focused on particular issues for a reason and only if it proves to be a success will a new set of meetings focused on other issues be useful or achievable. States parties must make this new process work in order to make a convincing case for additional work after 2006.

Although states parties should concentrate on fulfilling their existing commitments, they should also recognise that the new process does not preclude any state party from taking action on its own to strengthen the BWC or agreeing further action to improve implementation of the BWC at the regional level or together with like-minded states. There is nothing to prevent a state party from examining ideas discussed at the Fifth Review Conference in order to improve national implementation and adopting them. Others would do well to follow the US example and adopt measures to improve the protection and security of dangerous pathogens.<sup>23</sup> Exogenous to the BWC, states could adopt regional measures or standards for pathogen security. Such measures are permitted under the new process. Development of such a system would require consultations and co-operation among such states. They would, therefore, be able to enhance confidence in their compliance through such a process.

The five topics identified cut across the commitments and obligations of the convention, including Articles I, III, IV, V, VI, VII and X. Progress, and particularly some progress in the verification area, can be achieved if states parties use the opportunity before them. Such an approach does mean that the hard cases, those suspected of not complying with the treaty, will still be able to hide behind the lack of legal requirements but, if the majority of states parties to the BWC take up the opportunity and the challenge of the new process by 2006, a significant amount of information will be in the public domain which will serve to underline further who the hard cases are. The burden will fall on the compliant, and the immediate likelihood is that the compliant states parties will be making assessments of other states parties that they already believe are in compliance. However, it is example-setting and, in the absence of a formal legal verification regime, the only way forward.

### *Societal verification*

A further development that is pertinent to the issue of verification of the BWC in 2003–2005 is that individuals and NGOs have lost faith in the ability and willingness of even reform-minded states to take the BWC forward. Despite the UK, for example,

having strongly supported the BWC verification protocol and the AHG mandate from the 1994 Special Conference onwards, it has now effectively abandoned the legally binding route of strengthening the BWC.<sup>24</sup> It is by no means the only state party to have done so and, in the face of the unwillingness of states parties to lead efforts in verification, the question of societal verification—verification from below—must come into play.<sup>25</sup> While no substitute for formal legally binding bilateral or multilateral verification, societal verification, if done correctly, is better than nothing.

This is relevant to the BWC given the dual-use nature of the agents, pathogens and materials, as well as the knowledge, required to develop and produce biological and toxin weapons. Civil society can pressure a state to live up to its commitments. To take the UK as an example, enquiries could be made to members of parliament about the timely submission of the UK CBM declaration. Requests could be made to view the UK's information on its CBMS, since there is nothing to stop an individual state making its submission publicly available, as Australia does via a website.<sup>26</sup> Even if data on civil industry facilities were removed because of concerns that commercial-in-confidence information could be derived from a public version of a CBM declaration, the ability to review the data on government facilities would still be a step forward. Likewise, the use of appropriate mechanisms to ensure that laboratories are abiding by the security requirements for pathogens, the reporting of unusual outbreaks of disease, the disclosure of information on past offensive or defensive BW programmes, the assessment of procedures for export licensing, and the reviewing of the implementation of national legislation and guidelines are all amenable to societal verification in one form or another.

The VERTIC national implementation project induced states parties to submit information on their national measures, and societal pressure in other areas could produce the same results, including in each of the five identified topics under consideration up to 2005. Societal pressure can contribute to ensuring national compliance, and the responses (evidence) provided by the state to answer the legitimate questions of its own citizens would go some way towards a demonstration of compliance.

This approach does, of course, depend on the existence of a free civil society, but democratic states could embrace these efforts, not only to assure their own citizens that they are complying with their obligations but also to lead by example. Once more, in the absence of legal measures that are applicable to all states parties, the

burden of doing this will fall on some states parties, but if the BWC is to be taken forward the states that are in compliance will have to bear such a burden and the costs involved. Efforts by organisations such as the BioWeapons Prevention Project (BWPP), which aim to nurture and empower global civil society in order to reinforce the norm against BW, are a step in the right direction. States parties may choose to support such efforts either through co-operation with them or through the provision of support, financially or in other ways.<sup>27</sup>

