

Strengthening the Biological Weapons Convention

Review Conference Paper No 21

Preparing for the BTWC Seventh Review Conference in 2011

May 2010

Series Editors

Graham S Pearson and Malcolm R Dando

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PREPARING FOR THE BTWC SEVENTH REVIEW CONFERENCE IN 2011

by Graham S. Pearson* & Nicholas A. Sims†

Introduction

1. At the Meeting of States Parties to the Biological and Toxin Weapons Convention (BTWC) in Geneva on 7 to 11 December 2009, all the group statements (the European Union, the JACKSNNZ group (Japan, Australia, Canada, South Korea, Switzerland, Norway and New Zealand), and the NAM and Other States group) as well as over half of the 29 States Parties that made a statement said that they were looking ahead to the Seventh Review Conference in 2011¹. It is thus timely to start preparing now for a successful outcome for the Review Conference in 2011.

2. It is recognized that there will be very few members of the delegations of States Parties in the Missions in Geneva who were involved in the Sixth Review Conference in 2006 and that even in capitals there will not be many who have previously taken part in a BTWC Review Conference.

3. This Review Conference Paper is the first of a series of such papers which are intended to facilitate the preparation by the States Parties for a **successful outcome** to the Seventh Review Conference in 2011. This Paper starts by providing an overview of the likely structure of the Review Conference and of its Preparatory Committee with the aim of showing how the Review Conference functions. It then indicates some of the topics that States Parties have mentioned in regard to the forthcoming Review Conference in 2011 during the current intersessional programme of meetings and emphasises the importance of preparing the ground as it is too late to present novel ideas at the Review Conference itself.

The BTWC Review Conference

4. The Biological and Toxin Weapons Convention² in Article XII states:

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

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¹ Graham S. Pearson, *The Biological Weapons Convention Meeting of States Parties December 2009*, *CBW Conventions Bulletin*, Issue No. 86, February 2010. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

² The Biological and Toxin Weapons Convention. Available at [http://www.unog.ch/80256EDD006B8954/\(httpAssets\)/C4048678A93B6934C1257188004848D0/\\$file/BWC-text-English.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/C4048678A93B6934C1257188004848D0/$file/BWC-text-English.pdf) and at <http://www.opbw.org>

realized. Such review shall take into account any new scientific and technological developments relevant to the Convention.

Only one Review Conference was obligatory under Article XII. However, the States Parties have held further Review Conferences by their own decisions. The first six Review Conferences took place in 1980, 1986, 1991, 1996, 2001-02 and 2006.

5. The process leading to the Seventh Review Conference effectively began with the agreement in the Final Declaration of the Sixth Review Conference³ in regard to Article XII that:

60. The Conference reaffirms that Review Conferences constitute an effective method of reviewing the operation of the Convention with a view to assuring that the purposes of the Preamble and the provisions of the Convention are being realized. The Conference therefore recommends that Review Conferences should continue to be held at least every five years.

61. The Conference decides that the Seventh Review Conference shall be held in Geneva not later than 2011 and should review the operation of the Convention, taking into account, inter alia:

- (i) new scientific and technological developments relevant to the Convention;*
- (ii) the progress made by States Parties on the implementation of the obligations under the Convention;*
- (iii) progress of the implementation of the decisions and recommendations agreed upon at the Sixth Review Conference.*

Although this Final Declaration did not, unlike the Final Report of the Fifth Review Conference, include the words *and would be preceded by a Preparatory Committee*, it can be confidently expected that the Seventh Review Conference will be preceded by a Preparatory Committee meeting.

6. Based on the experience at previous Review Conferences, the Preparatory Committee meeting is likely to be for three days in April 2011 and the Review Conference itself is likely to be for three weeks in November/December 2011. In addition, the Presidency of the Review Conference is held by each of the three main groupings of States Parties – the Eastern Group, the Non Aligned and Other States Group and the Western Group – in turn. As the Eastern Group chaired the Review Conference in 2001-02, and the Non Aligned and Other States Group in 2006, it will be the turn of the Western Group to nominate the President for the Seventh Review Conference in 2011.

