

## **KEY ISSUES, NATIONAL IMPLEMENTATION, CBMS AND ANNUAL MEETINGS FOR THE SIXTH REVIEW CONFERENCE**

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### **BACKGROUND ON PREPARATIONS FOR THE REVIEW CONFERENCE**

The EU policy<sup>2 3</sup> is to pursue the implementation and universalisation of the existing disarmament and non-proliferation norms<sup>4</sup> and assist third countries in the fulfilment of their obligations. It is important that BTWC States Parties agree a substantial outcome at the Review Conference 2006 so as to strengthen the Convention and build a sound basis for future work.<sup>5</sup> The Review Conference must further contribute actively to continued enhancement of the implementation of the BTWC.<sup>6</sup> In preparation for the Review Conference the EU has agreed on a Common Position<sup>7</sup> and a Joint Action for the BTWC<sup>8</sup> and a series of working papers.<sup>9 10 11 12 13 14</sup> The submission of CBMs constitutes an important element to increase transparency in the implementation of the BTWC and an Action Plan has been agreed upon to improve the number of CBMs submitted by EU Member States<sup>15</sup> The Review Conference will be a good opportunity to agree on specific, practical and realistic measures to strengthen both the BTWC and compliance with it. In this regard, the EU remains committed to developing measures to verify compliance with the BTWC. In the absence of negotiations on such a verification mechanism however, much useful work remains to be done within the perimeters of the intersessional BTWC work program. Specifically this involves promotion of the universality of the BTWC. In addition assistance to States Parties for the national implementation of the BTWC, in order to ensure that States Parties transpose the international obligations of the BTWC into their national legislation and administrative measures This involves carrying out 'regional and sub-regional workshops and seminars' during 2006-2007 of which a first one was organised in Nairobi. The EU has also adopted a Joint Action in support of implementation of the UNSC resolution 1540 involving two parts. Raising awareness of the requirements related to UNSC Resolution 1540 and contributing to strengthening third States' national administrative capacities in three regions.<sup>16</sup>

Canada has proposed to focus on national implementation, confidence building measures, implementing support (including a BTWC secretariat or implementing support unit) and annual meetings. Concerning national implementation States Parties should:

- promote action on national implementation, including at the regional level, and encourage, in particular, the development of specific goals, time lines and methodologies to facilitate effective implementation;
- encourage States Parties to report on their progress in passing national implementation legislation on a regular basis, such as at annual meetings and in their CBM submissions; and
- encourage those in position to do so to provide implementation support.<sup>17</sup>

The US has indicated that 'the United States will not return to negotiations for any BWC verification mechanism, but remains open to suggestions for the future of the BWC beyond 2006'.<sup>18</sup> There are though yet too few other governments that have presented any ideas for the Review Conference.

## **RESULTS FROM THE INTERSESSIONAL MEETINGS 2003-2005**

At the meeting of experts in 2003 biosafety and biosecurity were discussed and there was a general recognition of the value of biosafety and biosecurity measures and procedures.<sup>19</sup> States took note of the need for risk assessments as a tool for designing appropriate and balanced legislation. It was also noted that relying on facilities to self-regulate biosecurity is likely to be an inadequate approach, and government-based formal oversight arrangements based on legislation would probably be necessary. Some states were more vulnerable to unauthorized access to facilities with dangerous pathogens as they both lacked appropriate legislation and security.<sup>20 21</sup> National implementation measures were also addressed 2003. There was no Chairman's report of the discussions or of any common understanding achieved. A large amount of information was collected on a CD-ROM by the Secretariat.<sup>22 23</sup><sup>24 25</sup> A survey carried out by VERTIC revealed that a large proportion of States Parties to the BTWC, still after 30 years, have no implementing legislation and a mechanism was proposed for assistance to states.<sup>26</sup> VERTIC has further updated its earlier version of a modular approach to strengthen the BTWC.<sup>27</sup>

According to the United Nations Security Council (UNSC) resolution from 2004, states are requested to adopt and enforce 'appropriate, effective' laws and measures, such as export and border controls, to prevent non-state actors from acquiring and manufacturing WMD or related materials.<sup>28</sup> There is now a publicly available data-base with national legislation reported from 112 BTWC States Parties and 7 signatory States Parties of a total of 124 UN Member States.<sup>29</sup> It was 56 States Parties that had some prohibition covered in their legislation and 75 penalize violations of prohibitions in their criminal codes for the biological area. Of the 62 states that have not reported 42 were BTWC States Parties and 9 signatory states. It can also be noted that more states control exports than transit, transshipment or import of biological material which results in a gap.<sup>30</sup> It should be noted that in the BTWC Article IV the word prevent is used in addition to prohibition thus given Article IV a wider scope than UNSCR 1540.

