

The Biological Weapons Convention New Process

As reported in *Bulletin 61* (September 2003), the Meeting of Experts of the States Parties to the Biological and Toxin Weapons Convention (BWC) during 18 to 29 August 2003 made a promising start to the new process agreed at the Fifth Review Conference in November 2002. This new process is, however, disappointing when set against the full magnitude of the task that many see ahead for the recovery and strengthening of the Convention through a return to the cumulative development of extended understandings leading to effective action at the Sixth Review Conference in 2006.

For the annual Meetings of States Parties, the mandate set by the Fifth Review Conference stated that a meeting of one week's duration would be held "to discuss, and promote common understanding and effective action" on specified topics. The two topics identified for 2003 were:

- i. *The adoption of necessary, national measures to implement the prohibitions set forth in the Convention, including the enactment of penal legislation*
- ii. *National mechanisms to establish and maintain the security and oversight of pathogenic microorganisms and toxins*

The mandate also states that:

All meetings, both of experts and of States Parties, will reach any conclusions or results by consensus.

Preparations for the Meeting of States Parties, 2003

The Final Report (BWC/MSP.2003/MX/4 dated 18 September 2003 — this and other such official BWC documentation is available at <http://www.opbw.org>) of the Meeting of Experts comprised a Part I which was a factual procedural report of 4 pages together with Annex I, a listing of the documents of the Meeting of Experts, and a Part II, which was a separate 172 page document prepared to meet the decision of the Meeting of Experts that "all the statements, presentations and contributions made available to the Chairman by the States Parties would be attached to this Report, in the language of submission, as Annex II". However, Annex II in Part II is preceded by a note from the Secretariat that:

"the statements, presentations and contributions included in this part of the report are presented in the languages of submission. In cases where the language of submission is not English, the text as submitted is followed by an informal transcript of the English interpretation, made from the tape recording of the meeting. These transcripts are not an official record, and are provided solely as a

convenience to delegations. They may differ from the texts submitted. Statements, presentations and contributions which were submitted as working papers are not included in this Annex; please refer to the Annex I for the list of working papers."

It is not easy to analyse the information provided in Annex II as no indication is provided as to when *statements, presentations and contributions which were submitted as working papers* — and thus are not included in Annex II — were made during the Meeting of Experts, nor is there any indication in Annex II as to where the statements, presentations and contributions fit into the agreed detailed programme of work which broke down the two topics into subtopics and further detailed sub-elements.

Although there are common understandings — and, consequently, the foundations for possible effective action — there is no attempt to draw these together in the final report of the Meeting of Experts. As Ambassador Tóth had said in his concluding remarks to the Meeting of Experts, there were a number of core themes that had emerged. States parties from East and West, from North and South, had reiterated many of the same elements as being central requirements for effective national implementation of the prohibitions in the Convention and for effective security and oversight of pathogenic microorganisms and toxins. However, at the end of the Meeting of Experts, Ambassador Tóth had said that he would not attempt to enumerate these common themes now. Rather he undertook over the coming weeks carefully to review all the information provided during the Meeting in order to distill and focus on these key elements for the Meeting of the States Parties in November.

In New York on 21 October 2003, in the First Committee of the United Nations General Assembly, Ambassador Tóth introduced the draft resolution (A/C.1/58/L.37) on the BWC which, in its operative paragraphs, notes with satisfaction the number of states that have become party to the Convention and reaffirms the call upon all states not yet party to become so at an early date, welcomes the information and data provided to date and reiterates its call upon all states parties to participate in the exchange of information and data agreed at the Third Review Conference, and, in the third operative paragraph:

"3. Recalls the decision reached at the Fifth Review Conference [in paragraph 19 of BWC/CONF.V/17], and calls upon the States Parties to the Convention to participate in its implementation."

As expected, the First Committee adopted this draft resolution without a vote. It is, however, notable that New Zealand made an explanation of vote on behalf of Canada and New Zealand in which they stated:

“In particular, we wish to comment on operative paragraph 3. The agreement reached at the Fifth Review Conference stated that States parties would “discuss and promote common understanding and effective action on two topic[s]”, the topics for this year being national implementation of the BWC and security and oversight of pathogenic microorganisms and toxins. In other words, the task is not only for States Parties to participate in its implementation as set out in OP [operative paragraph] 3, but also to “promote common understandings and effective action”. That requires some stated outcome, either by the Chair or otherwise for the information of States parties. The fact that OP does not quote the mandate in its entirety does not diminish the task lying ahead of States parties at the upcoming Meeting of States parties in November.”

Other preparations

On the weekend of 8-9 November 2003 before the Meeting of States Parties, there was a meeting in Geneva of the Pugwash Study Group on Implementation of the Chemical and Biological Weapons Conventions entitled “The BTWC Intersessional Process towards the Sixth Review Conference and Beyond”; 41 participants from 16 countries considered a range of agenda items which focussed not only on the imminent Meeting of States Parties but also on the Inter Review Conference process leading up to the Sixth Review Conference and beyond. The view was expressed that the Meeting of States Parties was expected to arrive at a report with substance in which effective action was set out. A procedural report with an annex consisting of collated statements, as produced by the Meeting of Experts, would not be a successful outcome. There was also a clear recognition that the consideration of the two topics for 2003 could not end on 14 November 2003 and that states parties would be expected to continue to review their national provisions and to improve these where appropriate. Such developments could usefully be reported by states parties in their annual Confidence-Building Measure returns.