The Preparatory Committee

³ United Nations, Sixth Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Geneva, 20 November – 8 December 2006, *Final Document*, BWC/CONF. VI/6, Geneva 2006. Available at <http://www.opbw.org>

7. The Preparatory Committee is primarily concerned with procedural matters. In 2006, it had the following provisional agenda⁴:

PROVISIONAL AGENDA FOR THE PREPARATORY COMMITTEE

1. Opening of the meeting
2. Election of the Chairman and other officers
3. Adoption of the agenda of the Preparatory Committee
4. Organization of work of the Preparatory Committee
 - (a) Method of decision-making
 - (b) Languages
 - (c) Participation of non-States Parties
5. 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)
6. Appointment of a provisional Secretary-General
7. Financial arrangements for the Preparatory Committee and the Review Conference
8. Report of the Preparatory Committee to the Review Conference
9. Other business

8. In 2006, the Preparatory Committee was opened by Tim Caughley, the Director of the Geneva Branch of the UNDDA⁵. He rapidly moved to agenda item 2 *Election of the Chairman and other officers* when he said that Ambassador Masood Khan of Pakistan had been nominated by the NAM Group as Chairman of the Preparatory Committee. As there was no dissent, Tim Caughley went on to say that “*It was so decided*” and then he invited Ambassador Khan to take the Chair. Ambassador Khan then chaired the rest of the Preparatory Committee.

9. The Chairman made some introductory remarks and then moved on to the election of other officers of the Committee. The meeting then unanimously elected a representative from the Eastern Group and one from the Western Group to serve as Vice-Chairmen of the Preparatory Committee. In 2011, as the Chairman will be nominated by the Western Group, the Vice-Chairmen will come from the Eastern Group and from the NAM and Other States Group.

10. The Preparatory Committee then moved on to consideration of the provisional agenda for the Preparatory Committee meeting (as set out in paragraph 7 above) which was agreed thus

⁴ United Nations, Preparatory Committee for the Sixth Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, *Provisional Agenda for the Preparatory Committee*, BWC/CONF.VI/PC/1. 27 March 2006. Available at <http://www.opbw.org>

⁵ United Nations, Preparatory Committee for the Sixth Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, *Report of the Preparatory Committee*, BWC/CONF.VI/PC/2. 3 May 2006. Available at <http://www.opbw.org>

completing Agenda item 3. It then moved on to consideration of Agenda item 4 *Organization of work of the Preparatory Committee* when it was agreed that decision making would be, as traditionally, by consensus, then that the languages would be the six UN languages, and finally, in regard to the participation of non-States Parties, it was agreed that Signatory States and non- States Parties could participate. Consideration was then given to the participation of NGOs, which it was agreed should follow past practice: NGOs could attend public meetings and receive the documents, but not participate in discussion. It was decided that NGOs could be present for the first four Agenda items and the penultimate Agenda item *Report of the Preparatory Committee to the Review Conference* as well as to hear the statements made by the Groups and by States Parties.

11. The Preparatory Committee then heard four Group statements: Malaysia (on behalf of the NAM and Other States), Austria (on behalf of the European Union and associated states), Argentina (on behalf of Argentina, Brazil, Colombia, Costa Rica, Chile, Ecuador, Guatemala, Mexico, Peru and Uruguay), Canada (on behalf of Australia, Canada and New Zealand), and then four statements by States Parties: Republic of Korea, Russian Federation, China and Ukraine.

12. In 2006, Canada took the opportunity both in its statement on behalf of Australia, Canada and New Zealand, and in a Discussion Paper⁶ (BWC/CONF.VI/PC/INF.1) to put forward some substantive ideas for the Review Conference. In particular they elaborated an accountability framework, focusing on **national implementation, confidence building measures, implementation support** and **annual meetings**. [emphasis in original]. Canada encouraged further discussion of these ideas, as well as any other ideas that might be put forward, during the Preparatory Committee and in the months ahead.

