

Strengthening the Biological Weapons Convention

Review Conference Paper No 23

An Accountability Framework for the BTWC

June 2010

Series Editors

Graham S Pearson and Malcolm R Dando

Department of Peace Studies, University of Bradford

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AN ACCOUNTABILITY FRAMEWORK 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. Review Conference Paper No. 22² *An Annual Meeting for the BTWC* addressed the fourth item in the above list. This Review Conference Paper addresses the fifth item in the above list:

- d. The development of an accountability framework..

An Accountability Framework

[†] Nicholas A. Sims is a Reader in International Relations in the Department of International Relations at the London School of Economics and Political Science, University of London, Houghton Street, London WC2A 2AE, UK.

¹ Graham 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>

² Nicholas A. Sims, *An Annual Meeting for the BTWC*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 22, June 2010. Available at <http://www.brad.ac.uk/acad/sbtwc>

3. Canada's proposed Accountability Framework³ for the Biological and Toxin Weapons Convention (BTWC) was the single most promising new concept to come to the Sixth Review Conference in 2006. Perhaps inevitably, or at least predictably, the Review Conference cherry-picked the Accountability Framework proposal for its most attractive component parts, and left others behind. Tactically, it was successful in helping Canada, along with other States Parties, achieve its immediate goal of securing an Implementation Support Unit. Strategically, it received less attention than it deserved.

4. The concept of an accountability framework is one that merits further development as it has enormous potential to achieve an effective strengthening of the BTWC. This Review Conference Paper is developed from the ideas that have been elaborated elsewhere.⁴ An accountability framework is key to the constructive evolution of the BTWC treaty regime in the interval between the Seventh and Eighth Review Conferences; and if it is to be agreed at the Seventh Review Conference then States Parties need to be considering how best it might be formulated now in the few months before the Review Conference in 2011.

5. To set the scene, an outline of the concept of an accountability framework is provided.⁵ An Accountability Framework for the BTWC could usefully build on the practice of States Parties reporting on national compliance to the Review Conferences. This practice goes back to 1979: a request from the very first Review Conference Preparatory Committee (PrepCom) in that year generated 27 reports by February 1980 for the First Review Conference to be held the following month. As there were then 87 States Parties, this corresponded to reports from just under a third of all States Parties. Unfortunately this practice of reporting by States Parties has remained, over three decades, somewhat patchy and unsystematic. Some governments report more fully and informatively than others; many, not at all. In 2006 there were only 22 national compliance reports to the Sixth Review Conference from among 155 States Parties, corresponding to less than 15% and half that achieved in 1979, only partly attributable to the advent of concurrent Confidence-Building Measures (CBM) returns from 1987 onwards.

6. Even among those States Parties which report to every Review Conference there is no standard structure or set of categories. Most discouraging of all, perhaps, there is at present no forum for discussion of these national compliance reports which some States Parties have made the effort to offer to their BTWC treaty partners. Review Conferences which do not organise themselves to provide a forum for the consideration of these reports offer little incentive to States Parties to supply them at all, or (if supplied) to put much effort into their compilation.

³ Canada, *An Accountability Framework*, United Nations Sixth 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, 20 November – 8 December 2006, Working Paper BWC/CONF.VI/WP.1, 20 October 2006. Available at <http://www.opbw.org>

⁴ Nicholas A. Sims, *The Future of Biological Disarmament: Strengthening the Treaty Ban on Weapons* (London: Routledge, 2009), Chapter 6 'BWC next steps (1): an accountability framework for organising collective scrutiny'.

⁵ This is developed from Nicholas A. Sims, *Midpoint between Review Conferences: next steps to strengthen the BWC*, *Disarmament Diplomacy* 91 (Summer 2009) pp 44-50, at p 48.

