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Strengthening the Biological Weapons Convention

Review Conference Paper No 16

Successful Outcomes for the BTWC Sixth Review Conference

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SUCCESSFUL OUTCOMES FOR THE BTWC SIXTH REVIEW CONFERENCE

Graham S. Pearson* & Nicholas A. Sims†

1. The Sixth Review Conference of the Biological and Toxin Weapons Convention (BTWC) will be held in Geneva during the period from 20 November to 8 December 2006. Article XII of the Convention requires that:

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

As there has not been a complete review of the operation of the Convention since 1996, it is especially important that all States Parties prepare now to ensure a successful outcome to the Sixth Review Conference. As others have pointed out, success is rarely accidental and needs to be planned for.

2. This Review Conference Paper looks ahead to the Sixth Review Conference in the light of the developments relevant to the Convention around the world both nationally and internationally. A number of successful outcomes are identified and it is recommended that the States Parties adopt a modular approach obtaining agreement where consensus is achievable.

Background

3. The BTWC is the multilaterally agreed norm that totally prohibits biological and toxin weapons and provides the cornerstone against the risks that such weapons might be used by States Parties or by sub State actors. It also enhances international peace and security against the risk that advances in the life sciences may provide novel ways of causing harm to humans, animals or plants.

4. There is no doubt about the risks posed by biological and toxin weapons. Their capabilities were proven in national offensive programmes in the years prior to the entry into force of the BTWC in 1975.¹ It is also evident that public awareness and concerns about outbreaks of disease in humans, animals and plants are greatly heightened – SARS, Avian Flu and Foot and Mouth Disease outbreaks have caused widespread public alarm. In addition, the past decade has seen heightened concern about the possible use of biological or toxin agents by sub-State actors notably following the attempts to disperse anthrax and botulinum

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¹ For a comprehensive account see Mark Wheelis, Lajos Rozsa and Malcolm Dando (eds), *Deadly Cultures*, Harvard University Press, Cambridge, Massachusetts, 2006.

toxin by the Aum Shinrikyo sect in Tokyo in 1993/4 without casualties and the anthrax letters in the United States in September/October 2001 which resulted in five deaths.

5. There is widespread recognition of the value to international peace and security provided by the BTWC. For example, recent statements by the G-8, EU, NAM, ASEAN, the Rio Group as well as major powers such as China and the Russian Federation have all reaffirmed the importance of the BTWC and the need to take steps to increase its effectiveness.

6. Consequently, as we approach the Sixth Review Conference there are widespread expectations both politically and publicly that the States Parties will demonstrate their accountability and commitment to the obligations that they have undertaken in becoming States Parties to the Convention. There is also a widespread anticipation that the States Parties will act responsibly by adopting a constructive approach to achieving a successful outcome to the Sixth Review Conference and thereby demonstrating in concrete terms the real value to international peace and security made by the Convention.

Preparing for the Review Conference

7. The first step is to hold the Preparatory Committee meeting on Wednesday to Friday 26 to 28 April 2006 at which to agree on the provisional agenda for the Review Conference and also the provisional distribution among the various regional groups of the various positions such as the Chairmen and Vice-Chairmen of the Committee of the Whole, the Drafting Committee and the Credentials Committee.

8. In Review Conference Paper No. 10 *Preparing for the BTWC Sixth Review Conference in 2006*², it was noted that Review Conferences have been held at about five year intervals in 1980, 1986, 1991, 1996 and 2001/2002. These have been chaired in rotation by representatives from the Group of Eastern European States, the Group of Non-Aligned and Other States and the Western Group as summarized in the table below.

Review Conference	Date	Presidency
First	3 to 21 March 1980	President Ambassador Oscar Vaernø (Norway) Chairman of the Committee of the Whole Ambassador Petar Voutov (Bulgaria) Chairman of the Drafting Committee Ambassador C. G. Maina (Kenya) Chairman of the Credentials Committee Ambassador C. A. de Souza e Silva (Brazil)
Second	8 to 26 September 1986	President, Ambassador Winfried Lang (Austria) Chairman of the Committee of the Whole, Ambassador M. Vejvoda (Czechoslovakia) Chairman of the Drafting Committee Ambassador R. Butler (Australia) Chairman of the Credentials Committee, Ambassador D. D. Afande (Kenya)

² Graham S. Pearson & Nicholas A. Sims, *Preparing for the BTWC Sixth Review Conference in 2006*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 10, February 2005. Available at <http://www.brad.ac.uk/acad/sbtwc>

Third	9 to 27 September 1991	President Ambassador Roberto Garcia Moritan (Argentina) Chairman of the Committee of the Whole Ambassador H. Wagenmakers (the Netherlands) Chairman of the Drafting Committee Ambassador T. Tóth (Hungary) Chairman of the Credentials Committee Ambassador W. Lang (Austria)
Fourth	25 November to 6 December 1996	President Ambassador Sir Michael Weston (United Kingdom) Chairman of the Committee of the Whole Ambassador Jorge Berguño (Chile) Chairman of the Drafting Committee Ambassador Tibor Tóth (Hungary) Chairman of the Credentials Committee Mrs Maria Francisca Arias Castaño (Colombia)
Fifth	19 November to 7 December 2001 & 11 to 22 November 2002	President Ambassador Tibor Tóth (Hungary) Chairman of the Committee of the Whole Ambassador Markku Reimaa (Finland) Chairman of the Drafting Committee Ambassador Munir Akram (Pakistan) Chairman of the Credentials Committee Ambassador Ali-Ashgar Soltanieh (Islamic Republic of Iran)

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

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

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

11. The **date and duration** are likely to have already been determined by consultation among the States Parties as it is known that the Depositary Governments have identified a three week period for the holding of the Sixth Review Conference from 20 November to 8 December 2006. It is recommended strongly that the States Parties use the three weeks available in order to carry out a comprehensive review of the operation of all aspects of the Convention as this has not been done since the Third Review Conference in 1991.

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

ANNEX I

DRAFT PROVISIONAL AGENDA FOR THE FIFTH REVIEW CONFERENCE

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

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

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

14. Insofar as the decision of the Fifth Review Conference is concerned, the key requirement is that the Sixth Review Conference should *inter alia* consider the outcome of the annual meetings and whether any further action is required. However, consideration needs to be given as to whether the outcome of the annual meetings should be considered as part of the Review of the operation of the Convention under Agenda item 10 (b) or if there should be a separate item to consider the outcomes of the annual meetings. On balance, there will be advantage in considering the outcomes of the annual meetings as part of the Article by

Article review of the operation of the Convention as this is likely to result in a more integrated outcome.