13. The Preparatory Committee went on to agree⁷ the following Provisional Agenda for the Review Conference in 2006:

PROVISIONAL AGENDA FOR THE SIXTH REVIEW CONFERENCE

1. Opening of the Conference
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

⁶ Canada, *Towards the Sixth Review Conference: An Accountability Framework*, BWC/CONF.VI/PC/INF.1, 10 April 2006. Available at <http://www.opbw.org>

⁷ United Nations, Preparatory Committee for the Sixth Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, *Report of the Preparatory Committee*, BWC/CONF.VI/PC/2, 3 May 2006. Available at <http://www.opbw.org>

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 the operation of the Convention as provided for in its Article XII and any possible consensus follow-up action
12. Other matters, including the question of future review of the Convention
13. Report of the Committee of the Whole
14. Report of the Drafting Committee
15. Preparation and adoption of the final document(s)

The Review Conference

14. The key elements in the work of the Review Conference are agenda items 10 to 12:

- 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 the operation of the Convention as provided for in its Article XII and any possible consensus follow-up action*
- 12. Other matters, including the question of future review of the Convention*

15. **Article by Article Review.** In agenda item 10, the Review Conference carries out an Article by Article review of the Convention together with a review of *the preambular paragraphs and purposes of the Convention*. The aim for each of these is to arrive at consensus language which generally reaffirms the commitment by the States Parties to the requirements of the individual Article and includes language that provides an extended understanding of that Article. Such extended understandings may include definitions, set out agreed procedures, highlight recent developments, emphasise relevant relationships or in other ways draw out the latent potential and logical implications of each Article. Taken together over successive Review Conferences, they record the States Parties' common understanding of where the Convention stands and what its obligations require of them.

16. For example, Article I of the Convention states that:

Each State Party to this Convention undertakes never in any circumstances to develop, produce, stockpile or otherwise acquire or retain:

- (1) Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;*
- (2) Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.*

17. At the Sixth Review Conference in 2006, the following language was agreed and appeared in the Final Declaration⁸ which commenced with the formal statement that:

THE STATES PARTIES TO THE CONVENTION ON THE PROHIBITION OF THE DEVELOPMENT, PRODUCTION AND STOCKPILING OF BACTERIOLOGICAL (BIOLOGICAL) AND TOXIN WEAPONS AND ON THEIR DESTRUCTION, WHICH MET IN GENEVA FROM 20 NOVEMBER TO 8 DECEMBER 2006 TO REVIEW THE OPERATION OF THE CONVENTION, SOLEMNLY DECLARE:

The declaration in respect of Article I was as follows:

Article I

1. The Conference reaffirms the importance of Article I, as it defines the scope of the Convention. The Conference declares that the Convention is comprehensive in its scope and that all naturally or artificially created or altered microbial and other biological agents and toxins, as well as their components, regardless of their origin and method of production and whether they affect humans, animals or plants, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes, are unequivocally covered by Article I.

2. The Conference reaffirms that Article I applies to all scientific and technological developments in the life sciences and in other fields of science relevant to the Convention.

3. The Conference reaffirms that the use by the States Parties, in any way and under any circumstances, of microbial or other biological agents or toxins, that is not consistent with prophylactic, protective or other peaceful purposes, is effectively a violation of Article I. The Conference reaffirms the undertaking in Article I never in any circumstances to develop, produce, stockpile or otherwise acquire or retain weapons, equipment, or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict in order to exclude completely and forever the possibility of their use. The Conference affirms the determination of States Parties to condemn any use of biological agents or toxins for other than peaceful purposes, by anyone at any time.

4. The Conference notes that experimentation involving open-air release of pathogens or toxins harmful to humans, animals and plants that have no justification for prophylactic, protective or other peaceful purposes is inconsistent with the undertakings contained in Article I.