Meeting of States Parties, 10-14 November 2003: opening plenary session

The Meeting began on the Monday with a plenary session where Ambassador Tóth welcomed the representatives from the states parties and urged everyone to make every effort to use this Meeting of States Parties to make a further qualitative step forward. 92 States parties participated — nine more than in the Meeting of Experts as Belarus, Bolivia, Dominican Republic, Georgia, Iraq, Lithuania, Panama, Portugal, Singapore, Sudan, Tunisia participated whilst Benin and Bhutan did not. This was only two less than the number of states parties that had participated at the Fifth Review Conference and considerably more than the number that had participated in the Ad Hoc Group sessions. Over 360 individuals from states parties were present, of whom over 135 had come from capitals.

Four signatory states participated: Egypt, Haiti, Madagascar and Myanmar. Two states neither party nor signatory, Israel and Kazakhstan, were granted observer status. The Convention now has 151 states parties and 16

signatory states (see BWC/MSP/2003/INF.2) as Sudan had acceded during the week prior to the Meeting of States Parties.

In his opening remarks, Ambassador Tibor Tóth said that at the Meeting of Experts in August 2003 there had been an impressively productive exchange of a vast amount of information relating to states parties’ efforts and views on national implementation and on security and oversight of pathogens. He said that the report of the Meeting of Experts, along with the Working Papers and the CD-ROM Information Repository, constitutes a handy resource for national implementation, whatever the individual circumstances of the state party. In this sense, the new process established by the Fifth Review Conference had already been a success.

However, he considered it was important not to let it rest there, and that the Meeting of States Parties should make every effort to take a further qualitative step forward. He recalled that he had said in his closing remarks to the Meeting of Experts that a number of common themes had emerged. Whilst it was recognised that there was no “one size fits all” solution to national implementation, it is nevertheless apparent that there are common elements that can be derived and applied usefully in a wide range of situations and adapted to fit as necessary. Ambassador Tóth expressed the hope that, in the course of this Meeting of States Parties, those parts of specific proposals that are of interest to more than one state party should be extracted and assembled them into some kind of coherent, logical order. He saw this as being a step further than the Meeting of Experts which resulted in a collation of material, which, while valuable and useful, was not easy to sort through and draw out those elements that might be most relevant for a particular state party’s national implementation requirements. Consequently, if this Meeting of States Parties could achieve some sort of distillation of this material, a refinement of the common themes and elements, then an excellent outcome would be achieved.

He went on to say that in his informal consultations with the regional groups and the individual states parties, he had not wanted to try to dictate the actual form of the outcome of this Meeting of States Parties. He said that some kind of final document was needed that accurately reflected the work of the states parties and he hoped that this would be something of lasting practical value to individual states parties. The actual format would, he suggested, have to be something that develops naturally during the course of the work in the coming week as there was no time for any drafting work or lengthy negotiations on form or format, and a pragmatic attitude would need to be taken to put the wealth of material into a coherent and usable form.

The plenary session then adopted the provisional agenda (MSP/2003/1) which included as the substantive items 5 and 6, discussion of topic (i) (national implementing measures) and topic (ii) (security and oversight) from the decision of the Fifth Review Conference, and the provisional programme of work (MSP/2003/2). Attention was then drawn to the annotated provisional programme of work (MSP/2003/3). As at the Meeting of Experts, the Rules of Procedure would be those of the Fifth Review Conference, as contained in BWC/CONF.V/17, which should apply, *mutatis mutandis*, except for various rules, in particular those relating to subsidiary bodies and to office-holders which are not relevant to the Meeting of States Parties and would not apply. Formal credentials would not be required. The Meeting considered

requests for observer status by two states that were neither signatories nor parties (Israel and Kazakhstan). This was agreed, as were the requests of two specialized agencies and inter-governmental organizations (ICRC and WHO). Ambassador Tóth then said that there was a significant level of NGO participation; representatives of some of the NGOs would be making lunch-time presentations. 9 NGOs and research institutes attended the Meeting of States Parties. He went on to say that a request had been received from a number of NGOs to make short statements as had been done at both the Fourth and Fifth Review Conferences and at the Meeting of Experts by setting aside some time to suspend the formal sessions to allow such statements to be made in informal session. He proposed that this should take place during the Meeting of States Parties on the afternoon of Wednesday 12th November from 3 to 4 pm. This was agreed, thus concluding the formal procedural matters.

A short presentation was then made of the information contained on the third version of the CD-ROM Information Repository, which has been compiled by the Secretariat from information on over 1,000 national implementation measures provided by 85 states parties. A new feature was the addition of search capabilities that included a full text search. Additional documentation had also been added from the Meeting of Experts.

