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# **Strengthening the Biological Weapons Convention**

## **Briefing Paper No 11 (Second Series)**

### **Preparing for a Successful Outcome to the BTWC Sixth Review Conference in 2006**

**December 2003**

**Series Editors**

**Graham S Pearson and Malcolm R Dando**

Department of Peace Studies, University of Bradford

# **Strengthening the Biological Weapons Convention**

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Jez Littlewood

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Department of Peace Studies

University of Bradford

Bradford, UK

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# PREPARING FOR A SUCCESSFUL OUTCOME TO THE BTWC SIXTH REVIEW CONFERENCE IN 2006

by Jez Littlewood<sup>†</sup>

## Introduction

1. This Briefing Paper looks forward to the Sixth Review Conference in 2006 now just three years away and provides an initial assessment of what needs to be done to ensure a successful outcome to the Review Conference. Many of the issues identified should be considered by individual States Parties, the States Parties collectively, regional organisations, like-minded groups of States Parties, appropriate international organisations and NGOs. In the penultimate section, areas are identified where NGOs might make a constructive contribution to the BTWC. The issues and areas considered in this paper are not intended to be comprehensive. States Parties and the NGO community will be able to identify more issues than this initial paper has done in seeking to stimulate thinking **now** about the Sixth Review Conference. Indeed, there is much to be said for making use of the time available in 2004 and 2005 to undertake a comprehensive assessment of the role of the BTWC and its implementation, with a view to providing States Parties with specific information and substantive proposals before the Preparatory Committee in 2006.

2. This approach, and hence the Briefing Paper, is based on a number of assumptions about the 2003-2005 inter Review Conference process, the status of multilateral arms control, and the actual ability of States Parties to the BTWC to bring to fruition a meaningful work programme. First, the current work programme should be regarded as an interim strategy which should be exploited to its **full** potential, which is much greater than many participants and observers appear to believe, and which will require the States Parties to continue work **after** the Sixth Review Conference. Second, that arms control and multilateral treaty-based weapons-regulation have now evolved into a more 'honest' acceptance of the fact that the treaty-only approach to arms control is not a sufficient 'answer' by itself to the problem. Third, that collectively the States Parties have yet to catch up with the new reality and only very modest achievements can be expected from them. Anyone interested in the BTWC or the dangers posed by biological weapons more generally, cannot but ponder the question of whether the States Parties as a collective body are actually up to the tasks they are legally bound to undertake: to ensure the prohibition and prevention of the development, production, stockpiling, acquisition – and ultimately use – of biological and toxin weapons. The collective failure of the States Parties in recent years must, if nothing else, initiate a fundamental rethink of how the BTWC should be maintained and strengthened.

## Expectations for the 2003 to 2005 Inter Review Conference process

3. Although there have been indications that the first Meeting of Experts under the new process (18-29 August) can be considered a modest success and a step in the right direction, the limited nature of its achievements cannot be ignored.<sup>1</sup> There was consequently an

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<sup>†</sup> Jez Littlewood, Research Fellow, Mountbatten Centre for International Studies, Division of Politics and International Relations, School of Social Sciences, University of Southampton, Southampton, SO17 1BJ, UK.

<sup>1</sup>Jez Littlewood, 'Substance Hidden Under A Mountain Of Paper: The BWC Experts' Meeting in 2003' Disarmament Diplomacy Issue No. 73 (October-November 2003) pp 63-66. Available at

expectation that the first annual Meeting of States Parties on 10-14 November 2003 would produce a similarly modest 'effective action' component. After this first annual Meeting of States Parties, the United States said that "*We are very pleased that at a political level the member states were able to build upon the progress achieved by the experts in August...*"<sup>2</sup> An expectation of modest progress was therefore justified and indicates that a much more radical approach is required for the formulation of policy proposals for the Sixth Review Conference of the BTWC in 2006.

4. Previous Bradford Papers have argued that 'what is needed in the BTWC review process is the more systematic and reliable implementation of the decisions of past Review Conferences.'<sup>3</sup> Such an approach is indeed necessary for a realistic Inter Review Conference process strategy. At previous Review Conferences, the States Parties have successfully strengthened the Convention by adding to their commitments and extending their understandings in the agreed Final Declarations. As Sims<sup>4</sup> went on to note, a shift of emphasis onto an assessment of existing obligations and how they and how the modalities of implementation might be improved would be an achievement in the current situation. The argument can be made that this is effectively what is happening under the new Inter Review Conference process for the specifically identified areas of work. The new process does have the benefit of providing a clear focus of specific areas of work from which the BTWC could be strengthened. In addition, the current focus assuages the concerns of those reluctant to agree to additional commitments. As far as it goes, this strategy can be regarded as adequate for the 2003-2005 period, because States Parties need to rebuild confidence in the BTWC and among themselves as a group. However, much more needs to be done at the Sixth Review Conference in 2006 and the new process needs to be continued, strengthened and expanded if the BTWC is to retain its relevance to efforts to prevent the development, production, stockpiling, acquisition, or use of biological and toxin weapons.