18. The first paragraph *reaffirms the importance of Article I* and confirms that this is because *it defines the scope of the Convention*. The second sentence then goes on to declare that the Convention is comprehensive in its scope as *all naturally or artificially created or*

⁸ United Nations, Sixth Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Geneva, 20 November – 8 December 2006, *Final Document*, BWC/CONF. VI/6, Geneva 2006. Available at <http://www.opbw.org>

altered microbial and other biological agents and toxins, as well as their components, regardless of their origin and method of production and whether they affect humans, animals or plants, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes, are unequivocally covered by Article I. This language incorporates the extended understandings that have developed at previous Review Conferences that take the scope beyond the words in Article I that in sub-para (1) refer to:

(1) Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;

The language agreed by the Sixth Review Conference clearly demonstrates the benefits that accrue to the Convention through such extended understandings.

19. The second paragraph shows that the Review Conference has addressed its obligation under the final sentence of Article XII that requires it to *take into account any new scientific and technological developments relevant to the Convention.* The agreed language that *The Conference reaffirms that Article I applies to all scientific and technological developments in the life sciences and in other fields of science relevant to the Convention.* makes it clear that the prohibitions of Article I are fully comprehensive, as they apply to all scientific and technological developments, not only in the life sciences, of relevance to the Convention.

20. The third paragraph makes it clear that the use *in any way and under any circumstances, of microbial or other biological agents or toxins, that is not consistent with prophylactic, protective or other peaceful purposes, is effectively a violation of Article I.* The second sentence then reaffirms *the undertaking in Article I never in any circumstances to develop, produce, stockpile or otherwise acquire or retain weapons, equipment, or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict in order to exclude completely and forever the possibility of their use.* The final sentence emphasizes that *any use of biological agents or toxins for other than peaceful purposes, by anyone at any time* is condemned. The overall effect is to underline that use for other than peaceful purposes is totally prohibited.

21. The fourth paragraph provides a further strengthening of the regime by pointing out that *experimentation involving open-air release of pathogens or toxins harmful to humans, animals and plants that have no justification for prophylactic, protective or other peaceful purposes is inconsistent with the undertakings contained in Article I.* This strengthening arises from the danger that such experimentation might be a precursor to the development or a trial prior to the use of such a weapon. It is a good example of an implication of one of the Articles of the Convention being drawn out and made explicit as an extended understanding by one Review Conference, in 1991, and reaffirmed by its successors.

22. These paragraphs relating to Article I show the sort of outcome that the Article by Article review of the Convention is intended to achieve. The language that appears in the Final Declaration is the result of the consideration of the proposals that are submitted by the individual States Parties for each Article. At the Sixth Review Conference, the submissions by individual States Parties to the Article by Article review are detailed in Annex II *Proposed Language Submitted to the Committee of the Whole* to the Report of the Committee of the

Whole⁹ which was issued as BWC/CONF.VI/3. In regard to Article I, proposals were submitted by the following six States Parties: Cuba on behalf of the Non-Aligned Movement and other States, Finland on behalf of the European Union, Iran, New Zealand, Pakistan, and the United States of America.

23. **Follow-up Action.** The next agenda item in paragraph 11 is concerned with *Consideration of issues identified in the review of the operation of the Convention as provided for in its Article XII and any possible consensus follow-up action.* Article XII of the Convention is the review article, set out in full at paragraph 4 of this Review Conference Paper. This agenda item enables consideration to be given to the overall operation of the Convention and thus to decide whether *any possible consensus follow-up action* is appropriate.

24. At the Sixth Review Conference in 2006, the outcome of this agenda item was recorded in a section of the Final Document¹⁰ entitled **Part III: Decisions and Recommendations** which immediately followed **Part II: Final Declaration.** The section on *Decisions and Recommendations* had sub-sections with the following headings:

Work of the 2003-2005 Meetings of States Parties
Implementation Support Unit
Intersessional Programme 2007-2010
Confidence-building Measures
Promotion of Universalization

Each of these subsections includes consensus follow-up action.

