

Strengthening the Biological Weapons Convention

Briefing Paper No 10 (Second Series)

Towards the BTWC Sixth Review Conference: Making Best Use of the 26 March 2005 Anniversary

December 2003

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Graham S Pearson and Malcolm R Dando

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**TOWARDS THE BTWC SIXTH REVIEW CONFERENCE:
MAKING BEST USE OF THE 26 MARCH 2005 ANNIVERSARY**

by Nicholas A. Sims[†]

Introduction

1. 26 March 2005 will be the thirtieth anniversary of the entry into force of the Biological and Toxin Weapons Convention (BTWC). How can this occasion be best used to help the BTWC recover from the reverses which it suffered in 2001-02 and to prepare the ground for a successful return to the mainstream diplomacy of biological disarmament at the Sixth Review Conference in 2006 -- now only three years away?
2. This Briefing Paper further develops a specific proposal made¹ on 19 August 2003 to the first Meeting of Experts in the light of a more wide-ranging analysis². There is much to be said for 26 March 2005 to be recognised as a **target** date as well as an anniversary, thereby giving it a central place in a coherent approach to the recovery and further strengthening of the Convention.
3. The proposal on 19 August 2003 was made in the context of the first topic -- the adoption of necessary, national measures to implement the prohibitions set forth in the Convention, including the enactment of penal legislation -- which the Meeting of Experts was addressing. It was that BTWC States Parties should **complete** their national implementing legislation by 26 March 2005. This would not only be the thirtieth anniversary of entry into force; it would **also** be almost exactly 25 years from the call for **immediate** action issued by the First Review Conference on 21 March 1980 which, in the Article IV section of its Final Declaration³,

"calls upon all States Parties which have not yet taken any necessary measures in accordance with their constitutional processes to do so immediately."

In this Briefing Paper, this proposal is now extended to call for completion of other agreed commitments beyond national implementing legislation alone.

4. 26 March 2005 should be recognised as a target date by which States Parties should have completed those actions on which they have agreed by **consensus**, which they have long since collectively accepted as **commitments**, and for which the concept of **completion** makes sense. It is equally evident that there are other very important actions, such as compliance with BTWC obligations under Articles I and III, and arguably also Article X.2, which require

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¹London School of Economics and Political Science, Statement by Nicholas A. Sims. Available at <http://www.brad.ac.uk/acad/sbtwc>

²Nicholas A. Sims, *Biological disarmament diplomacy in the doldrums: reflections after the BWC Fifth Review Conference*, *Disarmament Diplomacy* 70 (April/May 2003), pp. 11-18.

³United Nations, *Review Conference 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*, Final Document, Geneva, 3-21 March 1980, BWC/CONF.I/10, 21 March 1980, Part II. p. 7. Available at <http://www.opbw.org>

continual vigilance rather than completion; and there are yet others, such as those under Article X.1, which require States Parties to remain continually alert to new opportunities for peaceful-uses cooperation.

5. This Briefing Paper shows that the concept of completion by 26 March 2005 makes sense in regard to the following consensually agreed actions which are the subject of long-standing BTWC commitments:

- a. national implementing legislation (Article IV)
- b. sharing of legislative and other relevant texts through the UN for purposes of consultation (Article IV)
- c. for non-parties to the Geneva Protocol, ratification or accession to the Protocol (Article VIII)
- d. for parties to the Geneva Protocol, withdrawal of reservations on retaliation (Articles I and VIII)
- e. for non-parties to the Chemical Weapons Convention, ratification or accession to the Convention (Article IX)
- f. CBMs (Articles V and X).

Contributing to strengthening the BTWC regime

6. This approach has the advantage of constituting follow-up to the Final Declarations of the first four Review Conferences (1980⁴, 1986⁵, 1991⁶, 1996⁷), which in itself reaffirms the value of those declarations. It rejects the idea that the new process has superseded an older and inferior review process which can now be consigned to history. On the contrary, it upholds the centrality of the cumulative review process as the mainstream of BTWC diplomacy, to which it is necessary to return in 2006.

