

**Strengthening the
Biological Weapons Convention
Review Conference Paper No 22**

**An Annual Meeting
for the BTWC**

June 2010

Series Editors

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AN ANNUAL MEETING FOR THE BTWC

by Nicholas A. Sims[†]

Introduction

1. Review Conference Paper No. 21¹ which addressed *Preparing for The BTWC Seventh Review Conference in 2011* noted that there are potentially a wide range of issues 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.

2. This Review Conference Paper addresses the fourth item in the above list:

- d. The holding of Annual Meetings of States Parties with authority to make decisions.

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¹Graham S. Pearson & Nicholas A. Sims, *Preparing for The BTWC Seventh Review Conference in 2011*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 21, May 2010. Available at <http://www.brad.ac.uk/acad/sbtwc>

Annual Meetings for the BTWC

3. The BTWC has long laboured under an institutional deficit.² Unlike many other treaties, it was negotiated with no provision for a treaty organisation and not even for an inter-governmental council or consultative body. The BTWC was not endowed with any secretariat or dedicated staff resources of any kind. The provision of scientific advice to keep the Convention up to date with developments in science and technology was not built in and no provision was made for any advisory panels. No future meetings were foreseen beyond a single Review Conference.

4. International treaty governance, consultation, staff assistance and expert advice were all absent, presumably on the mistaken assumption that the BTWC would not need any such capabilities. This institutional deficit at the international level has been compounded by the lack of any requirement for national authorities within States Parties to help secure the national implementation of the BTWC.

5. A first step towards remedying this deficit was taken in 2006 with the decision of the Sixth Review Conference³ to create an Implementation Support Unit (ISU) with three full-time posts for the period 2007 – 2011, to be funded by all States Parties *pro rata*. The ISU came into being in August 2007 and has provided a welcome focus for coordination as well as an information resource and much practical support to the BTWC States Parties. Its mandate was set out in the Final Document of the Sixth Review Conference as being *to perform the following tasks*:

A. Administrative support:

- (i) Providing administrative support to and preparing documentation for meetings agreed by the Review Conference;*
- (ii) Facilitating communication among States Parties and, upon request, with international organizations;*
- (iii) Facilitating, upon request, States Parties' contacts with scientific and academic institutions, as well as non-governmental organizations;*
- (iv) Serving as a focal point for submission of information by and to States Parties related to the Convention;*
- (v) Supporting, as appropriate, the implementation by the States Parties of the decisions and recommendations of this Review Conference.*

B. Confidence Building Measures:

²Nicholas A. Sims, *The Future of Biological Disarmament: Strengthening the Treaty Ban on Weapons* (London: Routledge, 2009). Chapter 7 'BWC next steps (2): strengthening structures for remedying the institutional deficit', pp 115-140, explores historical and continuing reasons for the deficit as well as possible remedies.

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>

- (i) Receiving and distributing confidence-building measures (CBMs) to/from States Parties;*
- (ii) Sending information notices to States Parties regarding their annual submissions;*
- (iii) Compiling and distributing data on CBMs and informing on participation at each Meeting of States Parties;*
- (iv) Developing and maintaining a secure website on CBMs to be accessible only to States Parties;*
- (v) Serving as an information exchange point for assistance related to preparation of CBMs;*
- (vi) Facilitating activities to promote participation in the CBM process, as agreed by the States Parties.*

6. The Unit's mandate will be limited to the above-mentioned tasks. The Unit will submit a concise annual written report to all States Parties on its activities to implement this mandate. The Unit's performance will be evaluated and its mandate will be reviewed by States Parties at the Seventh Review Conference.

The ISU has been very careful to respect the limits of its mandate and to avoid trespassing on political preserves.