Political Statements

The meeting then continued with the General Debate in which 33 statements were made by states parties in the following sequence: Italy on behalf of the EU, Malaysia on behalf of the NAM, Republic of Korea, Switzerland, Canada, USA, Czech Republic, Japan, Germany, Tunisia, China, Russian Federation, Saudi Arabia, Morocco, UK, France, Pakistan, Cuba, Argentina, New Zealand, Colombia, Norway, Indonesia, Australia, Sweden, Brazil, Philippines, Malaysia, Mexico, Sudan and Iraq. It should be recognised that this General Debate was the first opportunity for the states parties to make political statements at a meeting of the BWC states parties since the resumption of the Fifth Review Conference in November 2002. Consequently, many of the statements made by the states parties set out the perspective of the state party in regard to the broader picture of the BWC regime. It was therefore unsurprising that some states parties took the opportunity to regret the failure of the negotiation of the legally binding instrument that had sought to strengthen the effectiveness and improve the implementation of the Convention. Most of the statements focussed on the new Inter Review Conference process with about half expressing support for a substantive outcome to the Meeting of States Parties.

Italy on behalf of the **EU** said that a positive outcome of this first year of meetings will be particularly important. The EU went on to say that it *“is convinced that the current meeting of States Parties should now take stock of the technical debate carried out by experts and identify possible consensual elements. Building on this common ground, the final document should make political recommendations on how to promote effective implementation of the Convention at the national level. In particular, States Parties should commit themselves to share, on a regular basis, details and updates*

on their national legislation (including penal legislation) implementing the Convention and the regulations on the handling of pathogenic microorganisms and toxins. Furthermore, the EU proposes that there should be discussion of the key elements of legislation that all States Parties should have in place covering both of the above settings.” In addition, the EU said that *“the possibility to provide on a bilateral basis, as appropriate and feasible, technical and juridical assistance for enacting such legislation and regulation should be considered by each State Party in a position to do so.”*

Malaysia then spoke on behalf of the **NAM and Other States**, noting the mandate of the Meeting of States Parties as being to discuss and promote common understanding and effective action on the two topics for 2003. The NAM believed that the Meeting of States Parties will provide an important forum for the states parties to exchange views and explore effective measures to implement the Convention, taking into account their national peculiarities and the best practices of others. The NAM statement then went on to recall paragraph 86, which addresses the NAM position in regard to the BWC, of the Final Document of the XIII Conference of Heads of State or Government of the Non-Aligned Movement, which had met in Kuala Lumpur during 20 to 25 February 2003. This emphasised the importance of a legally binding Protocol and said that the NAM were deeply disappointed by the inability of the states parties to successfully strengthen the implementation of the Convention. The NAM further regretted the limited nature of the decision of the Fifth Review Conference and was disappointed that limited work, which at best only has the potential of enhancing the implementation of the Convention, is all that could be achieved.

South Africa said that it would be the task of this Conference to see what could be done with the mass of information provided during the experts meeting and to see if we could reach agreement on how it can be applied to enhance the implementation of the Convention. The statement went on to say that the information provided the opportunity for the states parties to consider the measures and mechanisms being implemented elsewhere with a view to seeing how our national systems may be enhanced or improved; and to form a basis in terms of which assistance could be provided for the establishment, enhancement or improvement of systems elsewhere. South Africa noted that in terms of the goals that the states parties have set themselves over the past decade or more, such an outcome to this Conference may be viewed as being a consequence of states parties with limited vision. It was then noted that the recently held Eighth Session of the Conference of the States Parties to the CWC had agreed on a Plan of Action regarding national implementation obligations and it was suggested that the BWC states parties should be able to look at the work done in The Hague so as to pick up elements that may be applicable to the BWC. South Africa said that *“in our work here in Geneva, we should also be in a position to consider whether we could also not agree on a similar ‘Plan of Action’ that is adapted to our differing circumstances. Some of the elements that could ... be considered in the context of the BTWC are to:*

- Stress the need to fully implement the recommendations of previous meetings of States Parties on national implementation measures.
- Recognise how important and how urgent it is that States Parties complete the implementation of their national implementation obligations under the BTWC and adopt, in accordance with their constitutional processes, the necessary measures to implement the Convention.
- Underline the conviction that full and effective implementation of national implementation measures by all States Parties also contributes to universal adherence to the Convention,
- Underline the concern that a large number of States Parties have not fulfilled their national implementation obligations under the Convention and recognising that many of them may have difficulties in doing so.
- Request States Parties to consider intensifying their work with those States Parties that have difficulties in adopting the measures required under the Convention, by further identifying, analysing and addressing these difficulties.
- Request States Parties to offer sustained technical support to States Parties that request it for the enactment of national implementation measures and the adoption of any administrative measures required in accordance with the Convention.
- Encourage States Parties to lend advice, upon request, to other States Parties in drafting and adopting national measures to implement the Convention, *inter alia*, to:
 - Provide for the adoption of the necessary national measures to implement the prohibitions set forth in the Convention, including the enactment of penal legislation; and for
 - National mechanisms to establish and maintain the security and oversight of pathogenic micro-organisms and toxins.
- Agree that it is imperative that those States Parties that still need to do so take the necessary steps and set realistic target dates for these steps leading to the enactment of the necessary legislation, including penal legislation, and/or the adoption of administrative measures to implement the Convention.
- Encourage States Parties to take measures to raise awareness of the prohibitions and requirements of the Convention, *inter alia* in their armed forces, industry, and in their scientific and technological communities.
- And to urge States Parties that have not yet done so to review their existing regulations in the field of trade in bacteriological (biological) agents and toxins in order to render them consistent with the object and purpose of the Convention.”