⁴United Nations, *Review Conference 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, 3–21 March 1980, Final Document, BWC/CONF.I/10/Part II, 1980, Final Declaration, pp. 6-10. The Final Declaration had been adopted on 21 March 1980. Available at <http://www.opbw.org>

⁵United Nations, *The Second Review Conference 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, 8–26 September 1986, Final Document, BWC/CONF.II/13/Part II, 1986, Final Declaration, pp. 1-11. The Final Declaration had been adopted on 26 September 1986. Available at <http://www.opbw.org>

⁶United Nations, *The Third Review Conference 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, 9–27 September 1991, Final Document, BWC/CONF.III/23/Part II, 1992, Final Declaration, pp.9-47. The Final Declaration had been adopted as BWC/CONF.III/22/Add.2 on 27 September 1991. Available at <http://www.opbw.org>

⁷United Nations, *The Fourth Review Conference 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*, Final Document, Geneva, 25 November - 6 December 1996, BWC/CONF.IV/9, 1996, Part II. Final Declaration, pp. 13-29. The Final Declaration was adopted on 6 December 1996. Available at <http://www.opbw.org>

7. However, this approach does so in a way which cannot be misunderstood or misrepresented, even by those most suspicious of multilateral processes, as embarking on new negotiations or fashioning new agreements. It was suspicions of that kind, however far removed from reality, that constrained the Fifth Review Conference at its resumed session in November 2002 and shaped the restrictive mandate of the new process for 2003-2005.

8. Although not part of the new process, this approach converges with it on the need for "effective action".⁸ It does not cut across the five topics allocated to that process by the Fifth Review Conference or interfere with the corresponding Meetings of Experts and of States Parties. These meetings can remain completely self-contained, if that is how the States Parties continue to interpret them, and subject to all the other restrictions of their November 2002 mandate.⁹

9. Yet implicit in this approach is the preference for a return in 2006 to the review process proper, with its accumulation of extended understandings, procedures and commitments, as the main vehicle (in the continued absence of a legally-binding instrument to strengthen the Convention such as the Ad Hoc Group was working towards from 1995 to 2001) for steering the constructive evolution of the BTWC as a working multilateral treaty that has an increasingly important role to play in achieving international peace and security.

Why completion matters

10. Completion by 26 March 2005 of the actions specified below would have a positive psychological effect. It would provide a common platform from which States Parties could move forward over the following 18 or 20 months to make a success of the Sixth Review Conference, with greater confidence than in the past decade (or even longer) that most of them are taking the BTWC seriously. Admittedly it would not tackle the gravest concerns over non-compliance with Article I. But **only** a few States Parties, and we should be thankful that it **is** only a few, give rise to such concerns. A much larger number fall short in terms of their attentiveness to those actions which remain the subject of legally-binding and politically-binding commitments.

11. At a time when BTWC States Parties are prevented by external pressures from collectively addressing the gravest concerns of non-compliance with Article I, let alone reinforcing the BTWC with stronger compliance measures as a functional substitute for verification, some other index of serious commitment to the BTWC is required. Completion could be the index of commitment, particularly valuable in this era of regrettably limited expectations. It would help stop the BTWC going backwards and would get States Parties collectively into better shape for the next move forwards when external conditions allow that to happen.

Agreed actions in need of completion

⁸United Nations, *Fifth 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, 19 November - 7 December 2001 and 11 - 22 November 2002, Final Document, BWC/CONF.V/17, 2002, para. 18. Available at <http://www.opbw.org>

⁹United Nations, *Fifth 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, 19 November - 7 December 2001 and 11 - 22 November 2002, Final Document, BWC/CONF.V/17, 2002, para. 18. Available at <http://www.opbw.org>

12. The proposal made during the Meeting of Experts on 19 August 2003 was to make 26 March 2005 the target date for completion of one particular agreed action: national implementing legislation. This is something to which States Parties have long been collectively committed, and moreover to a certain standard of scope and effectiveness, as defined in Article IV and through the cumulative text of successive Final Declarations up to 1996. These latter constitute an extended, and authoritatively stated, understanding of the implications of Article IV.¹⁰ Much has been done, albeit not with the immediacy prescribed, by consensus, in 1980; completion is needed.