7. This is where Canada's 2006 idea of an accountability **session** within the Annual Meeting may most conveniently be developed – and such a session is included in the indicative Work Programme outlined in Bradford Review Conference Paper No. 22 *An Annual Meeting for the BTWC*⁶. At such a session, or sessions, States Parties would focus squarely on their accountability, to one another in the first instance, and ultimately beyond the state-to-state dimension alone to the wider humanity they represent. The knowledge that their reports would be collectively scrutinised in a forum set aside for the purpose should provide a powerful incentive to compilers to take the practice seriously, and to all States Parties to come prepared to seek and supply clarification as necessary.

8. The basis of an accountability session or sessions would be reports on how the BTWC is being made to work: what each State Party is doing to implement it, obligation by obligation, which means largely (but not exclusively) Article by Article. Using the Articles of the Convention, slightly extended and modified, as the basic building-block of an Accountability Framework has the advantage of using a structure with which governments are already largely familiar and which several have chosen to use in their national compliance reports since 1979. An indicative, not exhaustive, list of questions might help give further shape to the reporting structure, but care would need to be taken not to make the questions so prescriptive as to constrain what should be each State Party's choice of how best to demonstrate compliance with the BTWC in its own unique circumstances.

9. If it is thought impractical, within an accountability session or sessions of manageable length, to scrutinise every State Party's performance every year, there could be a four-year cycle over which their reports would be distributed.

An operational concept

10. A way of operationalising the accountability framework concept so as to even out the volume of reports over the first cycle would be by considering the States Parties in four groups over the years 2012-2015. Each State Party would deliver its full report on national compliance in one year of the four. This would mean that over a four-year cycle, every State Party would have the opportunity to demonstrate its compliance with all parts of the Convention, and that, at the Annual Meeting, the States Parties would engage in collective scrutiny of one another's reports. The Accountability Framework, as here developed, is all about organising that collective scrutiny of performance and undertaking it on a frequent and systematic basis.

Alphabetical Grouping of the States Parties

11. In practice it is realised that not every State Party would take part. However, it cannot be predicted which ones would, and the opportunity has to be open equally to all. Assuming participation is distributed equally across the alphabet, a possible way forward would be to divide States Parties into four groups by English alphabetical

⁶ Nicholas A. Sims, *An Annual Meeting for the BTWC*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 22, June 2010. Available at <http://www.brad.ac.uk/acad/sbtwc>

order and to invite the States Parties in each group to report in a different year within the first cycle, thus:

2012	Afghanistan-Denmark	currently 41 States Parties
2013	Dominica-Libya	currently 41 States Parties
2014	Liechtenstein-Sao Tome & Principe	currently 41 States Parties
2015	Saudi Arabia-Zimbabwe	currently 40 States Parties

12. Examination of this division into four groups shows that it produces a good distribution of the JACKSNNZ⁷ States Parties over the four years. This is an attractive distribution which is important because the JACKSNNZ are the States Parties most likely to welcome an Accountability Framework in view of its original provenance and the leading role of the JACKSNNZ in 2006 in promoting constructive evolution of the BTWC through more sharply focussed and deliberately organised cooperation (on a number of BTWC issues from CBMs to secretariat and from national implementation to universalisation). Indeed, the Canadian proposal was the first in a set of national papers produced by each of the JACKSNNZ in consultation with the others shortly before the Sixth Review Conference.

13. Under the proposed division, Australia and Canada would report in 2012; Japan and Korea (Republic of) in 2013; New Zealand and Norway in 2014; Switzerland in 2015.

14. Among the other, **non-JACKSNNZ**, States Parties which might reasonably be expected to report, judging by their past participation in national compliance reporting and/or making CBM returns, or their prominent roles in the history of the BTWC and its reviews, the proposed distribution over the first cycle would include:

2012	Argentina, Austria, Brazil, China, Cuba
2013	France, Germany, Hungary, India, Iran, Italy
2014	Malaysia, Pakistan, Poland, Russia
2015	South Africa, Sweden, United Kingdom, United States

Locating the concept within the *treaty architecture* of the BTWC

15. In this section of the Review Conference Paper, the Accountability Framework concept is considered in relation to the existing *treaty architecture* of the BTWC.