Switzerland said that “*the aim of this Conference is to translate the results of the Meeting of Experts into concrete action. To do this it is necessary to synthesize the most important conclusions of the experts’ meeting and to identify those areas where States Parties should work together.*” The statement went on to set out the four general conclusions drawn by Switzerland from the meeting of experts. In regard to national legislation, the statement said that “*if our aims are to effectively control access to pathogenic micro-organisms and to ensure security in their use at national and*

international levels, it is not only necessary to verify that national controls guarantee similar degrees of protection and security in all States Parties but also to ensure that gaps in legislation be identified and corrected through collective action.” Other conclusions were drawn in relation to implementation and to biosafety and biosecurity as well as to the need for international technical assistance for drafting of national implementation legislation.

Canada said that “*our task is to promote ‘common understanding and effective action’.* We look forward to you guiding us to such an outcome and recording it in an appropriate manner.” The statement went on to remind states parties that, in focussing on the themes of the annual meetings, we must not neglect our obligations, and drew particular attention to the Confidence-Building Measures, saying “we are concerned that the record of CBM submissions to date has not been, to say the least, encouraging.”

The **United States** said that “*all States Parties gathered at this Annual Meeting have the responsibility for ensuring that each State Party understands its responsibilities for keeping the world collectively secure against BW. We must encourage all States Parties to take appropriate steps, and to hold each other accountable. Stemming the threat, after all, includes several components: not only enactment of necessary measures, but thorough implementation, strict enforcement and constant monitoring of compliance.*” They went on to emphasise the importance of enforcement of national implementing measures, pointing out that “*In the eyes of someone seeking to misuse biology, those who pass laws without providing the means of enforcing them are in no consequential way different from those states outside the Convention.*”

The United States then indicated what it believed could be “*an important outcome or ‘deliverable’ of the 2003 effort — an undertaking by all States Parties to review, update, and/or implement their national measures relative to both issues under discussion. A second ‘deliverable’ could be a commitment from the countries with the means to assist others on a national basis in meeting their BWC obligations.*” It went on to say that, based on the experience at the 2003 Meeting of Experts, the USA believed that “*States Parties now understand well enough what has to be done with regard to national implementation and biosecurity measures.... Therefore, we do not believe that we should try to negotiate an agreement by the Parties at this Annual Meeting on sets of ‘common understandings’ or ‘best practices’ relating to national implementation measures and/or biosecurity. The important focus needs to be on what States can do now, on a national basis to implement their obligations. Any attempt to negotiate common elements will only serve to distract States from acting sovereignly now, when it is necessary. Additionally, negotiations may reduce the quality of measures States would enact by establishing only a least common denominator model, and actually making it more difficult for a willing state to put in place effective barriers. The United States believes negotiations are most likely to dangerously delay institution of strict measures and reduce their quality.*” The USA concluded by saying “*We look forward to the culmination this week of our efforts regarding national implementation and biosecurity measures*”.

Japan said that *“the success of this Meeting of States Parties will be determined by the extent to which States Parties are willing to endorse the findings by experts in August and to make a political commitment towards addressing these common themes in the future.”*

Germany noted that the recent session of the Conference of the States Parties to the CWC had adopted *“an Action Plan with the aim of improving implementation, particularly in the areas of penal legislation as well as physical security of relevant materials and institutions”*. It continued: *“in our view, the primary task of this Meeting of States Parties should be the adoption of an agreed final document, identifying those common elements and recommending them for national implementation”* and went on to say that *“this meeting will show whether the new process of strengthening the BTWC will be able to carry through to the 6th Review Conference. A successful outcome is a prerequisite for the meetings of States Parties next year and in 2005”*.

Tunisia spoke on behalf of the members of the **Arab League** noting that this was the first time that an Arab League group statement had been made to the BWC states parties. It pointed out that the Arab League was engaged in drawing up a draft treaty to make the Middle East a zone free of weapons of mass destruction, including biological weapons. The statement concluded by saying that *“our meetings are giving importance to confidence-building measures and this is why it is extremely important to establish the principle of international transparency and to ensure double standards are not applied in the field of disarmament”*.

China said that, at the Meeting of Experts *“some common understandings have been reached, such as,*

- *it's essential for States Parties to establish and promote the national penal legislation covering the prohibition provisions of the Convention,*
- *it's necessary for States Parties to formulate biosecurity standards, procedures and relevant supervision mechanisms, etc”*.