15. The question relating to agenda item 12 of the Fifth Review Conference is more contentious. There is little doubt that the majority, if not all, of the States Parties would indeed support, in principle if not in specific terms, the requirement to strengthen the effectiveness and improve the implementation of the Convention. It is, however, equally true that it was a failure to agree on language in regard to agenda item 12 in the Final Declaration of the Fifth Review Conference that led to the adjournment of that Review Conference. The mandate derived from the 1994 Special Conference is now one among several competing approaches to the strengthening of the Convention. To emphasise its unique significance or authority could well no longer be productive.

16. Although an option would be to omit agenda item 12 from the provisional agenda for the Sixth Review Conference and to leave the question of the strengthening of the Convention to the consideration of Article V in the review of the operation of the Convention, this would serve simply to postpone the agenda issue to the Sixth Review Conference itself, and might hinder adequate preparation for addressing the substance of the question. It also needs to be recalled that the report³ of the UN Secretary-General's High Level Panel on Threats, Challenges and Change was issued on 2 December 2004 and that this included two recommendations specifically relating to the Biological and Toxin Weapons Convention:

27. States Parties to the Biological and Toxin Weapons Convention should without delay return to negotiations for a credible verification protocol, inviting the active participation of the biotechnology industry.

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

17. The first opportunity for the States Parties to the BTWC to consider these recommendations will be at the Sixth Review Conference in 2006. Whilst the Secretary-General's report⁴ *In larger freedom* took some aspects of these recommendations forward, the failure of the Summit to agree language on disarmament and non-proliferation means that the impact of the High Level Panel recommendations will, by late 2006, have become somewhat diluted and muted by the passage of the two years since its report appeared. There is also the prospect that the Swedish Weapons of Mass Destruction Commission chaired by Hans Blix will produce its report in 2006 and that it will include recommendations relating to the BTWC. From the statements made at the First Committee of the General Assembly in late 2005, it is evident that there is still considerable political attention being given to what should be done to strengthen the BTWC. It would therefore be prudent for the Sixth Review Conference to address the substance of the issue in Agenda item 12 as States Parties would then prepare for this discussion. It is recommended that an appropriate item should be included in the provisional agenda. Whilst this could have been along the lines of:

³ United Nations General Assembly, *Note by the Secretary-General*, A/59/565, 2 December 2004.

⁴ United Nations General Assembly, *In larger freedom: towards development, security and human rights for all*, Report of the Secretary-General, A/59/2005, 21 March 2005.

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

this might with advantage be made more open-ended and forward looking and thus, more widely acceptable, by updating the item to read:

12. Work to strengthen the Convention

18. This could therefore consider all developments since the Third Review Conference in 1991 and its decision to *strengthen the effectiveness and improve the implementation* of the Convention – an aim which must surely still command consensus amongst all States Parties. Work on such an item 12 could adopt a modular approach which could include consideration *inter alia* of such ideas as the holding of further annual Meetings of States Parties prepared by Meetings of Experts as well as the holding of an ‘ad hoc’ meeting of States Parties in 2007 to consider future action to strengthen the Convention, as recommended in Review Conference Paper No. 14⁵.

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

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

1. Background information document providing, in summary tabular form, data on the participation of States Parties in the agreed Confidence-Building Measures since the last Review Conference.
2. Background information document on compliance by States Parties with all their obligations under the Convention, compiled from information provided by them.
3. Background information on new scientific and technological developments relevant to the Convention and covering the applications being made of such developments and their relevance to various aspects of the Convention, compiled from information provided by the States Parties.
4. Background information document on actions taken by States Parties following the annual meetings of the States Parties held in accordance with the decision of the Fifth Review Conference, compiled from information provided by them.

21. An alternative to requesting an additional background paper on the actions taken by

⁵ Graham S. Pearson, *The UN Secretary-General's High Level Panel: Biological Weapons Issues*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 14, May 2005. Available at <http://www.brad.ac.uk/acad/sbtwc>

States Parties following the annual meetings would be to amend the request for the background paper on compliance by States Parties so that this specifically also includes any actions taken by States Parties following the annual meetings of the States Parties. In such a case the language in item 2, in the previous paragraph could be amended to read:

2. Background information document on compliance by States Parties with all their obligations under the Convention including action taken by States Parties following the annual meetings of the States Parties, compiled from information provided by them.

22. In addition to these four documents of a general character, more specifically focused papers on the possible modalities for measures such as those identified later in this Review Conference Paper and estimated costs of institutional support for particular purposes within the overall operation and implementation of the Convention could usefully be requested by the Preparatory Committee or its bureau so that the Review Conference is more adequately prepared. The Preparatory Committee should agree that such additional specifically focused papers be prepared by the Secretariat under the guidance of the bureau.

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

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

Successful Outcomes

25. In looking ahead to the Sixth Review Conference, all States Parties need to reaffirm the value of a strong Biological and Toxin Weapons Convention (BTWC) and to recognise that the regime has been strengthened effectively by the extended understandings agreed by the States Parties in their Final Declarations at successive Review Conferences. There is a great deal that the States Parties can achieve at the Sixth Review Conference in November/December 2006. It will be important to concentrate on substance, to be reasonably ambitious and by adopting a modular approach obtain agreement where there is consensus.

26. In this Review Conference Paper a number of successful outcomes are examined which could be adopted in a modular approach. The focus in this Review Conference Paper is on the possible outcomes that appear to have been most thoroughly considered and hence to be likely to be successfully achieved. Each single successful outcome is self-contained and independent of any other outcome.