5. A logical place for States Parties to begin their work in the 2003-2005 period in preparing for the Sixth Review Conference is their existing legally binding obligations under the Convention and the politically binding obligations they have all supported, as contained in the Final Declarations of the 1980, 1986, 1991 and 1996 Review Conferences. It is therefore reasonable to expect, as a minimum, that the existing and appropriate politically binding obligations will have been considered and addressed at least by individual States Parties before the Sixth Review Conference. Based on past experience, this is probably as much as can realistically be expected from the States Parties.

## **Biological disarmament**

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<http://www.acronym.org.uk/dd/dd73/73news05.htm> Graham S. Pearson, 'The Biological Weapons Convention New Process' Report from Geneva, CBW Conventions Bulletin No 61 (September 2003) pp.8-14.

<sup>2</sup>Richard Boucher, U.S. State Department Spokesman, 'Biological Weapons Convention Annual Meeting of States Parties', 17 November 2003. Available at <http://www.unmission.ch/press2003/1117BiologicalWeaponsConv.html>

<sup>3</sup>Nicholas A. Sims, 'Return to Geneva: The Next Stage of the BWC Fifth Review Conference' Strengthening the Biological Weapons Convention, Review Conference Paper No 5 (University of Bradford, Bradford, 2002) page 15. Available at <http://www.brad.ac.uk/acad/sbtwc>

<sup>4</sup>Nicholas A. Sims, 'Return to Geneva: The Next Stage of the BWC Fifth Review Conference' Strengthening the Biological Weapons Convention, Review Conference Paper No 5 (University of Bradford, Bradford, 2002) page 15. Available at <http://www.brad.ac.uk/acad/sbtwc>

6. The second area relates to the state of play in regard to multilateral arms control regimes and their associated conferences. Arms control agreements have always been evolving, in terms of their scope, the methods of negotiation, and the means of implementation. The BTWC is now almost 30 years into its life since its entry into force. However, the overall trend of the latter half of the 20th century towards multilateral centralised arms control regimes is, most likely, at an end. The CWC, and if it ever enters into force the CTBT, are likely to be the last of the regimes in their idealised sense. While multilateralism is not dead, the single-treaty silver-bullet approach to a weapons problem is, at least for the foreseeable future. History has clearly demonstrated that in the biological weapons arena, legislation, regulations, controls, administrative arrangements, and enforcement of these, is required at all levels: individual, sub-national, national, regional, and international.

7. As a consequence of the failure to strengthen the BTWC through a legally binding agreement efforts to strengthen the Convention and enhance implementation of all its obligations in one go, through a single agreement, have also come to a halt. That strategy has been replaced by an effort to improve implementation of specific obligations in discrete blocks, namely the allocation of the work into particular years with no envisaged year-on-year follow-up as has been done in the mandate of the new process.

8. This BTWC-specific development is in fact in line with the ongoing evolution, rather than revolution, in arms control. States have applied controls and restrictions in many areas at the national and like-minded level and/or the regional level in the past with a view to working towards international agreements. In some cases such arrangements are precursors to international agreements whilst in others they are supplementary to them after entry into force. Regardless of the rationale for such supplementary measures, they will continue to be developed in the future. For example, additional means of supplementing treaties or mechanisms aimed at enhancing agreements or reducing the scale of proliferation include the Missile Technology Control Regime (MTCR), the International Code of Conduct against Ballistic Missile Proliferation (HCoC), Australia Group, Nuclear Suppliers Group (NSG), the activities of the G8 and the Proliferation Security Initiative (PSI), and the Wassenaar Arrangement, as well as regional activities such as Mendoza and the Nuclear Weapon Free Zones (NWFZs), bilateral arrangements, regional actions (e.g. DPRK), or UN Security Council resolutions. Treaties themselves have acted as a conduit for further development of international arrangements. Successful or failing implementation of international agreements can, and has, acted as a catalyst for the development of supplementary mechanisms, including through the decisions of Review Conferences. The BTWC, or rather its States Parties, is failing and consequently a more disaggregated approach can be expected to strengthening the prohibition regime for biological weapons in the future, rather than a centralising strategy to address biological weapons.<sup>5</sup>