⁷ The JACKSNNZ is an informal grouping of seven BTWC States Parties which takes its name from their initial letters: Japan, Australia, Canada, Korea (Republic of), Switzerland, Norway, New Zealand. All are non-EU and non-nuclear-weapon members of the Western Group. They emphasise the flexibility of their grouping and their preference for loose coordination, as opposed to tight control, of policies and papers which remain national for each.

There are three possible options: regarded as being within the category of *appropriate international procedures* under Article V, or as a *functional substitute for verification*, or as a complement or reinforcement to the BTWC's CBM regime. And, in any event, the accountability framework may well add value to the Convention.

(1) *appropriate international procedures under Article V*

16. This BTWC term occurs in the context of *consultation and co-operation*. Article V of the Convention states that:

The States Parties undertake to consult one another and to co-operate in solving any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention. Consultation and co-operation pursuant to this Article may also be undertaken through appropriate international procedures within the framework of the United Nations and in accordance with its Charter.

The Fourth and Sixth Review Conferences have added the extended understanding that Article V provides an appropriate framework for consultation and co-operation **and to make any request for clarification**, language which interestingly enough brings Article V even closer to one of the purposes of the Accountability Framework.

17. One *appropriate international procedure* under Article V was explicitly identified in 1980 and elaborated in 1986 and 1991. This was the contingency mechanism whereby any State Party could request a consultative meeting open to all States Parties at expert level. On the only occasion on which it has been invoked, by Cuba in 1997, there was an Informal and then a Formal Consultative Meeting (FCM) followed up by submissions of expert views by States Parties and meetings of the FCM's Bureau until the procedure was completed with a letter from the FCM Chairman (UK Ambassador Ian Soutar) to all States Parties to which were annexed all the expert views submitted.⁸

18. However, *appropriate international procedures* under Article V are not limited to this one contingency mechanism. Other procedures have yet to be identified. In order to qualify under Article V they have to meet three conditions: they must

- exist within the framework of the United Nations; and
- be in accordance with its Charter; and
- enable States Parties to undertake consultation and co-operation (and clarification) in solving any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention.

19. In 1980-82 the main alternative contenders, too radical for the First Review Conference, were a Consultative Committee of Experts (either on the *contingency*

⁸ Nicholas A. Sims, *The Evolution of Biological Disarmament*, SIPRI Chemical & Biological Warfare Studies 19 (Oxford: Oxford University Press, 2001), pp 31-50.

mechanism model of the 1977 En-Mod Convention⁹, as set out in its Article V.2 and Annex, or, more ambitiously, as the continuously available body favoured by Sweden and the Netherlands in the En-Mod negotiations of 1976)¹⁰ or the *flexible, objective and non-discriminatory procedure to deal with issues concerning compliance with the Convention* which the UN General Assembly eventually recommended on 13 December 1982 in adopting the Swedish Resolution¹¹. But in 2011 we need not be bound by the alternatives proposed thirty years ago. We can consider afresh quite different *appropriate international procedures* which are still consistent with the Article V criteria.

20. The Accountability Framework is consistent with all three criteria. It would exist within the framework of the United Nations as do all meetings of BTWC States Parties, assembling as they always have done in the Palais des Nations, timetabled and budgeted and serviced on a UN basis by the Office of Disarmament Affairs. The concept fits well within the UN Charter: if a reference point is required, the whole of Article I (Purposes) of the Charter would surely suffice. And the Accountability Framework would certainly enable States Parties to undertake consultation and co-operation (and clarification) in solving problems. Where it differs from earlier proposals for Article V procedures is, first, in its point of departure, starting from the working life of the Convention where States Parties seek to emulate one another in finding ways to demonstrate their compliance, not from crisis behaviour once a specific compliance concern has arisen and escalated from the bilateral to the multilateral mode of Article V; second, in exploiting the full range of Article V's very broad formulation of scope, not confining it to crisis-laden notions of non-compliance narrowly understood.