6. In 2011 the Seventh Review Conference is required by the decision of the Sixth Review Conference to evaluate the Unit's performance and to review its mandate. The Seventh Review Conference should at the very least renew the mandate of the ISU for a further five years until the Eighth Review Conference. It could usefully go further and loosen the tight constraints under which the ISU has had to operate for its first four years. For instance, its role in assisting comprehensive implementation of the BTWC could be made as explicit as its role in helping successive Chairmen's efforts to promote universalisation which was detailed in another decision of the Sixth Review Conference as follows:

(c) Tasks the Implementation Support Unit to:

- (i) support the Chairs of Meetings of States Parties in the implementation of this decision;*
- (ii) support States Parties by maintaining a list of national points of contact;*
- (iii) consolidate and make available information on progress made by states not party towards ratification.*

7. In practice these two aspects of BTWC work, assisting comprehensive implementation and promoting universalisation, are inextricably linked, but in 2006 it was necessary to fudge the issue in the ISU's mandate as part of a then-necessary compromise. Its CBM-assisting functions could also benefit from restatement in clearer terms. Moreover, a voluntary fund might be set up to augment the budgetary assessments on States Parties which have provided its core funding. Such a fund would enable the ISU to extend its activities when specifically authorised, without detriment to its core tasks. The ISU would also benefit from a modest expansion in

staffing, from three to five, as its fulltime complement for the next quinquennium, to be augmented as necessary when meetings are in session.

8. Beyond building on the ISU decision of 2006, what else should the Seventh Review Conference do to help remedy the institutional deficit of the BTWC? One of the easiest next steps to take would be to formalise the institution of a **BTWC Annual Meeting** with authority to make decisions. The titles '*Annual Meeting*' and even '*Annual Conference*' have occasionally been used by States Parties in the distributed texts of their national statements at Meetings of States Parties, and the relevant Decision of the Sixth Review Conference referred in two places to '*annual meetings*' between 2007 and 2010 as a simple description of their frequency. However, the official documentation maintains the designation '*2008 Meeting of States Parties*', '*2009 Meeting of States Parties*' and so on. 2005 (as the '*3rd Meeting of States Parties*') was the last MSP to be so numbered. These usages correspond to the 2002 and 2006 mandates for largely self-contained events with strict agenda constraints and no decision-making powers. So the term '*Annual Meeting*' remains to be formalised as a title.

9. A *Meeting of States Parties* (MSP) preceded by a *Meeting of Experts* (MX) has been the agreed format for the intersessional programmes of 2003-2005 and 2007-2010. Each year these bodies are confined to their allocated topic or topics. In 2006 the Sixth Review Conference ostensibly rejected the notion of recurrent agenda items, despite the fact that it had previously taken other decisions which meant that in the second series of MSPs (unlike the first) there would always be two recurrent items. This was ensured by requiring the ISU to give an annual report on its activities and the Chairman each year to report on progress towards universalisation.

10. It is high time to discard the doctrine that each year's BTWC event and its agenda should be self-contained. A BTWC Annual Meeting would be a natural evolution from the *Meeting of States Parties* as it has developed through the first two intersessional programmes. It could still deal in part with special topics allocated year by year but its continuing agenda should embrace the central concerns of the treaty. The Accountability Framework⁴ could provide one, substantial, element of the Annual Meeting. Collective review of BTWC-relevant developments in science and technology could provide another. And a systematic discussion of each year's CBM returns could be a third.

11. Freeing up its agenda by removing the constraints insisted on in 2002 would enable the Annual Meeting to serve the needs of the BTWC with greater effectiveness and precision and thus build momentum year on year, instead of having to over-compartmentalise by addressing only a few aspects of the BTWC at a time, while leaving most aspects to be considered only at five-year intervals at the Review Conferences.

12. It is important to recognise that the Review Conferences would continue to perform a distinct and different role from the Annual Meetings as the Review Conferences would, as now, assess the health of the BTWC and set its course for the next five years. The Review Conferences would be more effective if there were

⁴ This will be addressed in a subsequent Review Conference Paper in this series.

Annual Meetings in between to take decisions where the States Parties identify a need. Instituting BTWC Annual Meetings with a freed-up agenda would also nurture a balanced approach to the evolution of the BTWC treaty regime in each of its sectors and attention could more effectively be paid to relevant contexts within which it is evolving. The five year Review Conferences have a very short time in which to pay appropriate attention to all the various aspects of the Convention.