Universality

27. At successive Review Conferences the States Parties have called upon States which have not yet ratified or acceded to the Convention to do so without delay. Thus at the Fourth Review Conference the Final Declaration⁶ under Article XIV:

1. *The Conference notes with satisfaction that a number of States have acceded to the Convention since the Third Review Conference.*
2. *The Convention calls upon States which have not yet ratified or acceded to the Convention to do so without delay and upon those States which have not signed the Convention to join the States Parties thereto, thus contributing to the achievement of universal adherence to the Convention.*
3. *In this connection, the Conference requests States Parties to encourage wider adherence to the Convention.*
4. *The Conference particularly welcomes regional initiatives that would lead to wider accession to the Convention.*

In addition, the resolution adopted by the General Assembly without a vote on 8 December 2005 as A/RES/60/96 included as its first operative paragraph:

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

28. There is therefore a widespread and continuing recognition by all States Parties of the importance of achievement of universal adherence to the Convention. However, the rate at which States have become Parties to the Convention has been very slow during recent years:

	October 2001	October 2002	November 2003	December 2004	June 2005
Number of States Parties	144	146	151	153	155
Number of Signatory States	18	17	16	16	16

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

29. This slow rate of approaching universality is all the more pronounced when a comparison is made with the Chemical Weapons Convention which entered into force on 29 April 1997. At its First Review Conference⁷ in April/May 2003, the States Parties in regard to universality of the CWC agreed that:

*The First Review Conference **recommended** that the Council, with the cooperation of the Secretariat, develop and implement a plan of action to further encourage, in a systematic and coordinated manner, adherence to the Convention and to assist States ready to join the Convention in their national preparations to implement it [Emphasis added] (RC-1/5, para.7.18).*

The background paper⁸ provided by the OPCW on adherence to the CWC for the First Review Conference provided a summary of the participation in the Convention:

Date	Number of States Parties	Number of States Parties for which Entry into Force was pending	Signatory States not Party	Non-Signatory States not Party
29 April 1997	87	0	78	28
29 April 1998	107	1	60	25
29 April 1999	121	0	48	24
29 April 2000	132	3	37	21
29 April 2001	143	0	31	19
29 April 2002	143	0	31	19

30. Since adoption of the Action Plan on Universality following the CWC Review Conference, the number of States Parties has increased⁹ significantly:

	May 2003	October 2003	June 2004	February 2005	March 2006
Number of States Parties	151	154	164	167	178
Number of States Parties for which Entry into Force	2	3	0	0	0

⁷ Organisation for the Prohibition of Chemical Weapons (OPCW), *Report of the First Special Session of the Conference of the States Parties to Review the Operation of the Chemical Weapons Convention (First Review Conference) 28 April – 9 May 2003*, RC-1/5, 9 May 2003. Available at <http://www.opcw.org>.

⁸ Organisation for the Prohibition of Chemical Weapons (OPCW), *Background Paper on Universal Adherence to the Chemical Weapons Convention*, RC-1/S/5, 25 April 2003. Available at <http://www.opcw.org>.

⁹ Scott Spence, *Achieving Effective Action on Universality and National Implementation: The CWC Experience*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 13, April 2005. Available at <http://www.brad.ac.uk/acad/sbtwc>

was pending					
Signatory States not Party	25	22	18	16	8
Non-Signatory States not Party	16	15	12	11	8

31. It is thus evident that in March 2006, the States Parties to the CWC are some 178, over twenty more than the number of States Parties to the BTWC. There is consequently a window of opportunity at the forthcoming Sixth Review Conference in November/December 2006 for the States Parties to the BTWC to mount an initiative to encourage all those States who have acceded to the CWC to also accede to the BTWC. Rather than just adopting an exhortation, as at previous Review Conferences, it would be timely to agree to actually do something to achieve the objective of universality. Whilst this might be called an Action Plan there might be advantage in adopting some different terminology such as an achievement timeline with the objective of reaching 180 States Parties to the BTWC no later than the Seventh Review Conference in 2011. The States Parties at the Sixth Review Conference in agreeing this achievement timeline need to also agree on how the initiative is to be progressed and how the progress towards this objective will be reported regularly to the States Parties. Such a progress report would be appropriate at future annual Meetings of the States Parties at which agreement could be reached on additional action should that be necessary.

National Implementation

32. At successive Review Conferences the States Parties have reaffirmed the importance of Article IV of the Convention. Thus at the Fourth Review Conference the Final Declaration¹⁰ under Article IV stated:

1. *The Conference underlines the importance of Article IV. It reaffirms the commitment of States Parties to take the necessary national measures under this Article, in accordance with their constitutional processes. These measures are to ensure the prohibition and prevention of the development, production, stockpiling, acquisition or retention of the agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention anywhere within their territory, under their jurisdiction or under their control, in order to prevent their use for purposes contrary to the Convention. The States Parties recognize the need to ensure, through the review and/or adoption of national measures, the effective fulfilment of their obligations under the Convention in order, inter alia, to exclude use of biological and toxin weapons in terrorist or criminal activity.*

2. *The Conference notes those measures already taken by a number of States Parties in this regard, for example the adoption of penal legislation, and reiterates its call to any State Party that has not yet taken any necessary measures to do so immediately, in accordance with its constitutional processes. Such measures should apply within its territory, under its jurisdiction or under its control anywhere. The*

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

Conference invites each State Party to consider, if constitutionally possible and in conformity with international law, the application of such measures also to actions taken anywhere by natural persons possessing its nationality.

33. In addition, national implementation was one of the issues considered during the 2003 to 2005 intersessional process¹¹ when the topic in 2003 was:

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

The outcome of the Meeting of States Parties in 2003 was to agree a short report¹² on both of the topics saying:

At the Meeting of States Parties, States Parties noted that notwithstanding the differing legal and constitutional arrangements among the 151 States Parties to the Convention, States have adopted similar basic approaches and share common principles. The States Parties stressed the need for undertaking activities at the national level in keeping with their obligations and responsibilities to strengthen and implement the Convention. The States Parties agreed, to that end, on the value of the following:

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

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

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

States Parties considered that agreement on the value of these measures discussed at the Meeting constitutes an essential effort to facilitate more effective implementation

¹¹ 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 Toxins Weapons and on their Destruction, Geneva, 19 November – 7 December 2001 and 11 – 22 November 2002. *Final Document*, BWC/CONF.V/17, 2002. Available at: <http://www.opbw.org>

¹² United Nations, Meeting of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxins Weapons and on their Destruction, First Meeting, Geneva, 10 – 14 November 2003. *Report of the Meeting of States Parties*, BWC/MSP/2003/4 (Vol. 1), 24 November 2003. Available at: <http://www.opbw.org>

and enforcement of the Convention, as well as providing a basis for review of progress at the 2006 Review Conference.