13. The same can be said of the sharing of legislative and other relevant texts through the United Nations for purposes of consultation (Article IV), and of the call to non-parties to the Geneva Protocol to ratify or accede to that treaty (Article VIII). In regard to the sharing of texts, it will be recalled that the States Parties have already agreed at previous Review Conferences to provide information on national legislation or other measures to implement the Convention -- see, for example, the language agreed at the Fourth Review Conference¹¹ in 1996:

... some States Parties, as requested by the Second Review Conference, have provided to the United Nations Department for Disarmament Affairs information on the texts of specific legislation enacted or other measures taken to assure domestic compliance with the Convention. These States Parties are invited, and all States Parties are encouraged, to provide such information and texts in the future. In this regard the information provided by States Parties in response to the confidence-building measure agreed to at the Third Review Conference entitled "Declaration of legislation, regulations and other measures" is welcomed. In addition, all States Parties are encouraged to provide any useful information on the implementation of such measures.

Moreover, as stated in Briefing Paper No. 6¹², it should be recognised that, as agreed at the Third Review Conference, from 15 April 1992 States Parties, under Confidence-Building Measure E,

*shall be prepared to submit copies of the legislation or regulations or written details of other measures on request to the United Nations Department for Disarmament Affairs or to an individual State Party.*¹³ [Emphasis added]

14. Each State Party can now, therefore, request these details **bilaterally** under the authority of the Third Review Conference, instead of depending solely upon the circulation of texts

¹⁰Graham S. Pearson & Nicholas A. Sims, *Maximizing the Benefits of the Inter Review Process: I: National Implementing Legislation*, University of Bradford, Department of Peace Studies, Briefing Paper No.6 (Second Series), July 2003. Available at <http://www.brad.ac.uk/acad/sbtwc>

¹¹United Nations, *The Fourth Review Conference 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*, Final Document, Geneva, 25 November - 6 December 1996, BWC/CONF.IV/9, 1996, Part II. p. 18. Available at <http://www.opbw.org>

¹²Graham S. Pearson & Nicholas A. Sims, *Maximizing the Benefits of the Inter Review Process: I: National Implementing Legislation*, University of Bradford, Department of Peace Studies, Briefing Paper No. 6 (Second Series), July 2003. Available at <http://www.brad.ac.uk/acad/sbtwc>

¹³United Nations, *The Third Review Conference 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, 9–27 September 1991, Final Document, BWC/CONF.III/23/Part II, 1992, pp.12-13. Available at <http://www.opbw.org>

made available to the United Nations. Although this extension to provide for bilateral requests has not been recorded explicitly in any Final Declaration, it is still one part of the politically binding requirement of CBM 'E'. It therefore represents one of the common understandings which have evolved out of Article IV. This bilateral approach should become more important as States Parties take a greater interest in the status and effectiveness of their own legislation as well as other States Parties' legislation, and whether it is sufficiently strong and comprehensive to contribute to security overall. They can check one another's legislative performance individually, and make their own assessment of its adequacy. The possibility of requesting these details bilaterally could be used to bring diplomatic pressure to bear on any State Party which was thought, by reason of the inadequacy of its national measures, to be leaving open loopholes which bioterrorists or others might exploit to the detriment of everyone's security. To "*be prepared to submit copies of the legislation or regulations or written details of other measures on request*" is to accept that these texts are of legitimate interest to individual States Parties and that their requests are in accord with the common understanding of what Article IV implies for each State Party.