9. The implications of this change for the BTWC regime in the next few years is still far from clear, but unless the States Parties deliver the **required** 'effective action' in accordance with the 2002 decision, the Convention is likely to be shunted further to the periphery of efforts to prevent proliferation and ensure biological disarmament. Only success in the 2003-2005 inter Review Conference period can begin to move the BTWC regime back towards a central role in international efforts for the prohibition and prevention of biological weapons. In order to judge the likely outcome, it is necessary to make an assessment of the ability of the

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<sup>5</sup>Jez Littlewood, 'The EU Strategy against the Proliferation of Weapons of Mass Destruction' in Journal of European Affairs Volume 1 Number 1 (August 2003) pp25-26, available at <http://www.eupolicynetwork.org.uk/JournalOfEuropeanAffairs.pdf>

States Parties themselves, or rather the **collective** ability of the States Parties to fulfil their obligations and commitments under the BTWC regime. The record here is not encouraging given recent failures. It is **only** the States Parties that can act – and decide to act – in a manner that returns confidence in their ability to uphold the BTWC regime. Continued failure, however, will lead to other actors stepping into the BTWC arena. This will include like-minded States Parties acting on their own and as regional groupings, but will also lead to non-governmental organisations taking up an increasing role in the BTWC. Failure in the 2003-2005 inter Review Conference process will exacerbate the problems with the Convention regime and sideline it even further, rather than serve as a catalyst to strengthen it through renewed multilateral efforts.

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

10. Even though the new Inter Review Conference process might, and should, deliver some practical results, the scale of the problems facing the BTWC means the Sixth Review Conference has a significant amount of work before it. This opens doors for other actors to assist the States Parties – individually or collectively – in their task. Given the fact that a full review last occurred in 1991<sup>6</sup> -- because in 1996 the ongoing Ad Hoc Group negotiations limited the Fourth Review Conference to two weeks -- and that the States Parties will need to consider the outcome of the 2003-2005 inter Review Conference process, the usual three-week session for the Sixth Review Conference may not provide sufficient time to consider all the issues, unless a significant amount of preparatory work is undertaken beforehand. It is in this preparatory phase that States Parties and NGOs could take on a significant role. In order to start thinking about what preparatory work needs to be done, it is useful to consider what the Sixth Review Conference must do.

11. The first point that the States Parties need to recognise is that the Sixth Review Conference should indeed be a **full** review, rather than a partial review of work over the last few years. As the focus of this Briefing Paper is on achieving a successful outcome to the Sixth Review Conference, care should be taken in the drafting of the agenda to avoid inclusion of needlessly contentious items. Consequently, in line with past practice the agenda should include the following substantive items:

- Review of the operation of the Convention as provided for in its Article XII
  - (a) General debate
  - (b) Articles I-XV
  - (c) Preambular paragraphs and purposes of the Convention
- Consideration of issues identified in the Final Document of the Fifth Review Conference, and possible follow-up action

12. Article XII of the BTWC includes the following language *"to review the operation of the Convention, with a view to assuring that the purposes of the preamble and the provisions of the Convention, including the provisions concerning negotiations on chemical weapons, are being realized. Such review shall take into account any new scientific and technological*

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<sup>6</sup>Nicholas A Sims, 'Biological Disarmament Diplomacy in the Doldrums: Reflections After the BWC Fifth Review Conference' *Disarmament Diplomacy* Number 70 (April/May 2003) p.16. Available at <http://www.acronym.org.uk/dd/dd70/>

*developments relevant to the Convention.*" This means that the agenda items above in effect embrace the following items:

- a. A review of the operation of the Convention itself;
- b. The impact of any new scientific and technological developments relevant to the Convention;
- c. The relevance, and the implementation, of the CWC on the implementation of the BTWC, taking into account the degree of universality attained by the conventions in 2006;
- d. The effectiveness of Confidence-Building Measures as agreed at the Second and Third Review Conferences;
- e. The requirement for, and the operation of, the requested allocation of resources by the United Nations Secretary-General and other requirements to assist the effective implementation of the Convention;
- f. The work of the annual meetings of States Parties and the meetings of experts in 2003, 2004 and 2005, and any further action to be taken with regard to these meetings;
- g. The work required between the Sixth Review Conference and Seventh Review Conference;
- h. A decision to hold further Review Conferences.