34. In addition, national implementation measures have been the subject of an Action Plan undertaken by the States Parties to the CWC following their First Review Conference in 2003. At that Review Conference the States Parties agreed¹³:

*The First Review Conference **called upon** States Parties that have not already done so to inform the OPCW by the next regular session of the Conference of the status of their adoption of the legislative and administrative measures necessary for or taken by them to implement the Convention, of any problems they have encountered, and of any assistance they require. **Having considered** the importance of national implementation measures for the proper functioning of the Convention, and **having reviewed** the activities undertaken by the States Parties as well as the Secretariat, the First Review Conference...*

(h) agreed to develop, at its next regular session, a plan of action based on a recommendation from the Council regarding the implementation of Article VII obligations, with the objective of fostering the full and effective implementation of the Convention by all States Parties. [Emphasis added] (RC-1/5, para.7.83).

35. Bradford Review Conference Paper No. 13¹⁴ described the action being taken by the OPCW and a further update was published¹⁵ in the *CBW Conventions Bulletin* of September/December 2005. The situation can be summarised as follows:

Status at	Number of States Parties	Number (and percentage) of States Parties that have submitted national implementation	Legislation covers area key to the enforcement of the CWC
May 1997	87	0 (0%)	Not available
December 1997	103	24 (23%)	Not available
November 1998	120	40 (33%)	Not available
July 1999	125	43 (34%)	Not available

¹³ Organisation for the Prohibition of Chemical Weapons (OPCW), Report of the First Special Session of the Conference of the States Parties to Review the Operation of the Chemical Weapons Convention (First Review Conference) 28 April – 9 May 2003, RC-1/5, 9 May 2003. Available at <http://www.opcw.org>.

¹⁴ Scott Spence, *Achieving Effective Action on Universality and National Implementation: The CWC Experience*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 13, April 2005. Available at <http://www.brad.ac.uk/acad/sbtwc>

¹⁵ Santiago Oñate, Ralf Trapp and Lisa Tabassi, *Decision on the Follow-up to the OPCW Action Plan on Article VII: Ensuring the Effective Implementation of the Chemical Weapons Convention*, *CBW Conventions Bulletin*, Issue No 69 + 70, September/December 2005, pp. 5-10.

May 2000	133	48 (36%)	Not available
May 2001	143	53 (38%)	Not available
October 2002	145	70 (48%)	39 (27%)
October 2003	154	94 (61%)	51 (33%)
November 2004	166	96 (58%)	52 (31%)
November 2005	174	106 (61%)	59 (34%)

This shows that even after the Action Plan, although almost two thirds of the States Parties to the CWC had submitted information on their national implementation to the OPCW, only about one third of the States Parties had succeeded in adopting legislation that covered the areas key to the enforcement of the CWC.

36. The situation in regard to the adoption of national measures to implement the BTWC, as required by Article IV of the Convention which requires:

Each State Party to this Convention shall, in accordance with its constitutional processes, take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition, or retention of the agents, toxins, weapons, equipment and means of delivery specified in article I of the Convention, within the territory of such State, under its jurisdiction or under its control anywhere.

is much less certain than that for the CWC. There is, however, no basis on which to conclude that the situation is any better and it is likely to be worse.

37. There is widespread recognition of the importance of all States Parties adopting national legislation *to prohibit and prevent the development, production, stockpiling, acquisition, or retention of the agents, toxins, weapons, equipment and means of delivery specified in article I of the Convention.* The adoption of Security Council Resolution 1540 (2004)¹⁶ has also provided additional impetus for all States – and not solely the States Parties to the BTWC – to adopt national legislation. Operative paragraph 2 requires:

*2. Decides also that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or **biological** weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them; [Emphasis added]*

It would therefore be timely – and bring significant benefits to all States Parties – for the States Parties to the BTWC at the forthcoming Sixth Review Conference in November/December 2006 to do more than simply adopt an exhortation along the lines of those agreed previously at Review Conferences. There is a need for action to adopt national legislation to counter the continuing threat posed by biological and toxin weapons whether by States or by sub-State actors. It is, however, appreciated that the action plan adopted by the OPCW has required significant resources from the Technical Secretariat and comparable resources are currently not available for the States Parties to the BTWC.

¹⁶ United Nations Security Council, *Resolution 1540 (2004) Adopted by the Security Council at its 4956th meeting, on 28 April 2004, S/RES/1540 (2004), 28 April 2004.*

38. As recognised by SCR 1540 (2004) in its seventh operative paragraph, States may require assistance to implement this resolution:

7. Recognizes that some States may require assistance in implementing the provisions of this resolution within their territories and invites States in a position to do so to offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions;

Consequently, at the Sixth Review Conference particular attention should be given to seeking a commitment from those States Parties in a position to do so to provide assistance to States Parties requiring such assistance in developing and adopting national implementation legislation.

39. Although there may be some consideration to whether to adopt an action plan, it would be wise to adopt different terminology as the resources provided by the OPCW to support the CWC Article VII national implementation action plan will not be available. It is suggested that an achievement timeline which sets a target for two thirds of the States Parties to the BTWC to have adopted national implementation legislation by the time of the Seventh Review Conference would be an effective and desirable outcome. It would be greatly aided by one or more States Parties undertaking to provide resources to facilitate the adoption of legislation by States Parties as well as to monitor and report to the States Parties annually on progress towards this target. Such a progress report would be appropriate at future annual Meetings of the States Parties at which agreement could be reached on additional action should that be necessary.

Article V Consultation and Cooperation Procedures

40. At the Third Review Conference the States Parties agreed¹⁷ procedures to strengthen the implementation of Article V:

The Conference notes the importance of Article V and reaffirms the obligation assumed by States parties to consult and cooperate with one another in solving any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention.