### A preliminary judgement

The above analysis is positive in terms of both the potential of the new process and the first meeting of experts in August 2003. On the plus side, the new process keeps the BWC moving forward and on the international agenda. The process is very flexible and as a result has already demonstrated significant potential.<sup>28</sup> Co-operation between states parties on specific issues, which was signalled during the final stages of the first experts' meeting, is tangible progress.<sup>29</sup> Moreover, the onus is already on the Sixth Review Conference to do something much more concrete.<sup>30</sup> The secondary, or knock-on, benefits should also not be ignored. Annual BWC meetings were a principal objective of Western states in 2001. Agreement to hold such meetings brings the BWC into line with the current practice of states parties to the CWC and the 1968 Nuclear Non-Proliferation Treaty.<sup>31</sup> It also makes annual BWC meetings the norm rather than the exception, because by 2006 they will have been held, in various guises, in 18 of the last 21 years.<sup>32</sup> The difference in the BWC context is that such meetings are specific, focused and ad hoc, but given the depth of the BWC's problems more meetings will surely be needed after 2006. As long as they remain specific and focused, a rationale exists for their continuation, providing they deliver practical results.

The new process also goes some way towards reducing the institutional deficit: de facto by 2006 institutional support for the BWC will have been provided for nine years.<sup>33</sup> Continuation of that arrangement remains at the mercy of the states parties. However, with the delivery of the 'Information Repository' on CD-ROM and the effort put in by the Chairman and the Secretariat in 2003, no state can claim that this support to the Secretariat has been a significant financial burden on it or that it has not delivered a positive contribution to the BWC or its states parties.

No analysis, however, can ignore the scale of the problems facing the BWC. It is difficult not to agree with Marie Chevrier's assertion that 'states parties are now mired in a diplomatic staging of *Waiting for Godot*. Delegations meet, spend money, argue semantics and report back to capitals, justifying continued talk while the spectre of biological warfare and bioterrorism hover in the background with ever growing menace'.<sup>34</sup> The much broader questions identified by Chevrier, as well as verification and compliance, scientific developments, universality and institutional arrangements, should have been included for consideration in the new process. Without doubt, the new process is a lowest common denominator outcome given the global BW context.<sup>35</sup> Furthermore, the lack of a final declaration at the 2001 Fifth Review Conference and consequent loss of important discussions and understandings among states parties (for instance, on hostile use, bio-control agents and their use on the territory of other states, and the scope of the BWC in the light of scientific developments) also mean that the bigger picture is ignored. And, not least, the status and mandate of the AHG have not been formally decided. These bigger questions are important to some, if not all, states parties' perceptions of the relevance and utility of the BWC to their security. The failure explicitly to address them does nothing to arrest the continued erosion of confidence in the convention.

By focusing on a number of specific issues the new process, if successful, can go some way towards revitalising the convention in 2006, but no one should forget that it was the only available strategy to move the states parties forward after the ruinous course identified by Rissanen. It kept the BWC alive. After the holding of the first meeting, it is clear that the potential for progress does exist and the new process can deliver concrete benefits to the BWC and its states parties. Whether or not the states parties collectively realise that potential remains to be seen, but to be really successful the new process will have to move states parties towards a much broader and much more coherent approach to dealing with the weakness of the BWC. The 2003–2005 process is only a new starting point, not an end in itself.

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## Endnotes

<sup>1</sup> US Department of State, Bureau of Arms Control, 'New ways to strengthen the international regime against biological weapons', Fact sheet, Washington, DC, 19 October 2001, available at [www.state.gov/t/ac/bw/fs/2001/7909.htm](http://www.state.gov/t/ac/bw/fs/2001/7909.htm).

<sup>2</sup> By substantive multilateral action I mean collective action by all states parties to the BWC. Many states parties have taken action at the national level—for instance, action on the US controls on select agents—or with like-minded states parties (which may be interpreted as 'multilateral' action). Examples are the activities of the Australia Group, the Group of Eight industrialised countries (G8) initiative and the new Proliferation Security Initiative. The latter has been undertaken by Australia, France, Germany, Italy, Japan, the Netherlands, Poland, Portugal, Spain, the UK and the US and is designed to interdict WMD-related materials en route to state and non-state actors of proliferation concern. See <http://usinfo.state.gov/topical/pol/terror/texts/03090431.htm>.

<sup>3</sup> Jenni Rissanen, 'Continued turbulence over BWC verification', in Trevor Findlay and Oliver Meier (eds), *Verification Yearbook 2002*, The Verification Research, Training and Information Centre (VERTIC), London, December 2002, p. 88.

<sup>4</sup> United Nations, 'Fifth Review Conference of the states parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction: final document', BWC/CONF.V/17, Geneva, 2002, available at <http://disarmament.un.org:8080/wmd/bwc/pdf/bwccnfv17.pdf>.