The statement went on to say that *“China is of the view that the Meeting of States Parties should, on the basis of the achievements of the Meeting of Experts, strive to decrease differences and promote common understandings which should be reflected in the report of the meeting. By doing so, States Parties can, according to their own national conditions, establish or improve their national implementation mechanism on a voluntary basis and jointly promote the effective implementation of the Convention.”*

The **Russian Federation** said that, in regard to achieving universality of the Convention, it wondered whether it would not be appropriate for the BWC states parties *“to think about the adoption of an action plan aimed at ensuring the universality of the BTWC in a way similar to what is done with respect to the Convention on the Prohibition of Chemical Weapons? We believe that it would be in the interest of all the States Parties to the Treaty if we act consistently and energetically to this end.”*

The statement went on to say that *“In preparing for this meeting we thought at length about the results it should produce. We proceed from the understanding that, in fact, the next regular BTWC review process has been initiated. We must think about the results that we would be able to produce by the Sixth Review Conference. The outcome of our work during this year will be, to a certain degree, a reference point for the subsequent regular meetings of the States Parties to the BTWC. In view of this, it would be a mistake if the results of such a fruitful discussion would not be called for and lost. Therefore I should like to once again draw your attention to the fact that it would be quite useful to develop on the basis of the discussions here recommendations relative to the problems of national implementation and biosecurity. Subsequently such a document could be submitted to the Sixth BTWC Review Conference. Such an algorithm of activities would make it possible to retain those issues for further discussion, and that, we are confident, meets our common interests.”*

India said *“this Meeting marks a new beginning for BWC States Parties”*. It went on to say that *“the qualitatively different approach that was adopted last year focuses on parts of the BWC and not its entirety. Five subjects have been subjected for deliberations over a 3-year period. Secondly, the objective of the exercise is to ‘promote common understanding and effective action’ in these areas but negotiations are not part of the mandate. Questions have been asked whether ‘promoting common understanding’ also implies ‘achieving common understanding’. Some feel that ‘achieving common understanding’ requires negotiations. And ‘effective action’, if it has to be collective, has to emerge from ‘achieving a common understanding’, otherwise, ‘effective action’ will remain limited to unilateral measures on national level. Terminological parsing of this nature reflects the fragility of the consensus...”*

The statement then considered the Meeting of Experts and asked what the outcome of the Meeting of States Parties should be. It went on to question whether, even if domestic legal constraints existed on a country's statute book, the body of states parties could conclude that these were being fully implemented. It concluded by noting that *“if unilateral action could provide adequate assurances to the international community, good faith would establish the norm. But long ago, we learnt that good faith is often subjective and therefore lacking in legitimacy; and realized that a norm only gets built around the legal structure of an equitable treaty.”*

The **United Kingdom** said that at this Meeting of States Parties *“it will be important that we reach agreement on identifying the key issues that can be identified from the material and ideas presented by our Experts in the areas of legislation and regulation. A precedent will thereby have been set for the meetings that will follow over the next two years and the topics on which we will need to report at the 2006 Review Conference.”* The statement concluded by saying that a successful outcome this week *“may also in the process establish a new and effective paradigm for multilateral arms control”*.

Pakistan said that “we have embarked upon a new journey where it is expected that common understandings and effective action would emerge on some selected topics” and went on to conclude that “it is our desire and hope that by the end of this week we would have arrived at some common understandings on the basis of best practices, to be pursued on a voluntary basis”.

New Zealand said that “we believe that the value of the experts’ group process will only be capable of measurement as ‘effective action’, at each annual Meeting of States Parties, when we see its product encapsulated in substantive form. The useful work that has been carried out so far by States Parties and yourself deserves concretisation in a final document that goes beyond a description of activities that have taken place and truly reflects the common elements of our collective efforts to combat the threat posed by biological weapons.”

Norway said that “our hope is that this meeting will result in concrete recommendations which will serve as input to the Sixth Review Conference in 2006. Although national implementation is not sufficient on its own, it will be extremely important if we want to achieve a strengthened BTWC. As a minimum we need to make concrete progress towards identifying key elements of national legislation that need to be in place in all states parties.”

Australia said that, following the August Meeting of Experts, it became apparent that few states parties appeared to have legislation in place that comprehensively covered the BWC obligations. Consequently, Australia urged “States Parties:

- to take full advantage of the opportunities provided by the Expert Group meetings to gather and exchange information
- to enact, implement and enforce BWC implementing legislation;
- to review the scope and effectiveness of their national measures, and to report the process internationally. (A possible mechanism for such reporting is under Annex E of the annual CBM, and all States Parties are encouraged to make these reports as comprehensive and accurate as possible.)
- to ensure that national measures are put in place which effectively secure pathogens and toxins of concern;
- to develop a national plan to address and meet priority areas;
- to support efforts by the WHO, FAO and OIE to develop guidelines on biosecurity; and
- to provide assistance, on request, to other States Parties so as to help build their capacity to effectively implement the BWC.”

The statement concluded by saying that “we consider the positive atmosphere and active participation at the August meeting of experts augurs well for further constructive activities between now and the next Review Conference”.

Sweden said that “concrete results emanating from this working programme is of crucial importance for us to reach our common objective, a strengthened Convention” and concluded that “Sweden would like this meeting of States

Parties to take stock of the outcome of the experts meeting in August and to identify common elements, which could be used in a final document on how to promote effective implementation of the Convention at the national level”.