The Conference reaffirms the agreement reached at the Second Review Conference, and agrees that in order to strengthen the implementation of the provisions of Article V the following provisions should be adopted:

- A formal consultative meeting could be preceded by bilateral or other consultations by agreement among those States parties involved in the problems which had arisen;*
- Requests for the convening of a consultative meeting shall be addressed to the Depositaries, who shall immediately inform all States parties of the*

¹⁷ United Nations, Third Review Conference of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxins Weapons and on their Destruction, Geneva, 9 – 27 September 1991. *Final Document*, BWC/CONF.III/23, 1991. Available at: <http://www.opbw.org>

request and shall convene within 30 days an informal meeting of the interested States parties to discuss the arrangements for the formal consultative meeting, which shall be convened within 60 days of receipt of the request;

- With regard to the taking of decisions, the consultative meeting shall proceed in accordance with rule 28 of the rules of procedure of the Review Conference;

- The costs of the consultative meeting shall be met by the States parties participating in accordance with the United Nations assessment scale prorated to take into account differences between the United Nations membership and the number of States parties participating in the meeting;

- A consultative meeting may consider any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention, suggest ways and means for further clarifying, inter alia, with assistance of technical experts, any matter considered ambiguous or unresolved, as well as initiate appropriate international procedures within the framework of the United Nations and in accordance with its Charter;

- The consultative meeting, or any State party, may request specialized assistance in solving any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention, through, inter alia, appropriate international procedures within the framework of the United Nations and in accordance with its Charter;

- The States parties agree that, should the consultative meeting, or any State party, make use of such procedures within the framework of the United Nations, including lodging a complaint with the Security Council under Article VI of the Convention, the Secretary-General may be kept informed;

- The Conference considers that States parties shall cooperate with the consultative meeting in its consideration of any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention, and in clarifying ambiguous and unresolved matters, as well as cooperate in appropriate international procedures within the framework of the United Nations and in accordance with its Charter.

41. At the Fourth Review Conference in 1996 the States Parties in their Final Declaration¹⁸ under Article V noted the following in regard to these procedures:

2. The Conference also reviewed the operation of the procedures to strengthen the implementation of the provisions of Article V which were adopted in the Final Declaration of the Third Review Conference and which built on the agreements reached at the Second Review Conference. While noting that these procedures have not yet been invoked, the Conference reaffirmed their present validity. The

¹⁸ United Nations, Fourth Review Conference of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxins Weapons and on their Destruction, Geneva, 25 November – 6 December 1996. *Final Document*, BWC/CONF.IV/9, 1996. Available at: <http://www.opbw.org>

Conference calls on any State Party which identifies a problem arising in relation to the objective of, or in the application of the provisions of the Convention to use these procedures, if appropriate, to address and resolve it.

42. These procedures were used in 1997 when an allegation was made by Cuba¹⁹. It will therefore be appropriate to review the procedures at the Sixth Review Conference in the light of the experience gained in the 1997 implementation of them and the developments in the international scene since then. A successful outcome at the Sixth Review Conference is thus a review and reaffirmation or amendment of the procedures for consultation and cooperation under Article V of the Convention.

Confidence-Building Measures

43. The States Parties agreed at the Second Review Conference in 1986 to submit information annually under Confidence Building Measures (CBMs). The CBMs were reviewed and extended at the Third Review Conference in 1991²⁰:

In accordance with the decision of the Second Review Conference, and taking into account views expressed concerning the need to strengthen the implementation of the provisions of Article V, the Conference reviewed the effectiveness of the provisions in Article V for consultation and cooperation and of the cooperative measures agreed in the Final Declaration of the Second Review Conference, and considered whether or not further actions were called for to create further cooperative measures. The Conference came to the following conclusions and recommendations:

The Conference notes the importance of the confidence-building measures agreed upon at the Second Review Conference, as well as the modalities elaborated by the Ad Hoc Meeting of the Scientific and Technical Experts from States parties to the Convention held in 1987. The Conference recognizes the exchange of information that took place on this agreed basis between 1987 and 1991. The Conference urges all States parties to submit information to future rounds of information exchange.

With a view to promoting increased participation and strengthening further the exchange of information, the Conference agrees to reaffirm those measures established at the Second Review Conference with the following improvements: to add a declaration on "Nothing to declare" or "Nothing new to declare"; to amend and extend the exchange of data on research centres and laboratories; to amend the exchange of information on outbreaks of infectious diseases and similar occurrences caused by toxins; to amend the measure for the active promotion of contacts; and to add three new confidence-building measures entitled "Declaration of legislation, regulations and other measures"; "Declaration of past activities in offensive and/or

¹⁹ For an account of the way in which the Article V procedures were used to deal with the Cuban allegation see Graham S. Pearson, *Article V: Consultation and Cooperation*, in Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims, *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>

²⁰ United Nations, Third Review Conference of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxins Weapons and on their Destruction, Geneva, 9 – 27 September 1991. *Final Document*, BWC/CONF.III/23, 1991. Available at: <http://www.opbw.org>

defensive biological research development programmes"; and "Declaration of vaccine production facilities".

Accordingly, 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 set out in the annex to this Final Declaration, in order to prevent or reduce the occurrence of ambiguities, doubts and suspicions, and in order to improve international cooperation in the field of peaceful bacteriological (biological) activities:

1. Declaration form on "Nothing to declare" or "Nothing new to declare"

2. Confidence-building measure "A":

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

- Part 2: Exchange of information on national biological defence research and development programmes.

3. Confidence-building measure "B":

- Exchange of information on outbreaks of infectious diseases and similar occurrences caused by toxins.

4. Confidence-building measure "C":

- Encouragement of publication of results and promotion of use of knowledge.

5. Confidence-building measure "D":

- Active promotion of contacts.

6. Confidence-building measure "E":

- Declaration of legislation, regulations and other measures.

7. Confidence-building measure "F":

- Declaration of past activities in offensive and/or defensive biological research and development programmes.

8. Confidence-building measure "G":

- Declaration of vaccine production facilities.

The Conference also agrees that the exchange of information and data, using the revised forms, be sent to the United Nations Department for Disarmament Affairs no later than 15 April on an annual basis and should cover the previous calendar year.