In the July 2004 meeting of experts, 83 Working papers were presented providing a vast amount of information on international and national capabilities to handle the effects of alleged use or suspicious outbreaks and to strengthen mechanisms for disease surveillance and combating diseases. Positive was this time that the Chairman put together a listing of considerations, lessons, recommendations, conclusions and proposals.<sup>31</sup> There was though no decision to act on any of these at the States Parties meeting 2004.<sup>32</sup> The meeting of experts in 2005 discussed codes of conduct for scientists but there were no concrete actions taken as a result.<sup>33</sup> In fact, it is not realistic to believe that a single broad code can be enacted and States Parties should focus on creating a narrower, but nevertheless very important set of guidelines that would govern researchers in national biodefence research and development programs including programs, for bioterrorism preparedness and protection.<sup>34</sup>

## **NEED FOR PLAN FOR UNIVERSALITY AND NATIONAL IMPLEMENTATION**

In general few States Parties have legislative and enforcement regimes in place in keeping with their Article IV obligations. In many cases where legislation exist it has been introduced for reasons other than the BTWC like health or safety and being quite narrow in scope. This also means that there might well be many gaps in the regulatory coverage of activities, materials or facilities. To avoid this, a well coordinated whole-of-government approach is

preferred as many agencies might be involved.<sup>35</sup> An important question closely linked to national implementation is the universality of the BTWC which has for a long time been an aim for States Parties as stated at Review Conferences. There is a slow rate of increased adherence to the BTWC (now 155 states have ratified and 16 are only signatories) in comparison to the rate of increase of parties to the CWC.<sup>36</sup>

What is needed is a 'plan of action' or program to encourage adherence to the BTWC and support States Parties that so wish with the requirements for national implementation. The term 'action plan' is used in the context of the CWC which gives an idea what could be involved but is more ambitious than what can be expected in the short term as the BTWC has no organisation like the OPCW. Another appropriate term should be found for the BTWC context, for example program. Lessons can though be learnt from the adopted action plans for universality and on national implementation of the CWC. It has been found that significant assistance is needed on a broad range of issues from legal to the training of administrators, law enforcement and customs officials.<sup>37 38 39 40</sup> The resources available and point of coordination for implementing an 'action plan' is yet lacking for the BTWC.

The personnel resources required would be limited, compare with the small expert group for the UNSC 1540 Committee, also taking into account that much of the information has already been collected and can be found in the legislative data-base of the UNSCR 1540 Committee. One important part is the outreach activity giving support to States Parties and also here the UNSCR 1540 Committee has already done some of this work. In addition bilateral support is given by states including the EU as well as NGO's. The question of personnel resources could be solved through the UNDDA or a standing secretariat of the Annual Meeting of States Parties. Note can also be made of UNDDA Advisory Board's proposal to establish a permanent institution of experts with emphasis on biological weapons issues.<sup>41</sup>

Points that could be part of a plan/program for the BTWC:

- Promote universal membership of the BTWC and set targets for increasing the number of States Parties, it has been suggested that two-thirds of States Parties should have adopted national implementing legislation by the Seventh Review Conference<sup>42</sup>;
- awareness raising and outreach activities that can include seminars/workshops;
- need for national points of contact and establishment of national authorities for the BTWC;
- the plan to be updated and included in an annual report to the Annual Meeting;
- agree on facilitators for implementing the plan, regional coordinators and/or volunteering states or group of states;
- promote that State Parties carry out a comprehensive review of their national implementation measures so as to update them and prevent any potential gaps;
- promote collating and assessment of national legislation including making use of such material available from CBMs and other organisations such as UNSC 1540 Committee;
- compile checklists of legislation and drafting elements to cover the legislative requirements;
- agree to develop a concise and clear guide for the national implementation of the BTWC;
- establish a virtual focal point, clearing house, for resources for implementation support on the web where information can be exchanged, present examples of model legislation<sup>43</sup> or training materials, place offers or requests for support, indicate network of legal advisers, points of contacts in States Parties and relevant regional or other international organisations providing general advice can be listed etc;
- consider need for trust fund for funding activities;

- engage the bio-industry in outreach activities for example for promoting biosafety and biosecurity practises in line with obligations under BTWC, to gain support, funding and incentives to participate;
- promote activities by NGOs and academic research to improve legislation and best practise for implementation. Much can be done by NGOs such as develop model legislation, training, support, workshops and analysis of implementation measures taken; and
- important will be the active engagement of States Parties officials to underline the political importance attached to national implementation.

## **CONFIDENCE-BUILDING MEASURES**

CBMs are important to improve the degree of transparency of States Parties activities and thus help to build confidence in the BTWC.<sup>44</sup> Since many years very little attention by States Parties have been given to their content, potential use or need to improve them as they were seen as only a temporary measure to be used while waiting for the negotiations to result in a legally binding regime. In order to improve the utility of the CBM exchanges and to promote more active participation it is proposed to make some mandatory, add some new CBMs and in addition add a consultation and clarification procedure. It is proposed to make most of the CBMs mandatory, at least the one for biodefence programs and vaccine production facilities so as to improve reporting. Detailed proposals for different CBMs have been presented taking into account proposals presented at the Fifth Review Conference:<sup>45 46 47 48 49 50 51 52</sup> It should be promoted that states set up or designate a national entity responsible for the national implementation of CBMs and any subsequent follow-up. There is also a need to review the text for the CBMs in the Final Declaration so that it is made clear that the information is not only for government use but will be made publicly available in line with that several States Parties already has placed their information on the internet. In order to facilitate collection, electronic submissions are preferable and translation is needed of the text if not one copy is submitted in English and storage should be in easily accessible form in a common data-base. It is further proposed to create a small secretariat to handle, compile, analyze and translate CBM returns. Lately this has been possible in other WMD related areas like for the UNSCR 1540. Presently there is a small number of UN secretariat staff at UNDDA to handle the CBM returns and for each BTWC meeting secretariat staff is separately recruited on an Ad Hoc basis but the resources are not enough and there is a need for a permanent BTWC secretariat.