These are all items with which the States Parties are familiar because they are usually addressed at the Review Conference or arise from the decision of the States Parties in 2002 i.e. item f, or flow from that decision i.e. item g. They should not, therefore, be contentious.

13. There is much to be said also for a thorough assessment of the existing final declarations of the BTWC Review Conferences to be undertaken with a view to identifying those measures which have not been carried out or implemented and may therefore need particular attention.

14. The items embraced in the usual Review Conference agenda provide a useful framework to initiate some thinking on these issues and the following sections identify areas of work that may benefit from further exploration by States Parties, regional organisations or NGOs.

### **Scientific and Technological Developments**

15. Although the States Parties have consistently reaffirmed that the scope of Article I of the BTWC, and more specifically its general-purpose criterion, is sufficiently comprehensive to cover all scientific and technological developments, the background papers submitted by States Parties to previous Review Conferences have also included assessments by the individual States Parties of the impact of scientific and technological developments on the BTWC. In practice, these papers are rarely considered in the Review Conferences themselves, but they do have a beneficial influence on the Review Conference because they provide the background to the language proposed by States Parties for the Article I section of

the Final Declaration and thereby focus the efforts of some States Parties onto ensuring that there is a common understanding in the Final Declaration that the prohibitions in Article I of the BTWC remain comprehensive.

16. The following would appear to be useful preparatory activities to assist this at the Sixth Review Conference in 2006:

- a. A review of the submitted papers on scientific and technological developments in 1980, 1986, 1991, 1996, and 2001 to provide an overview of the scope of developments since entry into force and the methods by which States Parties have adapted to such developments. This might be done with a view to assessing how useful or comprehensive the response of States Parties has been and where, or if, any gaps in the scope of the BTWC exist that should be addressed by appropriate language in the Final Declaration of the Sixth Review Conference.
- b. An assessment of the implications of the scientific and technological developments likely to arise in the period between 2006 and 2011.
- c. The relationship between the BTWC and the CWC and how, or if, formal co-ordination and liaison between the States Parties and the OPCW might assist both Conventions in areas such as sub-national groups, assistance and/or emergency response;
- d. The impact of the dissemination of certain knowledge and/or technologies, e.g. aerosolization and aerobiology;
- e. The issue of biocontrol agents and genetically modified organisms (GMOs);
- f. The question of non-lethal weapons/technologies and their use in law enforcement (or other operations).

### **The Chemical Weapons Convention (CWC)**

17. By 2006 the CWC will have been in force for nine years and the action plan developed at the First Review Conference of the CWC on 28 April-9 May 2003 will have been in place for 3 years. It should be possible to assess how successful that action plan has been and whether the inclusion of defined timelines resulted in more effective implementation. It would be relevant to consider what lessons the BTWC can learn from implementation of the CWC.

### **Universality of the BTWC and the CWC**

18. The CWC is now steadily outpacing the BTWC in terms of the number of States Parties. Universal membership of the BTWC should be a serious objective despite the additional problems it could raise. If certain States currently not Party were to accede to the BTWC then the questions of compliance and assurance of destruction would need to be addressed. Other States non Party may need assistance in fulfilling the legal obligations of the BTWC and in achieving effective implementation. These possible problems should not be seen as a barrier to achieving universal membership. Rather new strategies are required to bring States not Party into the BTWC. Continuing behind-the-scenes diplomatic activity and co-ordinated

démarches is no longer a sufficient way forward if the objective of universality is to be pursued seriously.

19. Additional strategies to encourage and induce States to ratify, or accede to, the Convention must be considered. Although there are two categories of States that are non-Parties, signatories and non-signatories<sup>7</sup>, it can be helpful to distinguish between on the one hand those States which are unlikely to pose a direct threat to the Convention and on the other hand those States in regions of concern or States that have the capability to develop biological and toxin weapons. The group of States unlikely to pose a direct threat to the BTWC generally consists of those that do not feel threatened by biological weapons or consider the financial cost and administrative burden of joining the BTWC as too high. This would include States such as: Andorra, Angola, Azerbaijan, Burundi, Cameroon, Central African Republic, Comoros, Côte d'Ivoire, Gabon, Guinea, Guyana, Haiti, Kiribati, Liberia, Madagascar, Malawi, Marshall Islands, Mauritania, Micronesia, Mozambique, Namibia, Nauru, Samoa, Trinidad and Tobago, Tuvalu, United Republic of Tanzania, and Zambia. The continued omission of States in regions of concern and/or those that already have the capability to develop biological and toxin weapons undermines the Convention. This latter group would include: Chad, Egypt, Djibouti, Eritrea, Israel, Kazakhstan, Kyrgyzstan, Myanmar, Nepal, Republic of Moldova, Somalia, Syrian Arab Republic, United Arab Emirates, and Tajikistan.