44. At the Fourth Review Conference²¹, the States Parties did not carry out a detailed review of the CBMs as they were aware that the Ad Hoc Group was then engaged in considering the incorporation of existing and further enhanced CBMs into a regime to strengthen the Convention:

5. *The Conference notes the background information document prepared by the United Nations Secretary-General providing data on the participation of States Parties in the agreed confidence-building measures since the Third Review Conference. The Conference welcomes the exchange of information carried out under the confidence-building measures, and notes that this has contributed to enhancing transparency and building confidence. The Conference recognizes that participation in the confidence-building measures since the last Review Conference has not been universal, and that not all responses have been prompt or complete. In this regard, the Conference also recognizes the technical difficulties experienced by some States Parties with respect to preparing CBM responses. In this regard, the Conference urges all States Parties to complete full and timely declarations in the future. The Conference notes that the Ad Hoc Group of States Parties established by the Special Conference in 1994 is, as part of its continuing work, considering the incorporation of existing and further enhanced confidence-building and transparency measures, as appropriate, in a regime to strengthen the Convention.*

45. At the Fifth Review Conference, a number of useful proposals to strengthen the CBMs were submitted by South Africa²². These are well worth further consideration, along with other ideas for improving the responses from the States Parties in their annual submissions of CBM returns, at the forthcoming Sixth Review Conference in November/December 2006. Consideration needs to be given to a review of the existing CBMs and their format; proposals for new CBMs; provision for electronic submission and circulation; collation, translation and elaboration procedures; and the provision of assistance, where requested. It needs, however, to be considered whether there will be sufficient time at the Sixth Review Conference to consider the details of the existing CBMs and how they might be improved. It should be recalled that at the Second Review Conference in 1986 the States Parties agreed to hold an ad hoc meeting in 1987 of scientific and technical experts from States Parties *to finalise the modalities for the exchange of information and data by working out, inter alia, appropriate forms to be used by States Parties for the exchange of information agreed to in this Final Declaration, thus enabling States Parties to follow a standardised procedure.*

46. There would be merit in the States Parties at the Sixth Review Conference agreeing that a Meeting of States Parties should be held in 2007 to consider and decide how to improve the effectiveness of the CBM process with this Meeting being prepared for by an earlier two week Meeting of Experts. The Meeting of Experts on CBMs to prepare for the annual

²¹ United Nations, Fourth Review Conference of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxins Weapons and on their Destruction, Geneva, 25 November – 6 December 1996. *Final Document*, BWC/CONF.IV/9, 1996. Available at: <http://www.opbw.org>

²² South Africa, Fifth Review Conference of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxins Weapons and on their Destruction, Geneva, 19 November – 7 December 2001. *Strengthening Confidence-Building Measures Working Paper by South Africa*, BWC/CONF.V/COW/WP.1, 16 November 2001. Available at: <http://www.opbw.org>

Meeting would provide an opportunity for States Parties to share best practice in compiling annual CBM returns and identifying how the effectiveness of the CBM process might best be improved. It is evident from the experience gained during the period from 2003 to 2005 that the process of annual one week Meetings of States Parties prepared by an earlier two week Meeting of Experts has worked well and been effective in achieving a good exchange of information.

Strengthen the effectiveness and improve the implementation of the Convention

47. As already noted earlier in this Review Conference Paper in the paragraphs addressing the Preparatory Committee consideration of the Agenda for the Review Conference (see paragraphs 13 to 18), a particular issue that will need to be considered relates to what should be done at the Sixth Review Conference about agenda item 12 of the Fifth Review Conference Agenda:

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

This is a contentious issue but is not one that can be ignored. There is little doubt that the majority, if not all, of the States Parties would indeed support, in principle if not in specific terms, the requirement to strengthen the effectiveness and improve the implementation of the Convention. It is, however, equally true that it was a failure to agree on language in regard to agenda item 12 in the Final Declaration of the Fifth Review Conference that led to the adjournment of that Review Conference. The mandate derived from the 1994 Special Conference is now one among several competing approaches to the strengthening of the Convention. To emphasise its unique significance or authority could well no longer be productive.

48. Work on how to strengthen the effectiveness and improve the implementation of the Convention could be taken forward as a part of the modular approach by the States Parties at the Sixth Review Conference agreeing to hold an 'ad hoc' meeting of experts from States Parties in 2007 to consider future action to strengthen the Convention, as recommended in Review Conference Paper No. 14²³.

49. As noted in Review Conference Paper No. 14, there is no value in continuing recriminations about why the negotiations of the Ad Hoc Group came to an end in July 2001. Rather, a fresh start needs to be made. This could therefore be to consider all developments since the Third Review Conference in 1991 and its decision to *strengthen the effectiveness and improve the implementation* of the Convention – an aim which must surely still command consensus amongst all States Parties. It is hard to imagine that any State Party would object to such an objective and it is argued that all States Parties would indeed agree to this.

50. Having agreed this objective, the next step is to consider how best the States Parties can achieve this objective starting from the Sixth Review Conference in 2006. By recognizing the common agreement to the objective, the onus is put onto **all** States Parties to address how

²³ Graham S. Pearson, *The UN Secretary-General's High Level Panel: Biological Weapons Issues*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 14, May 2005. Available at <http://www.brad.ac.uk/acad/sbtwc>

best to move forward to achieve this. It also needs to be recognized that the Sixth Review Conference is **not** the occasion on which to address the **details** of how best to achieve this objective as there is a great deal of substantive business that needs to be accomplished during the three weeks of the Review Conference. The Final Declaration of the Sixth Review Conference should include in its Article V section language along the lines of:

The Conference reaffirmed the importance of strengthening the effectiveness and improving the implementation of the Convention and agreed that that experts from the States Parties would meet in 2007 to consider and recommend to a subsequent Meeting of States Parties how best to achieve this objective.

It would be up to the Meeting of Experts in 2007 to recommend to a subsequent Meeting of States Parties how best to achieve the objective of strengthening the effectiveness and improving the implementation of the Convention. Language as suggested above would be effective in moving the process forward.

51. The meeting proposed in 2007 would have no preconditions but simply require the experts from the States Parties to consider collectively how best to achieve the objective of strengthening the effectiveness and improving the implementation of the Convention taking into account all the international developments over the past fifteen years.

Article VI Investigations

52. The States Parties at the Fourth Review Conference²⁴ agreed in their Final Declaration under Article VI that:

2. The Conference reaffirms the importance of Article VI, which, in addition to the procedures contained in Article V, provides that any State Party which finds that any other State Party is acting in breach of its obligations under the Convention may lodge a complaint with the United Nations Security Council. The Conference notes that the provisions of Article VI will be taken into account, as appropriate, for any future verification regime resulting from the consideration by the Ad Hoc Group of a system of measures to promote compliance with the Convention. The Conference emphasizes the provision of Article VI that such a complaint should include all possible evidence confirming its validity. It stresses that, as in the case of the implementation of all the provisions and procedures set forth in the Convention, the procedures foreseen in Article VI should be implemented in good faith within the scope of the Convention.