25. Thus, for example, the sub-section on the *Intersessional Programme 2007-2010* sets out the mandate for the four annual intersessional meetings to be held before the next Review Conference and defines the topic to be considered in each year as follows;

- (i) Ways and means to enhance national implementation, including enforcement of national legislation, strengthening of national institutions and coordination among national law enforcement institutions.*
- (ii) Regional and sub-regional cooperation on implementation of the Convention.*
- (iii) National, regional and international measures to improve biosafety and biosecurity, including laboratory safety and security of pathogens and toxins.*
- (iv) Oversight, education, awareness raising, and adoption and/or development of codes of conduct with the aim of preventing misuse in the context of advances in bio-science and bio-technology research with the potential of use for purposes prohibited by the Convention.*

⁹ United Nations, Sixth Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Geneva, *Report of the Committee of the Whole*, BWC/CONF. VI/3, 6 December 2006. Available at <http://www.opbw.org>

¹⁰ United Nations, Sixth Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Geneva, 20 November – 8 December 2006, *Final Document*, BWC/CONF. VI/6, Geneva 2006. Available at <http://www.opbw.org>

(v) *With a view to enhancing international cooperation, assistance and exchange in biological sciences and technology for peaceful purposes, promoting capacity building in the fields of disease surveillance, detection, diagnosis, and containment of infectious diseases: (1) for States Parties in need of assistance, identifying requirements and requests for capacity enhancement; and (2) from States Parties in a position to do so, and international organizations, opportunities for providing assistance related to these fields.*

(vi) *Provision of assistance and coordination with relevant organizations upon request by any State Party in the case of alleged use of biological or toxin weapons, including improving national capabilities for disease surveillance, detection and diagnosis and public health systems.*

The sub-section includes language that states that *The topics for consideration at each annual meeting of States Parties will be as follows: items (i) and (ii) will be considered in 2007; items (iii) and (iv) in 2008; item (v) in 2009; and item (vi) in 2010.*

26. The agreed language in this section on *Decisions and Recommendations* is carefully formulated so as to set out what should be done in respect of each individual follow-up action.

27. **Future Review of the Convention.** The third agenda item in paragraph 12 is a broad one addressing *Other matters, including the question of future review of the Convention.* This arises in part from the provision in Article XII of the Convention 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 ...* This language is limited to the holding of the first Review Conference five years after the entry into force of the Convention.

28. It has become the practice at successive Review Conferences to agree that there should be a further Review Conference in five years' time. Thus at the Sixth Review Conference, the language agreed for Article XII in the Final Declaration¹¹ in the Article by Article review of the Convention was:

60. The Conference reaffirms that Review Conferences constitute an effective method of reviewing the operation of the Convention with a view to assuring that the purposes of the Preamble and the provisions of the Convention are being realized. The Conference therefore recommends that Review Conferences should continue to be held at least every five years.

61. The Conference decides that the Seventh Review Conference shall be held in Geneva not later than 2011 and should review the operation of the Convention, taking into account, inter alia:

¹¹ United Nations, Sixth Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Geneva, 20 November – 8 December 2006, *Final Document*, BWC/CONF. VI/6, Geneva 2006. Available at <http://www.opbw.org>

- (i) new scientific and technological developments relevant to the Convention;*
- (ii) the progress made by States Parties on the implementation of the obligations under the Convention;*
- (iii) progress of the implementation of the decisions and recommendations agreed upon at the Sixth Review Conference.*

29. This agenda item enables the States Party to agree when the next Review Conference shall be held and to identify any specific aspects that should be reviewed at that Review Conference. Thus in 2006, it was agreed that the 2011 Review Conference, in addition to considering *new scientific and technological developments relevant to the Convention*, should also address *the progress made by States Parties on the implementation of the obligations under the Convention* and the *progress of the implementation of the decisions and recommendations agreed upon at the Sixth Review Conference*.