<sup>5</sup> Daniel Feakes and Jez Littlewood, 'Hope and ambition turn to dismay and neglect: the Biological and Toxin Weapons Convention in 2001', *Medicine, Conflict and Survival*, vol. 18, no. 2, 2002, pp. 164–174.

<sup>6</sup> 'News chronology', *CBW Conventions Bulletin*, no. 58 (December 2002), p. 33 (entry for 2 September 2002).

<sup>7</sup> Kerry Boyd, 'US attempts to sink BWC Review Conference', *Arms Control Today*, vol. 32, no. 8, October 2002, p. 27.

<sup>8</sup> The UK Green Paper on the BWC brought together a number of proposals. See United Kingdom, Secretary of State for Foreign and Commonwealth Affairs, *Strengthening the Biological and Toxin Weapons Convention: Countering the Threat from Biological Weapons* (Cm 5484), The Stationery Office, London, April 2002. See also the working papers submitted at the Fifth Review Conference in 2001, available at [www.opbw.org](http://www.opbw.org), for numerous formal proposals for the inter-review conference period.

Milton Leitenberg claims that the US invited its European partners to make a counter-proposal and that several did so, and goes on to claim that once such proposals had been cleared by Washington they were passed to Ambassador Tóth, who worked them up into the one-page 'take-it-or-leave-it' proposal. See Milton Leitenberg, 'Biological weapons and bioterrorism in the first years of the twenty-first century', *Politics and the Life Sciences*, vol. 21, no. 2, September 2002, p. 9. This author's understanding and interpretation of events differ slightly from Leitenberg's.

<sup>9</sup> Graham S. Pearson, 'The Biological and Toxin Weapons Convention Review Conference: report from Geneva', *CBW Conventions Bulletin*, no. 58, December 2002.

<sup>10</sup> BWC/CONF.V/17.

<sup>11</sup> Nicholas A. Sims, 'Return to Geneva: the next stage of the BWC Fifth Review Conference', in *Strengthening the Biological Weapons Convention*, Review Conference Paper no. 5, University of Bradford, Bradford, 2002, p. 15.

<sup>12</sup> Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, 1972, Article IV. The text of the convention is available on the BWC website at [www.opbw.org](http://www.opbw.org).

<sup>13</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, 21 March 1980, p. 7.



<sup>14</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, Final document', *BWC/CONF.III/23*, Geneva, 1992, pp. 14, 43.

<sup>15</sup> *BWC/CONF.III/23*, p.12.

<sup>16</sup> United Nations, 'Fifth Review Conference of the states parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction: background information on the participation of states parties in the agreed confidence-building measures (CBMS), 1997–2001: status as of 28 September 2001', *BWC/CONF.V/2*, 3 October 2001, and 'Background information on the participation of states parties in the agreed confidence-building measures (CBMS), 2002: status as of 16 October 2002', *BWC/CONF.V/2/Add.1*, 25 October 2002; and 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: background information on the participation of states parties in the agreed confidence-building measures (CBMS), 1992–1996, status as of 26 August 1996', *BWC/CONF.IV/2*, 28 October 1996, and Corr. 1, Corr.2, Corr.3, Corr.4 and Corr.5, 27 November–6 December 1996.

<sup>17</sup> The Verification Research, Training and Information Centre (VERTIC), 'Time to lay down the law: national legislation to enforce the BWC', VERTIC, London, October 2003, p. 11, available at [www.vertic.org/whatsnew.html](http://www.vertic.org/whatsnew.html).

<sup>18</sup> The 2003 CBM document, based on the submissions made by the April 2003 deadline, indicates that only 26 of the 150 states parties made some kind of return for any of the CBMS. Thus 124, or 82 percent of the 150 states parties, did not make a return on time. See United Nations, Department of Disarmament Affairs, 'Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction: annual information exchange of states parties on confidence-building measures, as agreed at the Third Review Conference of the parties to the convention', UN document DDA/BWC/2003/CBM (undated).

<sup>19</sup> Jez Littlewood, 'Substance hidden under a mountain of paper: the BWC experts' meeting in 2003', *Disarmament Diplomacy*, no. 73 (forthcoming). Note in particular the closing remarks of the Chairman: 'We have made a good start: let's continue in the same vein'.

<sup>20</sup> Trevor Findlay, 'Introduction: the salience and future of verification', in Trevor Findlay (ed.), *Verification Yearbook 2000*, The Verification Research, Training and Information Centre (VERTIC), London, December 2000, p. 16.