13. At the Annual Meetings, the Chairman each year would continue to report on progress towards universalisation, and the ISU would continue to give an annual report on its activities. There would be value in taking stock of progress in exploring synergies (a major theme of the Sixth Review Conference) with other processes and organisations and parallel but independent regime-building developments outside the BTWC itself. These might range from the development of prudential constraints on biotechnology and other areas of life science activities – which could help bolster the BTWC Article I prohibition of biological materials for weapons purposes – to the use of the international criminal law to establish individual responsibility and eliminate impunity by specifically criminalising CBW activities.

14. It is to be hoped that the Seventh Review Conference succeeds in adopting an Action Plan on Comprehensive Implementation. This was proposed⁵ by the President of the Sixth Review Conference, Ambassador Masood Khan of Pakistan, but at too late a point in the Conference to win through to adoption. Such an Action Plan, embracing elements of Article X and Article IV without specifying either or limiting itself to those two Articles alone, would provide rich subject matter for comparison of experience and exhortation to greater efforts. The Chairman's report on progress under this Action Plan could be another recurrent item on the agenda of the BTWC Annual Meeting.

15. A BTWC Annual Meeting could also handle the '*consolidation agenda*'⁶ of progress towards completion of long-standing collective commitments. The BTWC parties long ago committed themselves to joining the 1925 Geneva Protocol and, since it came into existence, the 1993 Chemical Weapons Convention. Not all have done so. Those which are already parties to the 1925 Geneva Protocol need to complete the process of ridding themselves of reservations which purport to retain a right of retaliation with bacteriological warfare. BTWC Review Conferences called for the withdrawal of such reservations in 1991 and, more forcefully, in 1996 and 2006 – as did the UN General Assembly, most recently on 2 December 2008⁷. They are clearly incompatible with the absolute renunciation of bacteriological warfare

⁵ Masood Khan, *The 2006 BWC Conference: the President's reflections*, Disarmament Diplomacy 84 (Spring 2007) p 15.

⁶ **Consolidation** of a treaty regime is understood as preceding the next major advance – at a time when States Parties to the BTWC find it difficult to agree on what the next major advance ought to be. This term '*consolidation agenda*' was introduced in papers in 2003 and subsequently. The items on such an agenda concerned the completion of existing collective commitments, many of long standing, agreed in earlier Review Conferences as targets for achievement by the thirtieth anniversary of the BTWC's entry into force which occurred on 26 March 2005. The targets remain unachieved.

⁷ United Nations, General Assembly Resolution GA Res. 63/53 *Measures to uphold the authority of the 1925 Geneva Protocol*. 2 December 2008. Available at <http://daccess-ods.un.org/TMP/4535087.html>

which adherence to the BTWC logically entails. Ireland, declaring that to maintain its 1930 reservation would undermine the BTWC, took action accordingly in 1972, just before the BTWC was opened for signature. By 2002 nineteen governments had followed its example (in some cases impelled as much by support for the CWC as the BTWC). But almost as many States Parties to the 1925 Geneva Protocol and the BTWC have yet to take the necessary action. It may be that some governments are embarrassed to have to admit to holding on to legal positions that imply a half-hearted commitment to the BTWC; others may consider the reservations politically obsolete or legally superseded. Three Review Conferences, however, as well as the General Assembly, have agreed on what those governments nevertheless still need to do: simply withdraw the reservations. And if they do want to save face, or blame a colonial past from which (in some cases) they may have inherited an ill-considered or overlooked reservation, they can always call it a regularisation of their 1925 Geneva Protocol status for the avoidance of doubt.

16. The Chairmen already report every year on prospects for individual accessions and ratifications. It would be a useful extension to have them also report on the BTWC's progress towards completing its 'consolidation agenda'. There would then be a stronger incentive for the minority of BTWC States Parties which have not yet taken the necessary action to move forward and become parties also to the 1925 Geneva Protocol, without reservation, and to the CWC – and, if already party to the Protocol, to withdraw any surviving reservations inconsistent with their BTWC obligations.