15. Insofar as the call for non State Parties to ratify or accede to the Geneva Protocol is concerned, successive Review Conferences have called upon *those States not yet Parties to the said Protocol to ratify or accede to it at the earliest possible date*.¹⁴ This call is discussed further below (paragraph 24). The three commitments so far identified -- national implementing legislation, sharing of legislative texts, Geneva Protocol ratification or accession -- agreed by consensus as actions which States deemed appropriate to exhort themselves to take as Parties to the BTWC. These commitments all date from 1980 and still await completion.¹⁵

16. To these can be added the collective commitment to withdrawal of the remaining Geneva Protocol reservations on retaliation (Article VIII). This is an extended understanding, authoritatively stated in 1991 and even more plainly and insistently in 1996, of the implications of Article VIII when combined with the irresistible logic of Article I. The language agreed in 1996¹⁶ was as follows:

5. The Conference stresses the importance of the withdrawal of all reservations to the 1925 Geneva Protocol related to the Biological and Toxin Weapons Convention.

6. The Conference welcomes the actions which States Parties have taken to withdraw their reservations to the 1925 Geneva Protocol related to the Biological and Toxin Weapons Convention, and calls upon those States Parties that continue to maintain pertinent reservations to the 1925 Geneva Protocol to withdraw those reservations, and to notify the Depositary of the 1925 Geneva Protocol of their withdrawals without delay.

¹⁴United Nations, *Review Conference 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, 3–21 March 1980, BWC/CONF.I/10, Geneva 1980. p. 8. Available at <http://www.opbw.org>

¹⁵For detailed commentary on the First Review Conference and the origins of these commitments, see Nicholas A. Sims, *The Diplomacy of Biological Disarmament: Vicissitudes of a Treaty in Force, 1975-85*, London: Macmillan; New York: St Martin's Press, 1988, especially pp. 136-139.

¹⁶United Nations, *The Fourth Review Conference 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*, Final Document, Geneva, 25 November - 6 December 1996, BWC/CONF.IV/9, 1996, Part II. pp. 22-23. Available at <http://www.opbw.org>

7. *The Conference notes that reservations concerning retaliation, through the use of any of the objects prohibited by the Biological and Toxin Weapons Convention, even conditional, are totally incompatible with the absolute and universal prohibition of the development, production, stockpiling, acquisition and retention of bacteriological (biological) and toxin weapons, with the aim to exclude completely and forever the possibility of their use.*

Again, much has been done, but it needs completion, in this case by some of the major military powers as well as some less powerful states which have still not taken the necessary legal action to withdraw their reservations or even modify them for consistency with their BTWC obligations.¹⁷

Confidence-building measures (CBMs)

17. CBMs have been awaiting completion since 1986 and, as enhanced and expanded, since 1991. The great day was to have dawned on 15 April 1992. That was the date by which every State Party should have communicated to the United Nations its initial declaration under each CBM of the 1991 set. Only eleven States Parties – fewer than 10% - did so.¹⁸ Thereafter they were to be updated or reaffirmed ('no change') annually.

18. Here the 2005 target would be a 100% response rate on each CBM from each of the 151 States Parties. Admittedly, the CBMs vary in continuing importance and a 100% response rate is in itself no guarantee of quality: the information supplied may be so wide of the mark or full of gaps or lacking in precision (or even credibility) that it engenders little confidence. But a 100% response rate is still something worth aiming for, as a common commitment to be fulfilled. There is also a case for multilateral scrutiny of CBM returns to be properly organised among those States Parties which fulfil their CBM commitments, through a dedicated mechanism for such scrutiny, on an annual basis, as proposed at the Toronto Workshop on CBW (and other disarmament) Treaty Compliance Mechanisms in 1995.¹⁹

19. CBMs have been a politically-binding commitment agreed by the States Parties ever since 1986, and remain much the most-publicised of all their politically-binding BTWC commitments. So response rates are symbolically important, as the most readily available quantitative indicator of the seriousness with which States Parties take the BTWC.

20. Moreover, given that nil returns and 'no change' answers are acceptable, there is little room for most States Parties to complain that CBM declarations are too onerous to make in the first place or too difficult to keep up to date having made their initial declaration under each CBM.

A pause for thought

¹⁷Nicholas A. Sims, *The Evolution of Biological Disarmament*, Oxford: Oxford University Press for SIPRI, 2001, pp. 152-162.