20. Some of the latter group are not entirely in control of their own territory and may need special assistance, but for those that are in complete control of their territory, it is important to underline that in effect they are refusing to be bound by the BTWC. In short, they are refusing to commit themselves to giving up the option of biological and toxin weapons. States Parties should therefore err on the side of caution and assume that biological and toxin weapons **may** be in the possession of such States. It is perhaps necessary to think through the implications of labelling those States which do not have administrative or financial reasons underlying their non-Party status for what they potentially are: international pariahs.

21. To ameliorate this situation regional or other organisations might take a lead here. For example, the African Union, the Arab League, ASEAN, the European Union and the OSCE could all take forward action plans in this area. Likewise, other groups of States, such as the Commonwealth nations, might adopt a strategy to increase universal adherence to the Convention.

22. Given the real increase in concern about biological weapons, and that States Parties are determined to reduce the threat posed by these weapons by, *inter alia*, reinforcing the norm via universality, then consideration must be given to assisting smaller States to ratify or accede, through the provision of advice and assistance with procedures for ratification and accession. The development of model laws would be one example in this latter category which might flow from the work of States Parties under the new Inter Review Conference process in 2003, or be taken up by the EU, other regional organisations, other States Parties or NGOs. Another option would be convening a conference along the lines of the 1989 Paris

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<sup>7</sup>The 16 signatories are: Burundi, Central African Republic, Côte d'Ivoire, Egypt, Gabon, Guyana, Haiti, Liberia, Madagascar, Malawi, Myanmar, Nepal, Somalia, Syrian Arab Republic, United Arab Emirates, United Republic of Tanzania.

The 25 non-signatories are: Andorra, Angola, Azerbaijan, Cameroon, Chad, Comoros, Djibouti, Eritrea, Guinea, Israel, Kazakhstan, Kiribati, Kyrgyzstan, Marshall Islands, Mauritania, Micronesia, Mozambique, Namibia, Nauru, Republic of Moldova, Samoa, Tajikistan, Trinidad and Tobago, Tuvalu, Zambia.

Conference on the Prohibition of Chemical Weapons, at which 150 States subscribed to the Final Declaration. Such a conference could be convened by the Depositaries (or a depositary), a regional body such as the EU or by the United Nations. It could be co-convened with the OPCW and/or be linked with the 1925 Geneva Protocol, or as a special initiative under the United Nations First Committee or be a Special Conference of the BTWC States Parties. An immediate option would be to make use of the forthcoming 30th anniversary of the entry into force of the BTWC on 26 March 2005 as suggested by Nicholas Sims<sup>8</sup>. Financial assistance to smaller and least developed countries to achieve maximum participation in such a conference may be required. Such a conference would provide States Parties with an opportunity to develop new initiatives and allow civil society to demonstrate its support for the object and purpose of the BTWC.

### **The Confidence-Building Measures (CBMs)**

23. By 1991 the view that the CBMs had not met the expectations of most States Parties was already being promulgated<sup>9</sup> and the revisions and additions made to the CBMs in 1991 have failed to enhance confidence in the BTWC. In the absence of an alternative legally binding agreement for the submission of relevant information, however, the CBMs remain useful. The paucity of the existing CBMs, both quantitatively and qualitatively, suggests significant efforts are required in this area.

24. Although the annual CBM declarations are made by States Parties to the other States Parties, as each State Party 'owns' its CBM, on an individual basis States Parties could initiate a step forward by actually making their own data available to others as Australia has done through posting its CBM declaration on the website of its foreign Ministry<sup>10</sup>. Although annual updating is necessary, other States Parties could usefully follow this Australian initiative. Alternative approaches could include submission, for reference or scrutiny, to a government or parliamentary committee, to industry, scientific or other professional bodies and academic institutions, or to individuals and other organizations upon request. Understandably there are concerns that both security and confidential proprietary information might be released through making such declarations publicly available. However, reflection shows that such concerns are unwarranted. To take the security implications first, the question should be asked as to how likely it is that a State Party will include security sensitive information in a CBM declaration that is being distributed to 151 States Parties around the world. A parallel argument applies to the confidential proprietary implications -- and, in any event, it can be argued that no confidential proprietary information is required for the CBM declarations. It is evident that greater transparency of CBM returns would enhance confidence both within a State and among States Parties. In addition, States Parties should not underestimate the value of transparency within their territory or of the reassurance of compliance to their own citizens and the government bureaucracy.