17. Another question for consideration is whether the BTWC Annual Meeting should be preceded by a single Meeting of Experts or served by working groups or advisory panels, which might have a continuing existence. Whatever the answer, it is most important that the overall allocation of UN conference time to the BTWC every year should not be further diminished from the present two weeks (down from three following a decision of the Sixth Review Conference).

18. There is a strong case, indeed, for restoring the yearly allocation of time for the BTWC between Review Conferences to the three weeks which pertained from 2003 to 2005. But instead of dividing the three weeks as if between an MX and an MSP on the 2003-2005 model, it is proposed that the starting point should be a work programme for a two-week duration of the BTWC Annual Meeting since it is hard to see how the Annual Meeting can do justice to the needs of the BTWC and its States Parties as treaty partners without ten full days over which to distribute the necessary regular business and still allow sufficient space for special topics to be considered as well.

19. As already suggested, the Annual Meeting might be preceded by a single MX or served by working groups or advisory panels some of which might meet in parallel with one another. A week each year should be allocated for this, essentially preparatory, work at expert level. There is much to be said for this essential preparatory work to be held earlier in the year and **not** so that it immediately precedes the Annual Meeting. Holding the preparatory meetings immediately before the Annual Meeting prevents States Parties from giving adequate consideration in capitals to the outcome of the preparatory meetings. Holding them in August has worked well for the intersessional process and a similar timing should be followed.

20. There is a case for other BTWC institutions too such as a Scientific Advisory Panel and a Legal Advisory Panel. There is also a strong case for BTWC National Authorities. Further papers in this series of Review Conference Papers will consider some of these. However, the single most straightforward institution to achieve in the short term is the BTWC Annual Meeting.

Indicative Work Programme for the BTWC Annual Meeting

21. An indicative work programme, with annotations regarding the assumptions made, is set out below:

BTWC ANNUAL MEETING

FIRST WEEK

MONDAY		Adoption of agenda and rules and election of officers ⁸ Opening statements ⁹
TUESDAY	a.m. p.m.	Opening statements completed Annual reports: ISU; Chairman on universalisation; Chairman on progress of 'consolidation agenda' and Action Plan for Comprehensive Implementation
WEDNESDAY		Special topic(s) for the year (prepared by one-week MX or working groups or advisory panels) ¹⁰
THURSDAY		Special topic(s) continued
FRIDAY		Special topic(s) completed (possibly with adoption of Chairman's Synthesis or other report on the topic(s) for the year and consideration of draft decisions where a need is identified.)

SECOND WEEK

MONDAY		Accountability Framework sessions
TUESDAY		Accountability Framework sessions completed
WEDNESDAY		Review of BTWC-relevant developments in science and technology (prepared by Scientific Advisory Panel or group of experts)

⁸ Probably minimal at an Annual Meeting in future, compared with a Review Conference (or even the earlier MSPs), but it cannot be assumed that **everything** (agenda, rules and officers) will have been decided in advance by the Seventh Review Conference.

⁹ In the customary order, and including IGOs, IOs and NGOs after States Parties and signatory-only states.

¹⁰ It is assumed that the 2003-2005 and 2007-2010 pattern of allocating one or two special topics to particular years within an intersessional programme will still be wanted after 2011, so the special topic or topics is/are allocated a full three days of Annual Meeting time and as much preparatory work at expert level as necessary within the separate (earlier) week.

THURSDAY	Review of CBMs returns
FRIDAY a.m.	Review of relevant synergies and regime-building developments independent of the BTWC itself
FRIDAY p.m.	Adoption of mainly procedural report ¹¹ and closing statements

Conclusion

22. The adoption of an **Annual Meeting** would greatly enhance the effectiveness of the BTWC as it would enable States Parties to focus on the issues identified in previous Review Conferences and to agree decisions where they identify a need without having to wait until the next Review Conference. It would enable the States Parties to the Convention to build momentum year on year, instead of being limited to only the few aspects of the BTWC identified for the intersessional programme at the previous Review Conference and having to leave consideration of most aspects of the Convention to be considered only at five-year intervals at the Review Conferences.

¹¹ It is assumed that this report will be relatively short and simple and will not seek to emulate the outcome document(s) of a Review Conference.