¹⁸Included in UN Doc. DDA/4-92/BWIII (30 April 1992). See Nicholas A. Sims, *The Evolution of Biological Disarmament*, Oxford: Oxford University Press for SIPRI, 2001, pp. 73-74.

¹⁹ See Nicholas A. Sims, *Strengthening compliance systems for disarmament treaties: the Biological and Chemical Weapons Conventions*, in Canadian Council on International Law and The Markland Group (eds.), *Treaty Compliance: Some Concerns and Remedies*, London, The Hague & Boston: Kluwer Law International, 1998, p.136.

21. Just think how much better shape the BTWC would be in if, by 26 March 2005, every State Party had completed its national implementing legislation and shared the relevant texts through the UN, had made returns up to date under each CBM, and had joined the Geneva Protocol; and if no State Party had any Geneva Protocol reservations on retaliation, intentionally or simply by default, still left in place. This is indeed a worthy target for the 30th anniversary of the entry into force of the BTWC. It consolidates the treaty regime, ready for the next advance. There would then be a common platform from which to embark on the long-term strengthening of the BTWC to face further challenges.

What else should be added?

22. So far this Briefing Paper has identified five commitments of long standing -- counting the CBMs as one commitment. What else should be added? In considering this, it is necessary to consider how much priority, if any, should be given to the unfinished business of 21 March 1980 (25 years from which takes us almost exactly to 26 March 2005) over the unfinished business of 26 September 1986, 27 September 1991 and 6 December 1996? Another consideration has to be taken into account in reviewing which actions already agreed under the Article III and Article X sections of the Final Declarations up to 1996 would provide the most reassurance to States Parties, or the best evidence that they are taking the BTWC seriously, and would be manageable as lending themselves to completion in the time available? As always in BTWC diplomacy, any references to Article III and Article X would have to be carefully balanced with one another.

23. One commitment already identified from 1980 in this Briefing Paper is contained in the second part of the following sentence from the Article VIII section of the Final Declaration, concerning the **Geneva Protocol**:

"The Conference calls on those States Parties to the Convention which are Parties to the Protocol to comply strictly with its provisions and those States not yet Parties to the said Protocol to ratify or accede to it at the earliest possible date."

This sentence illustrates well the difference between continuing actions of indefinite duration, on the one hand, and those which permit completion, on the other. To comply strictly with the provisions of the Geneva Protocol requires continual vigilance, especially the obligation *"to exert every effort to induce other States to accede to the present Protocol"*, an obligation to which the BTWC contains no equivalent. It is assumed that for most Geneva Protocol Parties it is easier, although of course even more important, to comply strictly with the obligation to refrain from the use of chemical or bacteriological methods of warfare.

24. But for all States Parties to the BTWC to ratify or accede to the Protocol is an action which can and should be completed. In 1980, when this commitment was agreed, there were 15 States Parties to the BTWC (out of 87) which were not concurrently parties to the Protocol.²⁰ In 2003 there are 31 (out of 150).²¹ The 2003 situation is tabulated below:

BTWC States Parties which are not parties to the Geneva Protocol	BTWC States Parties which have neither signed nor ratified/acceded to the Protocol
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²⁰Nicholas A. Sims, *The Diplomacy of Biological Disarmament: Vicissitudes of a Treaty in Force, 1975-85*, London: Macmillan; New York: St Martin's Press, 1988, p. 139.

²¹*SIPRI Yearbook 2003*, Oxford: Oxford University Press, 2003. See list of States Parties to the Geneva Protocol on p.766 and to the BWC on p.775.

El Salvador -- signed on 17 June 1925	Armenia Bahamas Belize Bosnia and Herzegovina Botswana Brunei Darussalam Colombia Congo Costa Rica Croatia Democratic Republic of Congo Dominica Georgia Honduras Macedonia, Former Yugoslav Republic of Mali Oman Palau San Marino Sao Tome and Principe Seychelles Singapore Slovenia Suriname Timor-Leste Turkmenistan Ukraine Uzbekistan Vanuatu Zimbabwe
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Note: There are 13 States Parties to the Geneva Protocol which are not parties to the BTWC. Nine of these are signatory-only (Central African Republic, Cote d'Ivoire, Egypt, Liberia, Madagascar, Malawi, Nepal, Syria, Tanzania) and the remaining four have neither signed nor ratified/acceded to the BTWC (Angola, Cameroon, Israel, Trinidad and Tobago).