53. In addition, the Final Declaration also included:

4. The Conference recalls, in this context, United Nations Security Council resolution 620 (1988), which at the time encouraged the United Nations Secretary-General to carry out prompt investigations, in response to allegations brought to its attention by any Member State concerning the possible use of chemical and bacteriological (biological) or toxin weapons that could entail a violation of the 1925

²⁴ United Nations, Fourth Review Conference of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxins Weapons and on their Destruction, Geneva, 25 November – 6 December 1996. *Final Document*, BWC/CONF.IV/9, 1996. Available at: <http://www.opbw.org>

Geneva Protocol or of any other applicable rule of international treaty or customary law. The Conference also recalls the technical guidelines and procedures contained in Annex I of United Nations document A/44/561 to guide the United Nations Secretary-General on the timely and efficient investigation of reports of the possible use of such weapons. The States Parties reaffirm their agreement to consult, at the request of any State Party, regarding allegations of use or threat of use of bacteriological (biological) or toxin weapons and to cooperate fully with the United Nations Secretary-General in carrying out such investigations. The Conference stresses that in the case of alleged use the United Nations is called upon to take appropriate measures expeditiously, which could include a request to the Security Council to consider action in accordance with the Charter.

54. In addition, the States Parties at their annual meetings in 2004 considered the topic:

iii. enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease;

and in their Report²⁵ they agreed:

20. On the mandate to discuss, and promote common understanding and effective action on enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease, the States Parties recognised that:

a) capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease promote the object and purpose of the Convention;

b) States Parties' national preparedness and arrangements substantially contribute to international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease;

c) the Secretary-General's investigation mechanism, set out in A/44/561 and endorsed by the General Assembly in its resolution A/Res/45/57, represents an international institutional mechanism for investigating cases of alleged use of biological or toxin weapons.

21. The States Parties consequently agreed on the value of:

a) continuing to develop their own national capacities for response, investigation and mitigation, in cooperation with the relevant international and regional organisations, and, if in a position to do so, assisting and encouraging, with the necessary agreement, other States Parties to do the same;

²⁵ United Nations, Meeting of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxins Weapons and on their Destruction, Second Meeting, Geneva, 6 – 10 December 2004. *Report of the Meeting of States Parties*, BWC/MSP/2004/3, 14 December 2004. Available at: <http://www.opbw.org>

b) the Sixth Review Conference considering, inter alia, the further development of current procedures for the provision of assistance, by those in a position to do so, to States Parties in cases of alleged use of biological weapons or suspicious outbreaks of disease.

55. As reported²⁶ at the time, the draft outcome paper for the December 2004 Meeting of States Parties had initially contained the following:

(b) that consideration should be given to reviewing the Secretary-General's mechanism for investigation of cases of alleged use of biological and toxin weapons and to invite the Secretary-General to report to the Sixth Review Conference on any actions that may be taken in this regard on the basis of consideration by the United Nations General Assembly.

However, consensus could not be found on this language or on a development thereof. Consequently, all consideration has to be deferred to the Sixth Review Conference.

56. At the Sixth Review Conference, it is recommended that consideration be given to two aspects relating to Article VI Investigations. The first is that the States Parties should consider developing the modalities of the procedure implicit in the first paragraph of Article VI of the Convention which states that:

(1) Any State Party to this convention which finds that any other State Party is acting in breach of obligations deriving from the provisions of the Convention may lodge a complaint with the Security Council of the United Nations. Such a complaint should include all possible evidence confirming its validity, as well as a request for its consideration by the Security Council.

(2) Each State Party to this Convention undertakes to cooperate in carrying out any investigation which the Security Council may initiate, in accordance with the provisions of the Charter of the United Nations, on the basis of the complaint received by the Council. The Security Council shall inform the States Parties to the Convention of the results of the investigation.

The modalities of the procedure implicit in the first paragraph might be elaborated along the following lines:

1. The State Party lodging a complaint should identify which obligation under the Convention it considers has been breached and in what manner the breach has occurred.

2. The State Party lodging the complaint should compile a report containing all possible evidence relating to the alleged breach of obligations and the evidence therein should be validated to the extent possible.

²⁶ Graham S. Pearson, *The Biological Weapons Convention Meeting of States Parties*, in *The CBW Conventions Bulletin*, Issue no 66, December 2004, pp. 21-34. Available at <http://www.sussex.ac.uk/Units/spru/hsp>

3. *The State Party lodging a complaint should implement the procedure as soon as possible after the alleged breach of the obligations under the Convention has taken place.*

57. Secondly, the States Parties should recognise that it is in the interests of all States Parties to the BTWC to ensure that any investigation that may be carried out is both effective and credible. Consequently, the States Parties should consider what steps are needed to ensure that the Secretary-General's mechanism for the investigation of cases of alleged use of biological and toxin weapons would indeed be effective and credible. There has been significant developments since the Secretary-General's mechanism was first set up – for example, the OPCW has set up its mechanism for investigation of alleged use of chemical weapons and UNMOVIC has developed its procedures for investigations. In both cases, the importance of trained experts and of accredited laboratories that have validated procedures for the analysis of samples have been recognised. The Secretary-General's mechanism has neither and is therefore seriously lagging in regard to the current internationally expected standard.

Assistance

58. Article VII of the Convention states:

Each State Party to this Convention undertakes to provide or support assistance, in accordance with the United Nations Charter, to any Party to the Convention which so requests, if the Security Council decides that such Party has been exposed to danger as a result of violation of the Convention.

59. At the Fourth Review Conference, the States Parties agreed in their Final Declaration²⁷ under Article VII that:

2. *The Conference reaffirms the undertaking made by each State Party to provide or support assistance in accordance with the Charter of the United Nations to any Party to the Convention which so requests, if the Security Council decides that such Party has been exposed to danger as a result of violation of the Convention.*

3. *The Conference takes note of desires expressed that, should a request for assistance be made, it be promptly considered and an appropriate response provided. In this context, pending consideration of a decision by the Security Council, timely emergency assistance could be provided by States Parties if requested.*

60. It is considered that the States Parties at the Sixth Review Conference should include as a topic for a future annual Meeting of States Parties prepared for by a Meeting of Experts the topic:

To develop a procedure for the provision of timely emergency assistance to States Parties on request.

²⁷ United Nations, Fourth Review Conference of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxins Weapons and on their Destruction, Geneva, 25 November – 6 December 1996. *Final Document*, BWC/CONF.IV/9, 1996. Available at: <http://www.opbw.org>

Such an annual Meeting should clearly involve participation by the WHO, FAO and OIE.