Brazil noted the two topics for 2003 and said that “as regards the first topic, it is the view of my delegation that national legislation should include the control of transfers, having in mind the interest of all States Parties to combat the proliferation of pathogenic microorganisms and toxins.....At the international level, discussions should include the need to establish a common mechanism to oversee the implementation of national measures on the transfer of relevant materials and technology, and to assist in resolving ambiguities and to promote international collaboration in cases of suspicious unlawful transfers, according to the provisions contained in the BWC.” In regard to the second topic, the statement said that “the discussion on security and oversight of pathogenic microorganisms and toxins should keep in mind the need for centralized controls in States Parties to oversee activities that involve sensitive knowledge and materials, including biodefense programs and activities undertaken in cooperation with third countries”. Brazil concluded by saying that “we are convinced that under your able and experienced guidance we will be able to examine these important issues in order to contribute to the long term and permanent goal of strengthening the BWC regime”.

Sudan, which had acceded to the BWC just before the Meeting of the States Parties, noted that it had hosted “the first conference of National African authorities concerned with the implementation of the Convention on the Ban of Chemical Weapons”. and went on to say that “we look forward to see to it that similar national authorities for the BWC be established so as to secure more coordination at the regional level for more effective implementation of the prohibitions set forth in the Convention”.

The final statement was made by **Iraq**. It first endorsed the statement made by Malaysia on behalf of the NAM and the statement made by Tunisia on behalf of the Arab states. The statement went on to say that “Iraq signed this Convention in 1972. We ratified it in 1991 but circumstances have not allowed us to implement the Convention sufficiently effectively nor to work to ensure the success of principles to rid ourselves of this most severe of weapons of mass destruction, biological weapons”. The statement continued, “Last year Iraq drafted a first set of legislative norms at international level prohibiting the development of weapons of mass destruction. However, circumstances have not allowed Iraq to complete all measures related to this endeavour. The Governing Council is engaged in ensuring respect for all international treaties and conventions signed by Iraq and as soon as circumstances allow the Council will seriously consider further development of national legislation to prohibit all forms of production of weapons of mass destruction.”

The public plenary session then closed and the Meeting of States Parties began to address its two assigned topics in private working session.

NGO Activities

As already noted, the opening plenary session agreed that non-governmental organizations (NGOs) could make short statements in informal session at the beginning of the Wednesday 12 November 2003 afternoon session. Short 6 to 8 minute statements were made by the following NGOs:

- Angela Woodward, VERTIC
- Graham S. Pearson, Department of Peace Studies, University of Bradford (presented by Jez Littlewood, University of Southampton)
- Kathryn Nixdorff, International Network of Engineers and Scientists for Global Responsibility (INES)
- Jean Pascal Zanders, BioWeapons Prevention Project
- Jez Littlewood, Mountbatten Centre for International Studies, University of Southampton
- Richard Guthrie, Stockholm International Peace Research Institute

As at the Fourth and Fifth Review Conferences and at the Meeting of Experts, the NGO speakers spoke from seats in the room whilst their statements were distributed to all those present. There were over 100 people present in the room during the NGO statements, which, with simultaneous translation into the six official UN languages, enabled the NGOs to communicate their views to all present.

Lunchtime Presentations

Lunchtime presentations were also made on three days:

- a. Monday 10 November 2003. 1400. Dr Graham S. Pearson, *Department of Peace Studies, University of Bradford* Presentation of two Briefing Papers No.8 and No.9 entitled “Preparing for the First Meeting of States Parties: I National Implementing Legislation” and “II. Security and Oversight of Pathogenic Microorganisms and Toxins”.
- b. Tuesday 11 November 2003. 1345. Seminar sponsored by American Scientists Working Group on Biological and Chemical Weapons (formerly known as the FAS Working Group on BCW) entitled “Moving Beyond Treaty Regimes: The UNMOVIC Model”. Dr Patricia Lewis, *UNIDIR*, was in the chair and presentations were given by Frank Ronald Cleminson “Modeling a New International Regime for Monitoring and Verification of Compliance: Learning from Experience in Iraq, 1991 - 2004.” and by Dr. Kay Mereish “Comparison of the Organizational Structure of International Inspection Regimes”.
- c. Wednesday 12 November 2003. 1315. Lunchtime information session hosted by Canada entitled “CBMs: Increasing Transparency without Taxing Resources”. Ambassador Paul Meyer of Canada acted as moderator and there were presentations by Canada (David Steurman), UK (John Walker), Brazil (Roque Monteleone-Neto), UN DDA (Silvana da Silva) and BWPP (Jean-Pascal Zanders).

Outcome of the Meeting of States Parties

The Meeting of States Parties met in private working session during 10 to 14 November 2003. In accordance with the programme of work (BWC/MSP/2003/2), the Tuesday and Wednesday were allocated to discussion of national implementation legislation (topic (i)), the Thursday to discussion of security and oversight of pathogenic microorganisms and toxins (topic (ii)) and the Friday to discussion of the draft report and to the arrangements for the Meeting of Experts and the Meeting of States Parties in 2004. As at the Meeting of Experts, the provisional programme set out in some detail what topics would be discussed when:

Tuesday 11 November 2003:

Session 2: Incorporation of the prohibitions contained in Article I of the Convention including the enactment of penal legislation.