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<sup>8</sup>Nicholas A. Sims, *Towards the BTWC Sixth Review Conference: Making Best Use of the 26 March 2005 Anniversary*, University of Bradford, Department of Peace Studies, Briefing Paper (Second Series) No. 10, December 2003. Available at <http://www.brad.ac.uk/acad/sbtwc>

<sup>9</sup>United Nations, *Third Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction* Geneva, 1991, BWC/CONF.III/23 Part III page 52

<sup>10</sup>The information submitted by Australia under the 2002 round of CBM information exchange is available at [http://www.dfat.gov.au/security/statements/bwc\\_cbm\\_return\\_2002.pdf](http://www.dfat.gov.au/security/statements/bwc_cbm_return_2002.pdf)

25. The Sixth Review Conference should embark on a fundamental overhaul of the CBMs including the following areas: submission and processing; analysis and clarification of submitted information; and, the scope of the CBMs.

*Submission and processing*

26. In the information age the submission and collation of CBMs in hard copy form only should no longer be acceptable. The opportunity to submit the required information electronically should now be available to all States Parties and in addition to the hard copy circulation the submissions should at least be collated on a CD-Rom. A greater improvement would be a CBM database available to States Parties. The issue of translation of the submissions also needs to be considered by the State Parties because CBM submissions are of limited value to most States Parties in their current format. The modest costs incurred in the establishment of a CBM database should be considered favourably by the States Parties and not dismissed as they were at the Third Review Conference in 1991. However, the costs incurred by translating the information would need to be given careful consideration.

27. Whether or not electronic submission would improve the abysmal rate of return is open to question, but the shift to a computerised system would imply at least two further changes, one necessary and the other optional. The necessary change would be the provision of technical assistance to States Parties, in that the BTWC Secretariat would need to be the point of contact to assist States Parties should any technical problems arise in the collecting and submission of information. This is most likely to require a technical trouble-shooting activity rather than any on-site technical assistance. The other element of this is that the CBM contact point in the BTWC Secretariat would benefit significantly from a similar contact person or office in each State Party. If such a CBM contact point is established in the BTWC Secretariat, the office responsible for it might issue brief reports two or three times a year showing on a regional basis the current state of play in regard to submission of the annual CBMs. This would provide, in essence, simple reminders to those States Parties which have not yet submitted the requested information, although the States Parties should empower the BTWC Secretariat to act on their behalf to issue reminders to those States Parties yet to submit their annual declarations four times each year.

*Analysis and clarification*

28. States Parties should also consider the agreed procedures and mechanisms for discussing, consulting and clarifying any issue raised by the submitted information. Thus far it has been understood that the consultation and co-operation procedures under Article V of the BTWC includes the CBMs as the Final Declaration of the Second Review Conference in its Article V section stated that:

*The Conference, mindful of the provisions of Article V and Article X, and determined to strengthen the authority of the Convention and to enhance confidence in the implementation of its provisions, agrees that the States Parties are to implement, on the basis of mutual cooperation, the following measures, in order to prevent or reduce the occurrence of ambiguities, doubts and suspicions, and in order to improve international co-operation in the field of peaceful bacteriological (biological) activities:*

Whether or not this understanding needs to be extended or formalised should at least be considered. Furthermore, through an agreed CBM process other clarification mechanisms

might be developed through bilateral or regional initiatives, or in conjunction with Article V of the Convention.

29. A further element that would add value would be the provision of an annual report to the States Parties on the submitted information. Rather than the current practice of providing a five-yearly collation at Review Conferences, a brief factual report could be made to States Parties each year, immediately prior to the deadline for the annual submission, on the submissions made in the previous year. This should include a list of those States Parties that did submit information and of those which did not. The Depositaries might also consider such an annual report a useful method for circulating an up-to-date list of States Parties to the BTWC, which with advantage, should include not only those States which have ratified the BTWC and those who are signatories, but also those who are neither States Parties nor signatories.