Preparing for the Review Conference

30. A key point that needs to be recognized in regard to the Review Conference is that the time available at the Review Conference itself to discuss, consider and agree language is limited to the three week period in which the Conference is held. At the Sixth Review Conference the three weeks – or 15 working days – were taken up as follows:

- a. A general debate on the first two days.
- b. The Committee of the Whole then met for the next 8 days
- c. Informal consultations then took place for the next five days leading to agreement of the Final Document on the final day.

It is therefore evident that if some new ideas are to be proposed by one or more States Parties, there is generally little chance of them being successfully adopted if they are only revealed during the three weeks of the Review Conference itself. If the ideas are novel, then the delegations at the Review Conference will probably need to refer back to capitals for advice and this can be difficult if the national experts are in Geneva with the delegation of the State Party to the Review Conference.

31. It follows that there is much to be said for States Parties submitting new ideas and new approaches in the form of Working Papers to the intersessional meetings before the Review Conference itself and seeking to discuss them with other States Parties. Putting forward new ideas in this way enables all States Parties to consider them in capitals with the benefit of expert advice and to be in a position to debate them at Geneva either before the Review Conference or at the Review Conference itself.

32. During the intersessional meetings in 2007, 2008 and 2009, the statements made by States Parties or groups of States Parties have generally taken the opportunity to indicate some of the developments that they would like to see at the next Review Conference in 2011. This is particularly true as 2011 becomes closer. These have included the following:

- a. At the Meeting of Experts in August 2007, 6 States Parties (Cuba (on behalf of the NAM), Russia, India, Iran, Pakistan and Libya), out of the 14 who made statements in the opening session referred to the importance of a legally binding

compliance mechanism. 7 States Parties (Cuba (on behalf of the NAM), Iran, India, Morocco, Russia, Algeria and Pakistan) out of the 26 who made statements referred to this subject at the Meeting of States Parties in December 2007¹².

b. At the Meeting of Experts in August 2008, Switzerland submitted two Working Papers (WP.5 *National Data Collection Processes for CBM Submissions* and WP. 35 *Preparing the Ground for the CBM Content Debate: What Information Builds Confidence*) which were preparing the ground for improving the Confidence-Building Measure regime at the Seventh Review Conference in 2011¹³. Switzerland took the opportunity to take the matter further at the Meeting of States Parties in December 2008 with a further WP. 6 *Preparing the Ground for the CBM Content Debate: What Information Builds Confidence?*¹⁴ This working paper includes a sentence *Discussions at the 2006 Review Conference showed how difficult it was to agree on solutions during an already packed agenda.* That shows why it is so important to submit ideas **before** the Review Conference itself.

c. At the Meeting of States Parties in December 2008, 9 States Parties (Cuba (on behalf of the NAM), Turkey, Russia, Iran, India, Pakistan, Chile, Algeria and Brazil) out of the 24 who made statements in the General Debate referred to the importance of a legally binding compliance mechanism¹⁵. The Russian statement included the perceptive remarks that *We have no doubt in doing so one must make the full use of the valuable experience accumulated in the past by VEREX and the Ad Hoc Group. However, seven years have elapsed since the suspension of multilateral negotiations to develop a legally binding instrument of verification. All this time scientific knowledge has been rapidly advancing. If the future verification mechanism is to encompass all relevant S & T, then this work, vitally important for the success of the Convention, ought to be resumed at the earliest.*

d. At the Meeting of Experts in August 2009, there were a number of statements looking ahead to the Review Conference¹⁶. Thus Cuba (on behalf of the NAM and Other States) referred to *the particular importance of strengthening the Convention through multilateral negotiations for a legally binding Protocol* and pointed out that they were submitting a WP. 24 *The Establishment of a Mechanism for the Full Implementation of Article X of The Convention.* A sentence in the second paragraph of WP.24 states *Nevertheless we hope that a decision can be adopted in the Seventh BWC Review Conference in 2011 recommending negotiations on a legally binding*

¹² Graham S. Pearson, *The Biological Weapons Convention Meeting of Experts August 2007*, *CBW Conventions Bulletin*, Issue No. 76 + 77, October 2007. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