Session 3: Licensing

Wednesday 12 November 2003:

Session 4: Enforcement (applying to both topic (i) and topic (ii))

Thursday 13 November 2003:

Session 5: Biosecurity evaluation and implementation of biosecurity procedures

Session 6: Identification and licensing/registration

Consideration of efforts by relevant international bodies

The annotated provisional agenda (BWC/MSP/2003/3) provided further elaboration of what was to be covered under each of the above headings. Thus, for example, Session 3 Licensing was to address “establishment of a national licensing system governing the export of dual-use biological agents and related equipment and technologies”.

As at the Meeting of Experts, statements, presentations and contributions to the discussions during the Meeting of the States Parties were also provided by delegations in writing and collations were circulated daily to the delegations as unofficial documents. These collations contained the material presented in each Session rather than, as at the Meeting of Experts, the material presented each day. The collations were preceded by the Chairman’s introductory remarks and concluded with a short summary prepared by the Chairman in conjunction with the Secretariat.

Ten Working Papers were submitted by states parties: Germany (2, 3, 4), Italy (8), Japan (5), Netherlands (1, 10), Russian Federation (6, 7) and Switzerland (9). The number was considerably less than the 66 submitted to the Meeting of Experts.

At the final public plenary session on the afternoon of Friday 14 November 2003, the states parties adopted the report of the Meeting of States Parties. This consisted of a largely procedural report (BWC/MSP/2003/4 Vol. 1 and Vol. II). Volume I contains Part I, the procedural report, Part II, a one page substantive Report of the Meeting of States Parties, and Annex I, the list of the documents of the Meeting of Experts which includes a list of all 10 working papers.

Volume II contains Annex II comprising, in the languages of submission, all the presentations, statements and contributions to the discussion that were provided in writing. As a strictly informal courtesy to delegations, those parts of Annex II that were not in English were accompanied where possible by an informal transcript of the English interpretation.

One paragraph in Part I of the Final Report addresses the arrangements for 2004. This states that the Meeting of States Parties approved the nomination by the Group of the Non-aligned and Other States of Mr Peter Goosen of South Africa as Chairman of the Meeting of Experts and of the Meeting of States Parties in 2004. The Meeting of Experts would be held in Geneva from 19 to 30 July 2004 and that the Meeting of the States Parties would be held in Geneva from 6 to 10 December 2004.

There was agreement to a single short statement of substance being included in Part II:

“At the Annual Meeting, States Parties noted that notwithstanding the differing legal and constitutional arrangements among the 151 States Parties, States have adopted similar basic approaches and share common principles. The Parties stressed the need for undertaking activities at the national level in keeping with their obligations and responsibilities to strengthen and implement the BTWC. 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 BTWC, 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 BTWC.

States Parties considered that agreement on the value of these measures discussed at the Meeting constitutes an essential effort to facilitate more effective implementation and enforcement of the Convention, as well as providing a basis for review of progress at the 2006 Review Conference.”

The Chairman, in his concluding remarks on 14 November 2003, provided a useful and extensive review of the work undertaken by the states parties during the 2003 meetings. These remarks encourage states parties in need of assistance to contact those which have made offers of assistance to date, which include Australia, Canada, Cuba, France, Germany,

Japan, South Africa, Sweden, Switzerland, the United Kingdom and the United States. The Chairman's concluding remarks are included as part of the collation of all the presentations, statements and contributions made at the Meeting of States Parties reproduced as Annex II to the Final Report.

Reflections

The Meeting of States Parties barely managed to reach agreement on a short statement of substance and failed to fulfil the promise that had been apparent at the end of the Meeting of Experts in August 2003. The Final Report of the Meeting of States Parties just managed to avoid paralleling that of the Meeting of Experts, which comprised a procedural report and an annexed, but unanalysed, collation of all the presentations, statements and contributions. While there is significant value in maintaining a full record of the contributions made by states parties, the lack of analysis and distillation, together with the short period of time, two months, between the Meeting of Experts and the Meeting of the States Parties contributed to the limited outcome of the Meeting of States Parties. It cannot be said to have successfully promoted *common understanding and effective action* as required by the mandate. As was noted in the previous *Report from Geneva*, it was evident in August that considerable caution has been exercised in regard to trying to identify the *common understanding and effective action* required by the mandate agreed at the Fifth Review Conference. Although some of the information provided to delegations had suggested non-controversial language for common understanding and effective action based primarily on that of the Final Declarations of previous Review Conferences, and other ideas had recalled the practice followed in the previous meetings of experts (VEREX), which led effectively to Chairman's findings, there was little sign of a willingness to make this step forward in preparation for the November meeting.

With the benefit of hindsight, the language used in the resolution put to the First Committee of the General Assembly in October 2003, which simply called upon the states parties to the Convention to participate in the implementation of the decision of the Fifth Review Conference and said nothing about the objective of promoting *common understanding and effective action*, was indicative of a lack of ambition. It rightly sparked Canada and New Zealand into their explanation of their vote.