### *Scope*

30. At the initial session of the Fifth Review Conference proposals were made to increase the scope of existing CBMs and agree to new CBMs<sup>11</sup>. During the next two years there would be advantage in carrying out a more extensive review of the scope of the CBMs going back to the initial proposals in 1986-87, the revisions and additions of 1991 and the proposals of 2001, as well as any suggestions which might be put forward in the intervening period. The following initial suggestions are put forward for further detailed consideration:

- a. CBM on scientific and technical developments. States Parties could use this to bring to the attention of other States Parties, the scientific and technological developments that they consider are of relevance to the object and purpose of the BTWC. In the absence of a scientific advisory panel to the BTWC, this would go some way to bridging the five-year gap between the opportunity at successive Review Conferences to consider these developments;
- b. A one-off or occasional CBM on compliance with Article II of the BTWC. This would complement the existing CBM 'F' on past offensive and defensive activities and could include information on when, and how, stockpiles of prohibited items were destroyed in accordance with Article II and usefully be extended to provide information on the destruction, or conversion, of (previous) production facilities;
- c. CBM on assistance and protection measures and emergency response plans under Article VII;
- d. CBM on the implementation of Article X of the BTWC, not least because such information has been requested by each Review Conference to date;
- f. A miscellaneous CBM which a State Party may use to submit any other information it considers relevant to the objective of enhancing implementation

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<sup>11</sup>United Nations, '*Fifth Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction*' Geneva. See South Africa, '*Strengthening Confidence-Building Measures*', BWC/CONF.V/COW/WP.1, Japan, '*Working Paper by Japan*', BWC/CONF.V/COW/WP.14, and EU, '*Proposals*', BWC/CONF.V/COW/WP.23. Available at <http://www.opbw.org>

of the BTWC and/or any information it considers enhances the confidence of other States Parties about its own compliance with the Convention.

The above suggestions are by no means comprehensive but are intended to stimulate consideration of how the CBM process might best be used as one means to strengthen the Convention.

### **Resources to support implementation of the BTWC**

31. Under the standard Review Conference agenda the resources requested and allocated by the States Parties and the United Nations are considered only very briefly. The Sixth Review Conference should consider this issue in greater detail. At least since 1997 the States Parties have provided the resources for additional personnel to support their work. The support provided to the Ad Hoc Group between 1997 and 2001, to the Fifth Review Conference between 2001 and 2002 and during the first year in 2003 of the new Inter Review Conference process has incurred only a small additional financial commitment which has both facilitated the work of the States Parties and provided additional benefits to them. The CD-ROM on national implementation measures is only one recent example. The institutional deficit of the BTWC has long been recognised<sup>12</sup> and the resources required to make a worthwhile contribution to implementation are now known to be modest. In regard to the practical implementation of the Convention it would make sense to have at least one dedicated BTWC official available to States Parties between the Review Conferences, even if no additional work is undertaken after Sixth Review Conference in 2006, simply to process the CBM submissions and provide assistance and advice to the States Parties upon request.

### **NGO initiatives**

32. As noted earlier, the Third Review Conference in 1991 was the last full review of the BTWC because efforts at the Fourth Review Conference in 1996 were influenced by the ongoing work which led to the negotiations on the legally binding instrument and the Fourth Review Conference was itself of only two weeks duration. Prior to the Third Review Conference in 1991 a significant number of NGO publications and papers established a practical foundation for the work of States Parties.<sup>13</sup> Successive Review Conferences have seen less comprehensive preparation by NGOs although the Bradford *Key Points*

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<sup>12</sup>See Nicholas A. Sims, *The Functions of the BTWC Review Conferences: Maximizing The Benefits From The Fifth Review Conference*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 2, April 2001. Available at <http://www.brad.ac.uk/acad/sbtwc> and also Nicholas A. Sims, *The Case for a BWC Committee of Oversight: Mandate and Commentary*, Disarmament Diplomacy, no. 60, September 2001, pp.13-19. Available at <http://www.acronym.org.uk/dd/dd60/60op3.htm>

<sup>13</sup>Examples of the detailed studies made by NGOs are:

S. J. Lundin (Editor), *Views on Possible Verification Measures for the Biological Weapons Convention* SIPRI Chemical & Biological Warfare Studies No. 12, (Oxford, Oxford University Press, 1991);

Federation of American Scientists, *Proposals for the Third Review Conference of the Biological Weapons Convention* Arms Control Volume 12, Number 2 (September 1991) pp 240-254;

Jozef Goldblat and Thomas Bernauer, *The Third Review Conference of the Biological Weapons Convention: Issues and Proposals* UNIDIR Research Paper No. 9 (New York, United Nations, 1991);