61. It should, however, be recognised that the provision of timely assistance to States Parties is wider than solely being concerned with emergency assistance. For example, it is widely recognised that States Parties may require assistance with national implementation and with the preparation of annual CBM returns as well as in areas such as surveillance, detection, diagnosis and combating of infectious diseases affecting humans, animals, and plants. There would therefore be advantage in slightly broadening the scope of the topic for a future annual Meeting of States Parties prepared for by a Meeting of Experts to:

To develop a procedure for the provision of timely assistance to States Parties on request.

International Cooperation

62. At the Fourth Review Conference, the States Parties in the Article X section of the Final Declaration²⁸ agreed seventeen paragraphs relating to international cooperation. In particular, consideration was given to how existing institutional ways and means of promoting multilateral cooperation might be developed further:

5. The Conference notes that existing institutional ways and means of ensuring multilateral cooperation between the developed and developing countries would need to be developed further in order to promote international cooperation in peaceful activities in such areas as medicine, public health and agriculture.

6. The Conference reiterates its call upon the Secretary-General of the United Nations to propose for inclusion on the agenda of a relevant United Nations body, before the next Review Conference, a discussion and examination of the means of improving institutional mechanisms in order to facilitate the fullest possible exchange of equipment, materials and scientific and technological information regarding the use of bacteriological (biological) agents and toxins for peaceful purposes.

7. The Conference recommends that invitations to participate in this discussion and examination should be extended to all States Parties, whether or not they are members of the United Nations or concerned specialized agencies.

63. In addition, the Final Declaration in its section on Article X addressed the response to infectious diseases:

10. The Conference shares the worldwide concern about new, emerging and re-emerging infectious diseases and considers that the international response to them offers opportunities for increased cooperation in the context of Article X application and of strengthening the Convention. The Conference welcomes the efforts to establish a system of global monitoring of disease and encourages States Parties to support the World Health Organization, including its relevant newly established division, the FAO and the OIE, in these efforts directed at assisting Member States to

²⁸ United Nations, Fourth Review Conference of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxins Weapons and on their Destruction, Geneva, 25 November – 6 December 1996. *Final Document*, BWC/CONF.IV/9, 1996. Available at: <http://www.opbw.org>

strengthen national and local programmes of surveillance for infectious diseases and improve early notification, surveillance, control and response capabilities.

and also went on to list a number of possible measures:

12. *The Conference urges States Parties, the United Nations and its specialized agencies to take further specific measures within their competence for the promotion of the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes and of international cooperation in this field. Such measures could include, inter alia:*

1. *Transfer and exchange of information concerning research programmes in biosciences and greater cooperation in international public health and disease control;*
2. *Wider transfer and exchange of information, materials and equipment among States on a systematic and long-term basis;*
3. *Active promotion of contacts between scientists and technical personnel on a reciprocal basis, in relevant fields;*
4. *Increased technical cooperation and assistance, including training programmes to developing countries in the use of biosciences and genetic engineering for peaceful purposes through active association with United Nations institutions, including the International Centre for Genetic Engineering and Biotechnology (ICGEB);*
5. *Facilitating the conclusion of bilateral, regional and multiregional agreements providing, on a mutually advantageous, equal and non-discriminatory basis, for their participation in the development and application of biotechnology;*
6. *Encouraging the coordination of national and regional programmes and working out in an appropriate manner the ways and means of cooperation in this field;*
7. *Cooperation in providing information on their national epidemiological surveillance and data reporting systems, and in providing assistance, on a bilateral level and/or in conjunction with WHO, FAO and OIE regarding epidemiological and epizootical surveillance, with a view to improvements in the identification and timely reporting of significant outbreaks of human and animal diseases;*
8. *The promotion of programmes for the exchange and training of scientists and experts, and the exchange of scientific and technical information in the biological field between developed and developing countries.*

64. The Final Declaration also called for the Secretary-General to collate annually reports on how Article X is being implemented:

14. The Conference requests the Secretary-General to collate on an annual basis, and for the information of States Parties, reports on how this article [X] is being implemented.

15. The Conference welcomes the information provided by a number of States Parties on the cooperative measures they have undertaken towards fulfilling their Article X obligations and encourages States Parties in a position to do so to provide such information.

65. Thus far, there has been no such annual report by the Secretary-General and the information provided by a number of States Parties has largely been limited to working papers provided to Review Conferences. It is recommended at the Sixth Review Conference that the States Parties should include as a topic for a future annual Meeting of States Parties prepared for by a Meeting of Experts the topic:

To develop a procedure to facilitate international cooperation between States Parties and as part thereof to develop and adopt a Confidence-Building Measure to enhance transparency of cooperation between States Parties under Article X.

The proposed development of a CBM to provide transparency of Article X cooperation would help to focus attention on the actual situation rather than the rhetoric so often expressed in this area. Information on actual cooperation under Article X would make it easier for States Parties to recognise what cooperation is already taking place – and, through transparency, to be aware of what is achievable bringing benefits to all States Parties.

Institutional Support

66. The States Parties at the Sixth Review Conference should consider agreeing to the setting up of a small interim institutional support to facilitate the annual meetings held during 2007 to 2011 between the Sixth and the Seventh Review Conferences and also to help States Parties with implementation.

Conclusions

67. This Review Conference Paper has looked ahead to the Sixth Review Conference in the light of the developments relevant to the Convention around the world both nationally and internationally. As we approach the Sixth Review Conference there are widespread expectations both politically and publicly that the States Parties will demonstrate their accountability and commitment to the obligations that they have undertaken in becoming States Parties to the Convention. There is also a widespread anticipation that the States Parties will act responsibly by adopting a constructive approach to achieving a successful outcome to the Sixth Review Conference and thereby demonstrating in concrete terms the real value to international peace and security made by the Convention.

68. Consideration is first given to the Preparatory Committee meeting in April 2006 and then to Review Conference in November/December 2006. A number of successful outcomes are identified and it is recommended that the States Parties adopt a modular approach obtaining agreement where consensus is achievable. States Parties are urged to start considering such successful outcomes now and to drafting language that they can submit to the Committee of the Whole in regard to the relevant Articles of the Convention. In addition, States Parties with a particular interest in one or more of the successful outcomes are encouraged to prepare and submit Working Papers to the Review Conference. As noted in the introduction, success is rarely accidental and needs to be planned for.