The absence of any attempt during the period between the Meeting of Experts and the Meeting of the States Parties to draw together language setting out the common understandings alluded to by the Chairman in his concluding remarks in August is to be regretted. After all, the Chairman in August had said that there were a number of core themes which had emerged. States parties from East and West, from North and South, have reiterated many of the same elements as being central requirements for effective national implementation of the prohibitions in the Convention and for effective security and oversight of pathogenic microorganisms and toxins. However, the Chairman in August said that he would not attempt to enumerate these common themes now. Rather he would over the coming weeks be carefully reviewing all the information provided during the Meeting in order to distill and focus on these key elements for the Meeting of the States Parties in November.

Although the Chairman had consultations with states parties and with the regional groups, it is not clear whether these consultations narrowed the scope of the Chairman to produce a distillation of the information provided at the Meeting of Experts. It is reasonable to assume that these meetings influenced the preparations of the Chairman. However, it has to be realised that, for any successful consideration of the common themes at the Meeting of States Parties, a draft of these has to be made available to states parties at least a month prior to the Meeting of States Parties in order that they may be considered properly in capitals.

Somewhat surprisingly, the report of the Meeting of Experts (BWC/MSP.2003/MX/4) was **not** one of the documents provided to the delegations at the Meeting of States Parties, despite all the favourable references made to the valuable information exchanged at that meeting. This non-provision could have been because of the absence of any distillation of the key elements within the report of the Meeting of Experts.

A non-paper was prepared and circulated by the Chairman on Wednesday 12 November in the middle of the Meeting of States Parties. In addition to the three points of substance that were included in the agreed final report, the non-paper also included specified seven 'basic measures' that states parties would agree to undertake on an urgent basis and report to the Sixth Review Conference on progress to date. This specification of measures largely reflected proposals which had been made by states parties in their Working Papers to the Meeting of Experts or in their statements to the Meeting of States Parties. The measures listed in the non-paper were:

- National penal legislation by each state party incorporating the prohibitions contained in Article I (the general purpose criterion) and a prohibition on acts related to BW use by its citizens in any location and by anyone under its jurisdiction. This could include adaptation or enhancement of existing domestic legislation.
- Establishment of a national licensing system governing the export of dual-use biological agents and related equipment and technologies.
- Enforcement of national legislation, including criminal and civil penalties, and utilization of investigative tools for prevention and response.
- Establishment of national programmes to evaluate and implement biosecurity procedures, based on both intrinsic pathogen danger and likelihood of diversion, including oversight of facilities, transport systems and personnel possessing, handling, using and transporting potentially dangerous pathogens and toxins.
- National penal legislation to protect facilities and transport systems that possess, handle, use or transport potentially dangerous pathogens and toxins, including requirements limiting handling, use and transport of such materials to registered facilities and authorised personnel.
- National identification and licensing/registration of facilities and persons, and internal and external monitoring of such facilities.
- Support, as appropriate, for efforts by relevant international bodies, such as the WHO, OIE and FAO, to develop and/or expand voluntary biosecurity guidelines.

Although agreement of these seven 'basic measures' would have gone some way to demonstrating a will by states parties to achieve *effective action*, it seems likely that the circulation of this non-paper probably came much too late in the Meeting of the States Parties for the individual states parties to consult capitals and consider the merit of what was being proposed for agreement. Whilst it is understood that a number of states parties would have accepted the proposal, a number of others were unwilling to accept anything that might have been seen as additional obligations, even though previous Review Conferences have in their Final Declarations included most if not all of them.

Although there were special circumstances at the resumption of the Fifth Review Conference in November 2002 under which it was reasonable to consider the draft decision as non-negotiable, this must not be seen as the precedent for the future way of doing business. Draft language that is not based on previously circulated ideas tabled in the middle of a one week Meeting of States Parties is much too late. There is a real need to put forward ideas at an early date so that states parties can consider these in capitals and for consensus language to be developed over a couple of months leading up to the Meeting of States Parties.

The states parties set a standard in their 2003 Meeting that was far too low. For the Meetings in 2004 under the chairmanship of South Africa, the states parties should demonstrate a more effective outcome through the promotion of *common understanding and effective action*. This improved outcome should be facilitated by the four month period, twice as long as in 2003, between the Meeting of Experts and the Meeting of States Parties.

Unfortunately, it seems that the states parties have been unable to move on beyond the difficulties encountered at the Fifth Review Conference in 2001 and 2002 (see *Bulletins* 54, December 2001, and 58, December 2002). It is also evident that the states parties are failing to recognise that the new process is an **inter** Review Conference process and are failing to put their achievements into the context of the Review Conference process. Rather, states parties are focussing solely on the substance of the topics in the decision of the Fifth Review Conference and appear to regard consideration of them in the broader context of the Review Conference as a distraction. Regrettably, the disappointing distinct lack of ambition noted in the previous Report has been confirmed by the Meeting of States Parties in 2003 which means that efforts need to be started **now** in order to prepare for an effective and successful Review Conference in 2006 at which there needs to be a comprehensive review of all aspects of the Convention as was last carried out in 1991. This is vital if there is indeed to be recovery and strengthening of the Biological and Toxin Weapons Convention through a return to the cumulative development of extended understandings and to avoid the Convention becoming ever more peripheral in the policy frameworks states parties use to ensure the prevention and prohibition of biological weapons and combat proliferation.

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