21. The challenge to all BTWC States Parties is continually to demonstrate their compliance: to devise transparency and other measures which will persuade other parties that they are engaged in a coherent pattern of peaceful activity and that their compliance is full and genuine. It is hard to prove a negative, but that is essentially what the BTWC (like the CWC) demands of its States Parties.¹²

22. The Accountability Framework as proposed in this Review Conference Paper is a new approach to *appropriate international procedures* quite different from those envisaged earlier, but it is no less valuable for that. In relation to the existing procedures under Article V it would be less adversarial than the Consultative Meeting contingency mechanism but more systematic, and explicitly multilateral, than individual (bilateral) demarches. It would enable BTWC parties *to demonstrate their own compliance with greater certainty and credibility and to learn more about the*

⁹ En-Mod is an unofficial abbreviation of the Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques, negotiated in a working group of the Conference of the Committee on Disarmament in 1976. It was opened for signature on 18 May 1977 and entered into force on 5 October 1978.

¹⁰ 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), pp 168-225.

¹¹ GA Res. 37/98C on *Chemical and biological weapons*.

¹² Nicholas A. Sims, *Verifying biological disarmament: towards a Protocol and Organisation*, in Trevor Findlay (ed), *Verification Yearbook 2000* (London: Verification Research, Training and Information Centre, 2000) pp 87-99.

*compliance of other States Parties*¹³ and to do so on an egalitarian basis available to all without exception. It proceeds on the basis of equality of scrutiny, as the Convention itself embodies equality of obligation. And it relies upon a recognition of the value of diffuse reciprocity, example and emulation. This is a mode of multilateral consultation and cooperation, consistent with the criteria in Article V, which the BTWC could with benefit adopt for the next stage in its constructive evolution. Hence its characterisation as a *next step* for the Seventh Review Conference to set in train.

(2) *a functional substitute for verification*

23. One way – not the only way – of locating an Accountability Framework within the *treaty architecture* **may** be to regard it as a functional substitute for verification, in so far as such a categorisation helps illuminate one aspect of the BTWC.

24. The origin of this concept lies in the United Kingdom Working Paper on Microbiological Warfare¹⁴ and the ministerial statement accompanying its submission to the Eighteen Nation Disarmament Committee on 6 August 1968:

*While we cannot offer a fully effective system of verification and we believe it beyond the wit of man to devise one, **we can provide arrangements which should satisfy States**, given the intractable nature of the problem, that they will not be exposing themselves to unacceptable risks.*¹⁵ [Emphasis added.]

These arrangements did not add up to a verification system: nor was it ever claimed that they could. The United Kingdom ministerial statement had, immediately before the sentence just quoted, said bluntly that for a BW treaty no verification was possible in the usual sense of the word as used in the negotiations of the 1960s. But it could be argued that individually, and in combination, the arrangements proposed by the UK in 1968 might perform functions for the BTWC which could be seen as resembling **some** of the functions attributable to a system of verification.

25. Most regrettably, however, as was noted in 2000¹⁶:

Some of the most important components were discarded in the US-Soviet negotiations in April-August 1971, which radically diluted the UK concept of a BWC. Nevertheless, enough survived to endow the Convention with the rudiments of a compliance regime to support prohibitions in Articles I, II and III.

¹³ Nicholas A. Sims, *Verifying biological disarmament: towards a Protocol and Organisation*, in Trevor Findlay (ed), *Verification Yearbook 2000* (London: Verification Research, Training and Information Centre, 2000) pp 87-99.

¹⁴ United Kingdom, *Working Paper on Microbiological Warfare*, ENDC/231.

¹⁵ Statement by F.W.Mulley, Minister of State at the Foreign Office, to the Eighteen Nation Disarmament Committee, 6 August 1968 (ENDC/PV.387).

¹⁶ Nicholas A. Sims, *Verifying biological disarmament: towards a Protocol and Organisation*, in Trevor Findlay (ed), *Verification Yearbook 2000* (London: Verification Research, Training and Information Centre, 2000) pp 87-99.