<sup>21</sup> Under Article V of the BWC, states parties 'undertake to consult one another and to cooperate in solving any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention . . . [and] . . . through appropriate international procedures within the framework of the [UN] . . .'. Note that 'any problems' is interpreted by states parties as being applicable to any issue related to the BWC, including the CBM submissions. A formal consultative committee meeting was called by Cuba in 1997 in relation to a non-compliance allegation it made against the US. Under Article VI, a state party may lodge a complaint with the UN Security Council if it suspects a breach of the BWC. The Council will consider such a complaint and may initiate an investigation in accordance with the UN Charter. However, the veto power of the Council's five permanent members (the P-5) effectively stymies this provision.

<sup>22</sup> The Preparatory Committee for the (First) Review Conference of the BWC 'decided to request the Secretariat to prepare a background paper on compliance by States Parties with all their obligations under the Convention'. The paper dealing with compliance reproduced 'the substantive parts of the replies received [from States Parties]'. See United Nations, 'Background paper relating to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction', *BWC/CONF.I/4*, 20 February 1980, for a description of the process. The invitation to states parties to provide any useful information on their national implementation measures has been followed by all subsequent review conferences.

<sup>23</sup> US Department of State, 'us efforts to combat the biological weapons threat', Fact sheet, 14 November 2002, available at [www.state.gov/t/ac/rls/fs/15150pf.htm](http://www.state.gov/t/ac/rls/fs/15150pf.htm). For an overview of us efforts see also John D. Steinbruner and Elisa D. Harris, 'Controlling dangerous pathogens', *Issues in Science and Technology*, spring 2003, pp. 47–54.

<sup>24</sup> United Kingdom, Secretary of State for Foreign and Commonwealth Affairs, *Strengthening the Biological and Toxin Weapons Convention: Countering the Threat from Biological Weapons* (Cm 5484), The Stationery Office, London, April 2002.

<sup>25</sup> Dieter Deiseroth, 'Societal verification: wave of the future?', in *Verification Yearbook 2000*, pp. 265–280.

<sup>26</sup> For a copy of the 2002 CBM declaration, see the Australian Department of Foreign Affairs and Trade website at [www.dfat.gov.au/security/biological\\_weapons.html](http://www.dfat.gov.au/security/biological_weapons.html).

<sup>27</sup> See the BioWeapons Prevention Project website at [www.bwpp.org](http://www.bwpp.org).

<sup>28</sup> Littlewood, 'Substance hidden under a mountain of paper: the BWC experts' meeting in 2003'.

<sup>29</sup> The closing remarks of Ambassador Tóth at the first experts' meeting on 29 August indicated that various offers of assistance had been made by states parties to help others with their national implementation efforts. Information obtained by author, who was present at the closing plenary session.

<sup>30</sup> At the closing plenary session of the first experts' meeting, statements from Cuba, Iran and Brazil reiterated what the Non-Aligned Movement (NAM) statement of November 2002 made clear: this process must lead to a more holistic package of measures to strengthen the BWC. These states parties thus showed that the Sixth Review Conference in 2006 and future efforts are at the forefront of their attention.

<sup>31</sup> Treaty on the Non-Proliferation of Nuclear Weapons (NPT), available at <http://disarmament.un.org:8080/wmd/npt/npttext.html>.

<sup>32</sup> Over the 21-year period from the 1986 Second Review Conference to the Sixth Review Conference in 2006, states parties will have met in the technical experts' meeting to devise the CBMS in 1987, at the Third Review Conference in 1991, in VEREX in 1992 and 1993, at the Special Conference in 1994, in the AHG between 1995 and 2001, at the Fifth Review Conference in 2001 and 2002, in the new process from 2003 to 2005, and at the Sixth Review Conference in 2006. They did not meet in 1988, 1989 or 1990.

<sup>33</sup> States parties have paid for the provision of additional assistance to the AHG (1997–2001) and the Fifth Review Conference (2001–2002), and earmarked funds for the new process (2003–2005).

<sup>34</sup> Marie Isabelle Chevrier, 'Waiting for Godot or saving the show? The BWC Review Conference reaches modest agreement', *Disarmament Diplomacy*, no. 68, December 2002/January 2003, pp. 11–16.

<sup>35</sup> See for example the statements issued immediately after the adoption of the new process and its mandate. United Nations, 'Fifth Review Conference of the states parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction: Statement on behalf of the Group of the Non-Aligned Movement and Other States', BWC/CONF.V/15, 18 November 2002; and 'Statement on Behalf of the Western Group', BWC/CONF.V/16, 18 November 2002.