¹³ Graham S. Pearson, *The Biological Weapons Convention Meeting of Experts August 2008*, *CBW Conventions Bulletin*, Issue No. 80, September 2008. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

¹⁴ Graham S. Pearson, *The Biological Weapons Convention Meeting of States Parties December 2008*, *CBW Conventions Bulletin*, Issue No. 81, December 2008. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

¹⁵ Graham S. Pearson, *The Biological Weapons Convention Meeting of States Parties December 2008*, *CBW Conventions Bulletin*, Issue No. 81, December 2008. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

¹⁶ Graham S. Pearson, *The Biological Weapons Convention Meeting of Experts August 2009*, *CBW Conventions Bulletin*, Issue No. 85, October 2009. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

Protocol to comprehensively strengthen the implementation of the Convention including in the area of international cooperation for peaceful purposes. Sweden (on behalf of the EU) noted that *The European Union also remains committed to working with a long term view to develop measures to verify compliance with the BTWC.* Five individual States Parties (Algeria, Bangladesh, Iran, the Republic of Korea and Turkey) looked ahead in their statements to the Seventh Review Conference in 2011.

e. At the Meeting of States Parties in December 2009, it was evident that there was an increased awareness that the Seventh Review Conference was only two years away¹⁷. All the group statements (the European Union, the JACKSNNZ group, and the NAM and Other States group) as well as over half of the 29 States Parties that made a statement said that they were looking ahead to the Seventh Review Conference in 2011. In addition, some ten statements expressed views about the strengthening of the implementation of the Convention either through a legally-binding mechanism or other ways of improving compliance. Thus, Cuba (on behalf of the NAM) said *The strengthening of the Biological Weapon Convention cannot exclude inter alia the verification mechanism for the complete elimination of biological and toxin weapons through adopting a legally binding protocol to comprehensively strengthen the BWC.* Sweden (on behalf of the EU) said *Finally, the EU believes that preparations for the 2011 Review Conference should be initiated as soon as possible, including exploring options for strengthening the Convention and improving compliance, taking into account the risks from non-state actors.* Australia (on behalf of the JACKSNNZ group) said *The JACKSNNZ share with other delegations an interest in the opportunity provided by the Seventh Review Conference in 2011 to review and discuss possible means for strengthening the BTWC. Toward this end, the JACKSNNZ contribute for discussion at this Meeting of States Parties and in the lead-up to the Review Conference, the Canadian sponsored discussion paper "How to approach compliance issues in the Biological and Toxin Weapons Convention: policy issues for the Seventh BTWC Review Conference in 2011".* Switzerland said *Switzerland is of the view that this Convention is in need of stronger mechanisms for resolving concerns about implementation of, and compliance with, the BWC. In fact, Switzerland would welcome a legally binding compliance framework. We are convinced that an informal and forward-looking discussion is required on the kind of compliance mechanism that is needed to address existing and future challenges.* India said *We believe that only a multilaterally agreed mechanism for verification of compliance can provide the assurance of observance of compliance obligations by States Parties and act as deterrence against non-compliance. We believe that the decision regarding strengthening of the BWC and its effective implementation should be taken by the Review Conference on the basis of consensus.* Norway said *The lead-up to the 2011 Review Conference provides us an opportunity to deliberate on ways to further strengthen the BTWC, such as measures to verify compliance to the Convention.* Chile said *an effective verification regime is needed to strengthen the Convention regime.* Pakistan said *The 7th Review Conference must also pick up the unfinished work on the Protocol for effective negotiations would be resumed on a legally binding instrument to comprehensively strengthen the*

¹⁷ Graham S. Pearson, *The Biological Weapons Convention Meeting of States Parties December 2009*, *CBW Conventions Bulletin*, Issue No. 86, February 2010. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

convention including in the area of international cooperation for peaceful purposes. And Bangladesh said That the lack of a permanent institutional framework for verification is affecting the sound health of the Convention has been felt for too long. We understand that negotiations on this issue would take time. However, we must remain seized with the matter, and use the Seventh Review Conference in 2011 to make positive strides in this regard on the basis of consensus.