It would be reasonable to expect all of the BTWC States Parties to have acceded to the Protocol -- or, in the case of El Salvador, to have ratified its 1925 signature -- by 26 March 2005. Consequently, this has been included among the commitments of long standing which await completion, as specified earlier in this Briefing Paper.

25. A similarly politically-binding commitment to joining the **Chemical Weapons Convention** (CWC) is contained in the 1996 Final Declaration²² where

²²United Nations, *The Fourth Review Conference 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*, Final Document, Geneva, 25 November - 6 December 1996, BWC/CONF.IV/9, 1996, Part II. p. 23. Available at <http://www.opbw.org>

*"The Conference calls upon all States that have not yet done so to sign and/or ratify the Convention without delay."*²³

This suggests a further item for the list of commitments which ought to be specified for completion by 26 March 2005, unless it is thought preferable to restrict it to those which have been outstanding the longest despite exhortations of immediacy (or "at the earliest possible date") as in the 1980 declaration.

26. On the one hand a long list of desired actions for completion is less likely to be fulfilled. On the other, a list of actions for completion which is itself incomplete may be open to criticism. The lack of universality of the CWC is an aspect of incompleteness which has received particular attention in recent times. Indeed, at the First Review Conference of the CWC in May 2003, the States Parties to the CWC in their Review Document²⁴ stated that:

*The First Review Conference **stressed** the importance of universal adherence by all States to the Convention....*

*The First Review Conference **noted with concern**, however, that there remain a total of 43 States not Party to the Convention, including 25 signatory States and 18 non-signatory States.*

They went on to say that *"The First Review Conference **recommended** that the Council, with the cooperation of the Secretariat, develop and implement a plan of action to further encourage in a systematic and coordinated manner, adherence to the Convention and to assist States Parties ready to join the Convention in their national preparations to implement it."* At the Conference of States Parties on 20 to 24 October 2003, the States Parties approved an action plan on the universality of the Convention and recommended that the Conference of States Parties at its Tenth Session in November 2005 review the implementation of the action plan and take any necessary actions.

27. Moreover, the commitment to joining the CWC agreed by the BTWC States Parties at their Fourth Review Conference in 1996 is also related to the withdrawal of all Geneva Protocol reservations pertaining to retaliation, where (as in almost every case) such reservations make no distinction between BW and CW. There is a relationship of mutual reinforcement between the commitments to joining the Protocol and joining the CWC, and likewise between the commitments to joining the CWC and withdrawing reservations to the Protocol.

28. Consequently, it is concluded that the list of actions for BTWC States Parties completion by 26 March 2005 should indeed include ratification/accession to the CWC and that is why it appears in the list of commitments which await completion, as specified earlier in this Briefing Paper.

²³Accession – which would now for most states be the appropriate action – was not included at this stage because the CWC did not enter into force until 29 April 1997, although by the time of the declaration the 65th instrument of ratification had been deposited (triggering entry into force after 180 days) so the date of the CWC's imminent entry into force was known with certainty.

²⁴Organisation for the Prohibition of Chemical Weapons, Conference of States Parties, *Report of the First Special Session of the Conference of States Parties to Review the Operation of the Chemical Weapons Convention (First Review Conference)*, 28 April -- 9 May 2003, RC-1/5, 9 May 2003. Available at <http://www.opcw.org/docs/rc105.pdf>

Towards the Sixth Review Conference

29. This section of the Briefing Paper examines further how these proposals for completion might be taken forward. It has been argued elsewhere²⁵ that the effort to make a reality of the 26 March 2005 target date would be a first test of any emergent grouping of like-minded states working together with the International Committee of the Red Cross (ICRC) and with non-governmental organisations (NGOs) as 'friends of the Convention' to promote its recovery. Such a convergence of governmental, ICRC and NGO elements working on a new agenda for recovery can be seen as the best hope for extricating the BTWC from the precarious state to which it was reduced by the successive blows it sustained in 2001 and 2002.