It can also be considered in addition to the formal mechanisms for clarification to establish an informal forum for exchange of views and information. This could take the form of a web-based forum where information of interest like the CBM returns, up-coming conferences, list of relevant publications but also a forum for discussing perceived problems or pose questions. This could involve support for completing the CBMs, requests for assistance etc. The forum should be managed by the small secretariat already needed for the BTWC process like handling CBM returns. Initially this could be set up and managed by a willing State Party. The so far poor rate of return of CBMs (only 50 states in 2005) and the quality of information submitted has to change as they are important in order to increase transparency.<sup>53 54 55</sup> They allow states to better understand what other states are doing, reduce uncertainties in assessments of other states and will over time be confidence-building and can create a cooperative attitude amongst participating states as mutual confidence grows. CBMs can accomplish their aims if reports are accurate and complete. Canada has provided a useful guide to help states submit CBMs in 2004.<sup>56</sup> It can also be discussed to establish an informal working group for further developing the CBMs and the UNDDA could be encouraged to offer assistance in implementing the CBMs.<sup>57</sup>

## ANNUAL MEETING OF STATES PARTIES

States Parties should agree to hold Annual Meetings of States Parties in 2007-2011 proceeded by expert meetings as appropriate. At the Annual Meeting of States Parties one agenda point would always be to agree on the detailed agenda for the next annual meeting so as to maintain a flexible approach depending on progress in different areas. This would also mean that States Parties would be more engaged in the process if there is not a fixed detailed program of work 2007-2011 as the time span is long and the scientific progress as an example is difficult to foresee for such a long period in advance. The EU has proposed eight topics for future meetings.<sup>58</sup> It has also been suggested broad themes for these Annual Meetings.<sup>59</sup> Examples of topics during the period 2007-2011 could be:

Consultation and transparency: Further develop the Article V consultation mechanism including a clarification mechanism in case of potential inconsistencies in CBM returns. Further develop the formats for reporting.<sup>60</sup> Develop a data-base for all CBM returns and analysis. Development of a code of conduct for scientists involved in national biological research and development programs and guidelines for how national oversight authorities could be established.

Assistance and cooperation: Exchange information on and develop a data-base with information on potential preparedness and assistance measures States Parties can offer in case of biological/bioterrorism incidents, including the potential need to establish a unit for implementation of assistance. Exchange further information on biosecurity and biosafety measures and their implementation by States Parties, including development of biosecurity standards. Exchange information on and develop guidelines for detecting illicit trade and transfers of know-how, dual use materials and agents. Exchange information and develop guidelines for cooperation to prevent proliferation including redirecting former weapons scientists.

Program/plan for national implementation and universality: Develop program/plan for achieving universal membership of the BTWC and for promoting national implementation of the BTWC. Development of guidelines or assistance materials.

Measures for alleged use: Consider technical requirements for the establishment of an appropriate procedure for international investigation of suspicious outbreaks and/or alleged biological/bioterrorist incidents/activities taking into account the UN Secretary Generals mechanism from 1989 for investigating alleged use of biological and chemical weapons.<sup>61</sup>

Advisory panels: Develop criteria and functions for a scientific advisory committee for the BTWC that can be active between Review Conferences and as one task annually review the developments in science and technology with relevance for the BTWC. Another complementary mechanism that should be discussed is to have some kind of independent international authority, "scientists' ombudsman," to which scientists that are concerned with how their research is misused could contact such an authority for advice.

## CONCLUSIONS

States Parties should at the Sixth Review Conference as has previously been done at Review Conferences successfully strengthen the Convention by adding to their commitments and extending their understandings in the Final Declaration. The BTWC is more vital than ever and remains the principal international legal instrument against biological warfare and no action should be taken that could potentially undermine the treaty's role on this. There is no other forum than the BTWC where questions concerning biological weapons can be dealt with in a comprehensive way and since the Fifth Review Conference much of the attempted work

has been of a patchwork nature trying to move forward on limited issues and in specific organizational or regional contexts. The Sixth Review Conference should ensure that a mechanism is put in place that allows the BTWC parties to meet annually until, at a minimum, the Seventh Review Conference meets in 2011. This Sixth Review Conference might well be crucial for the attempts to strengthen the BTWC and the Conference should stress its determination to strengthen the effectiveness and improve the implementation of the Convention. A minimum result from the Sixth Review Conference must be a Final Declaration, follow-up process including formal Annual Meetings of States Parties in some form and to establish a small BTWC secretariat for this.

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