33. The above paragraph has identified some of the issues that have been mentioned by States Parties during the current intersessional meetings. There are also other proposals that have been made by States Parties that merit further consideration and elaboration. There is potentially a wide range of issues that are worthy of consideration at the Seventh Review Conference in 2011. These include consideration of the following:

- a. Recent advances in science and technology of relevance to the Convention.
- b. The Confidence-Building Measures mechanism and whether additional new CBMs should be adopted.
- c. The strengthening of the Implementation Support Unit.
- d. The holding of Annual Meetings of States Parties with authority to make decisions.
- e. The development of an accountability framework
- f. An Action Plan for national implementation of Article IV.
- g. A mechanism or a CBM for the implementation of Article X.
- h. A mechanism to strengthen the effectiveness and improve the implementation of the Convention.

Subsequent Review Conference Papers will consider these issues. It is, however, up to States Parties to put forward their ideas in regard to the issues that they wish to see taken up at the Seventh Review Conference.

34. It is encouraging that this year's Chairman of the 2010 intersessional meetings has, in his letter of 25 February 2010 to States Parties¹⁸, said:

Finally, I should mention that the Seventh Review Conference of the BWC will be held next year. Preparation for the Review Conference is not formally on our agenda for 2010, and is not part of my mandate as Chairman. Nevertheless, it is natural and welcome that States Parties should wish to start informal discussions on the Review Conference in the course of this year. I encourage delegations to consider holding

¹⁸ United Nations, Meeting of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Geneva, 6-10 December 2010, *Letter from Ambassador Carlos Potaes of Chile*, 25 February 2010. Available at: [http://www.unog.ch/80256EDD006B8954/\(httpAssets\)/78D56A98309C551CC12576DB004936F8/\\$file/Letter+to+SPs+Feb+2010.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/78D56A98309C551CC12576DB004936F8/$file/Letter+to+SPs+Feb+2010.pdf)

seminars and other events to begin considering options for 2011, including on the margins of the Meeting of Experts and Meeting of States Parties.

He has subsequently taken the opportunity to further emphasise this in his Regional Group Meetings on 29/30 March 2010¹⁹ when the Chairman said that he saw one of the *four key areas of activity this year* as being to *facilitate some preliminary informal discussion on preparations for the Seventh Review Conference in 2011*. He then went on to amplify this as follows:

Preparations for the Seventh Review Conference

- *As I mentioned in my letter, preparing for the 2011 Review Conference is not part of our mandated task this year, but neither is it something we should simply ignore.*
- *It is important that the formal sessions of the Meeting of Experts and Meeting of States Parties stay focused on our mandated topic.*
 - *Nevertheless, I think it would be a good idea to take advantage of these gatherings of States Parties to begin some informal discussions on the margins to consider how we might best prepare for the 2011 conference.*
 - *I encourage States Parties, as well as academic institutions and NGOs, to consider organising seminars and workshops in the course of the year to explore options for the future of the BWC.*

Conclusions

35. This Review Conference Paper provides an overview of the likely structure of the Review Conference and of its Preparatory Committee with the aim of showing how the Review Conference functions. Some of the topics mentioned by States Parties in regard to the forthcoming Review Conference in 2011 in their statements to the current intersessional programme of meetings are outlined. The importance of preparing the ground **in advance of** the Review Conference is emphasised as it is too late to present novel ideas for the first time at the Review Conference itself.

¹⁹ United Nations, Meeting of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Geneva, 6-10 December 2010, *Biological Weapons Convention: Regional Group Meetings March 2010, Chairman's Speaking Notes*. Available at: [http://www.unog.ch/80256EDD006B8954/\(httpAssets\)/EFCF26EC708AB682C12576F600527FF1/\\$file/Chairman+talking+points+group+meetings+29-30+March.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/EFCF26EC708AB682C12576F600527FF1/$file/Chairman+talking+points+group+meetings+29-30+March.pdf)