30. The way out of the doldrums in which BTWC diplomacy has got stuck will almost certainly involve a convergence of two new developments. One, which is already discernible but has not yet fully taken shape, is a civil society movement which could be built around the BioWeapons Prevention Project (BWPP), which was launched in 2002 and which already involves some key civil society players. Most importantly, potential partners include the medical and scientific communities and their professional associations as well as other civil society players **around the world**, which could complement the Biotechnology, Weapons and Humanity initiative of the ICRC, with its distinctive emphasis on the humanitarian tradition in its repudiation of biological warfare.

31. The other necessary development has not even started yet. A group of key, like-minded, States Parties is needed, to take the lead in defining and promoting among governments a new agenda for the recovery of the BTWC treaty regime. At the technical level this group could provide the core of a draft Final Declaration for 2006; at the political level it could encourage ever widening circles of States Parties to set their sights for the Sixth Review Conference much higher than they did for the Fifth.

32. This new like-minded group would need to span Groups (Eastern, Western, NAM) and regions of the world in order to be sufficiently broad-based and to attain global credibility and wide political acceptability. Although it had been hoped that such a group could have begun to coalesce in the margins of the first Meeting of States Parties on 10-14 November 2003, it has not been evident that any such grouping is forming yet. By November 2003, the ICRC and BWPP initiatives were a year old, and everyone had had time to leave behind the prolonged crisis of the Fifth Review Conference, to complete their reflections on what went wrong in 2001-02, and to gather their thoughts for the future. The Geneva Forum and the Pugwash CBW Study Group, among others, will need to continue their valuable work in providing acceptable auspices under which to bring governmental and non-governmental people together in informal discussions where, as for some years past, ideas can be pooled and proposals refined which may steer the process of recovery.

33. The new process has seen its first Meeting of Experts from 18-29 August 2003 spend a week apiece on topics (i) and (ii), and the corresponding Meeting of States Parties met in November 2003. The BWPP and ICRC were active in the margins during the largely-closed Meeting of Experts, although most regrettably the ICRC was not accorded speaking rights as an international organisation at the opening plenary session when, on BTWC Review

²⁵Nicholas A. Sims, *Biological disarmament in the doldrums: reflections after the BWC Fifth Review Conference*, *Disarmament Diplomacy* 70 (April/May 2003), pp. 11-18.

Conference precedents²⁶, it was rightly expecting to be heard. Six NGOs²⁷ in addition to the BWPP on 19 August 2003 and five NGOs²⁸ in addition to the BWPP on 12 November 2003 were allowed to make statements in the conference room in informal session as they had requested, and as they had done at the Fourth and Fifth Review Conferences. However, nothing resembling a like-minded group seems to have emerged among the delegations of States Parties either in August or in November 2003.

Conclusion

34. It is proposed that the convergence of a like-minded group of governments with the ICRC and NGOs on a new agenda for recovery for the BTWC still offers the best hope for 2006. Setting 26 March 2005 as a target date for the completion of actions on an identifiable set of BTWC commitments already agreed by consensus is not, in itself, part of a new agenda. It has a deliberately more modest ambition: to **consolidate**, rather than to advance. It should be **politically** uncontroversial, even **welcome**, in a climate where all States Parties find themselves invited repeatedly to demonstrate how seriously they take their allegiance to the BTWC. But it could well constitute a first test of the effectiveness of these convergent elements, occupying as it does a central point in the three years' build-up from now to the Sixth Review Conference; and it could provide a common platform from which to move forward.

35. 26 March 2005 falls on a Saturday. A weekend conference, for which UNIDIR and a representative group of NGOs might (as for the 25th anniversary in 2000) provide acceptable auspices, could perhaps be held in Geneva or within easy reach of Geneva to attract the delegations of States Parties.