Nicholas A. Sims, *Reinforcing Biological Disarmament: Issues in the 1991 Review* Faraday Discussion Paper No 16, The Council for Arms Control (London, Brassey's UK, 1991);

Barbara Hatch Rosenberg and Gordon Burck, *Verification of Compliance with the Biological Weapons Convention* pp 300-329, and from a wider perspective, Richard Falk and Susan Wright, *Preventing a Biological Arms Race: New Initiatives* pp 330-351, both in Susan Wright (Editor) *Preventing a Biological Arms Race*, Cambridge, Mass., The MIT Press, 1990.

publications<sup>14</sup> for both the Fourth and Fifth Review Conferences have established a valuable standard. In the lead up to the Sixth Review Conference a similar effort would be worthwhile and should encompass all possible elements for strengthening the BTWC and enhancing its implementation. A distinction may need to be made here between advocating certain measures, such as institutional and organizational arrangements and work that stands back from the immediate problems or issues in the Convention to think differently about the many areas which need attention.

33. While these two types of work are not unrelated to, or necessarily distinct from, each other, the latter would permit a broader perspective of the options available in 2006 to emerge. Areas of the BTWC where such work would prove of particular value to States Parties would include:

- The impact of scientific and technological developments;
- Export controls;
- National implementation measures;
- CBMs (particularly submission, processing, analysis and scope);
- Societal verification at the national level<sup>15</sup>;
- Co-ordination of emergency response and assistance with international organisations, e.g. WHO;
- The relationship to the Geneva Protocol (reservations) and the CWC; and
- Peaceful co-operation directly relevant to the BTWC.

This is again a preliminary listing. Work on the annual outcomes of the Meeting of States Parties during the Inter Review Conference years would also be helpful, but the issues referred to above would benefit from much deeper analysis. The role of regional initiatives in supporting the BTWC and non-proliferation efforts would also benefit from more detailed analysis.

## Conclusions

34. The chaos caused by the failure of the negotiations of a legally binding instrument and the limited outcome of the Fifth Review Conference means that the BTWC is in many ways standing still at a time when scientific developments, globalisation, and the rapid development and dissemination of information are accelerating. The Sixth Review Conference in 2006 will therefore be an extremely important point in the life of the Convention. If States Parties fail to address the problems which the Convention faces in 2006 it will lead to the BTWC becoming ever more peripheral in the policy frameworks States Parties use to ensure the prevention and prohibition of biological weapons and combat proliferation. Such failure is not something the international community can afford, hence

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<sup>14</sup>Graham S. Pearson & Malcolm R. Dando (eds), *Strengthening the Biological Weapons Convention: Key Points for the Fourth Review Conference*, University of Bradford, Department of Peace Studies, November 1996. Available at <http://www.brad.ac.uk/acad/sbtwc> Graham S. Pearson, Malcolm R. Dando and Nicholas A. Sims (eds), *Strengthening the Biological Weapons Convention: Key Points for the Fifth Review Conference*, University of Bradford, Department of Peace Studies, November 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

<sup>15</sup>Some preliminary thinking is given to this issue in the forthcoming *Verification Yearbook 2003* published by VERTIC. See Jez Littlewood, 'Back to basics: verification and the Biological Weapons Convention' in Trevor Findlay (ed), *Verification Yearbook 2003*, The Verification Research, Training and Information Centre (VERTIC), London, December 2003.

while States Parties focus on discrete areas of the Convention in 2003, 2004 and 2005, the States Parties, regional groups and other actors, including the non-governmental community, all need to begin to work towards, to think about and to plan for a far-reaching and successful conclusion to the Sixth Review Conference. This may well entail exploring innovative approaches to the biological weapons problem. It may mean proposing policies which have not, as yet, met with universal favour among the States Parties. It may also mean revising and reformulating some of the existing proposals and suggestions for strengthening the BTWC from the Fifth and previous Review Conferences. In the next two years, there is sufficient time to think issues through before the Sixth Review Conference in 2006 and that time should not be wasted.

35. Although substance is not addressed at the meetings of the Preparatory Committee for the Review Conference, the substantial work and detailed analysis outlined above needs to be completed **prior** to the Preparatory Committee meeting so that appropriate adjustments can be made to the Provisional Agenda and other preparations for the Sixth Review Conference. Consequently, the target for the completion of the substantial work and detailed analysis is March 2006 assuming that the Preparatory Committee will meet, as for previous Review Conferences, in April 2006.