36. But it would be even better if the Secretary-General of the United Nations, or the BTWC Depositaries, or another group of States Parties, felt able to take the initiative. Such an opportunity deserves to be whole-heartedly embraced by governments. It would be a great pity if they were to feel themselves to be precluded from marking this occasion by too narrow an interpretation of the limit to three weeks in each of the years 2003, 2004 and 2005 imposed in 2002. The meetings which the Fifth Review Conference decided to limit by the 3 weeks x 3 years formula were by no stretch of the imagination celebratory in character. After all, it can be noted that there is but one topic to be addressed in 2005 and hence it would be possible to

²⁶The precedent of an ICRC statement delivered at the opening plenary session had been set on 16 November 1996 by the BTWC Fourth Review Conference and followed by the Fifth Review Conference on 20 November 2001 with an ICRC statement during the general debate. But there had recently been an indefensible denial of speaking rights to the ICRC throughout the general debate (28 April – 1 May 2003) in plenary session of the Chemical Weapons Convention First Review Conference at The Hague.

²⁷The other six NGOs which addressed the Meeting of Experts on 19 August 2003 comprised the Federation of American Scientists, the Stockholm International Peace Research Institute, the Verification Research, Training and Information Centre (VERTIC), and three universities: Bradford (Department of Peace Studies), London School of Economics and Political Science (Department of International Relations) and Maryland (Center for International Security Studies Maryland: CISSM). For a full listing of IGO and NGO activities at the August 2003 Meeting of Experts, see Graham S. Pearson, *The Biological Weapons Convention New Process*, CBW Conventions Bulletin, No. 61, September 2003, pp. 8-14, at pp. 11-12.

²⁸The other five NGOs which addressed the Meeting of States Parties on 12 November 2003 comprised the International Network of Scientists and Engineers for Global Responsibility (INES), the Stockholm International Peace Research Institute, the Verification Research, Training and Information Centre (VERTIC), and two universities: Bradford (Department of Peace Studies), and Southampton (Mountbatten School of Political Studies). See Graham S. Pearson, *The Biological Weapons Convention New Process*, CBW Conventions Bulletin, No. 62, December 2003.

use some of the time already allotted for the business of the BTWC to be used for the proposed consolidation session. If the mandate for the new process is interpreted too narrowly to allow such an imaginative use to be made of the allocated time, there is another model which could be utilised. This is the Ministerial Meeting held in New York on 23 September 1998 when as a result of an Australian initiative, brought to fruition by New Zealand, Ministers and officials from 56 States Parties²⁹ met to endorse a declaration³⁰ that the negotiations for a legally binding instrument to strengthen the BTWC should be completed at the earliest possible date. That ambition was not realised, but despite the changed context of BTWC diplomacy the words at the beginning of this 1998 Ministerial Declaration that:

The Ministers view with deep concern the threat to global and regional security posed by biological weapons. They agree on the importance of strong and urgent international action to ensure the strengthening of the ban on biological weapons.

indicate a consensus that is surely as true today.

37. A weekend conference on 26 and 27 March 2005 could fittingly celebrate thirty years of the BTWC in force and at the same time recognise with satisfaction the **completion** of actions to which the States Parties committed themselves long ago. It would provide a necessary consolidation and facilitate the building of momentum necessary for a successful outcome of the Sixth Review Conference in 2006.

²⁹The States Parties which participated and cosponsored the declaration were Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Czech Republic, Denmark, Fiji, Finland, France, Germany, Greece, Hungary, Indonesia, Iran, Ireland, Italy, Japan, Jordan, Kenya, Kuwait, Luxembourg, Malaysia, Mexico, Netherlands, New Zealand, Norway, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russia, Singapore, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sweden, Switzerland, Thailand, Tonga, Turkey, Ukraine, UK, USA, Uruguay, Zimbabwe. It was also cosponsored by Myanmar, a Signatory State to the BTWC.

³⁰United Nations, *Ad Hoc Group 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*, Twelfth Session, Geneva, 14 September -- 9 October 1998, Working Paper submitted by Australia, BWC/AD HOC GROUP/WP.324, 9 October 1998. Available at <http://www.opbw.org>