There were four functional substitutes for verification that survived negotiation in 1971. They can be summarised as:

- *national implementation (Article IV)*
- *consultation (Article V)*
- *complaint (Article VI)*
- *assistance (Article VII)*

Articles IV-VII have evolved through the declarations of BWC Review Conferences into the first layer of a compliance regime.

26. Looking back at this idea of *the first layer of a compliance regime* it is recognised that its evolution was patchy. It comprised the accumulation of legislative texts and related acts of national implementation under Article IV and the contingency mechanism identified as an *appropriate international procedure* under Article V, but nothing under Articles VI and VII which remained untouched and subject to much less commentary let alone evolution through Review Conferences.

27. If that was *the first layer of a compliance regime*, the second layer was the regime of Confidence-Building Measures (CBMs), agreed in 1986 and extended in 1991. In the article in 2000, the CBM regime was not seen as a functional substitute for verification but rather as a new approach altogether: *the first new approach was transparency in legitimate activity.*¹⁷

28. This new approach found favour at a time (1986-1991) when there was a burgeoning of scientific, academic and even, albeit to a lesser extent, political interest in the possibility of belatedly adding a system of verification to the BTWC, but there was then equally no certainty that this would ever happen. CBMs may have been seen by some States Parties as precursors to verification; but by most, they were regarded as being worthwhile in their own right as building confidence among BTWC States Parties regardless of whether verification provisions would eventually be added or not. This last point is key to the survival of CBMs through the disagreements over verification which the BTWC experienced subsequently peaking in the Ad Hoc Group in 2001. Some States Parties which disagreed with one another over the verifiability of the BTWC were united in honouring their CBM commitments, while others ignored those commitments. The pattern of CBM returns did not run along a fault line of pro- and anti-verification States Parties.

29. The Accountability Framework, however, may be seen as a functional substitute for verification giving greater substance to the original elements or first layer of a BTWC compliance regime.¹⁸ It may do so in three ways.

¹⁷ Nicholas A. Sims, *Verifying biological disarmament: towards a Protocol and Organisation*, in Trevor Findlay (ed), *Verification Yearbook 2000* (London: Verification Research, Training and Information Centre, 2000) pp 87-99.

¹⁸ On the notion of regimes (or sectors) of the BTWC including a multi-layered or multi-modal compliance regime, with the original elements comprising the first layer or Mode A of this regime of

30. First, national accountability reporting, building on the compliance reports that a minority of States Parties have been supplying quinquennially since the first 1979 PrepCom request, can be seen as a more systematic approximation to the *declarations* aspect of verification, but on a strictly voluntary basis and with unfettered freedom for each government to decide what it chooses to report on and in how much detail. How closely national accountability reporting could ever approximate to the *declarations* aspect of verification would depend upon how fully governments reported and how many took part. An Accountability Framework might promote this mode of reporting and draw more governments into it in a spirit of emulation and a wish to place the evidence of their own compliance on record.

31. Second, within an Accountability Framework the collective scrutiny of compliance is organised around accountability reports, the sessions at the Annual Meetings and follow-up. If States Parties so choose, they can cooperate within the Accountability Framework to clarify concerns, resolve ambiguities and allay suspicions, where they can be allayed. How questions and answers are handled determines, in large measure, the usefulness of the procedure. Governments at the question-and-answer stage can use the Accountability Framework to be amicable and cooperative, or antagonistic and confrontational. Here they replicate the range of options contained within a verification system, but again, as with the declarations aspect of verification, on a strictly voluntary basis.

32. Third, follow-up to the organisation of systematic collective scrutiny might include invitations to undertake *visits* for clarification, fact-finding or other purposes, again replicating one aspect of a verification system.

33. Much will depend on participation. A multilateral treaty relies on an imperfect, diffuse reciprocity; but the Accountability Framework will flourish only if some important reciprocities are evident. The more prominent these relationships of reciprocity among the treaty partners are seen to be, the nearer the Accountability Framework will come to offering – among other things – a functional substitute for verification.

(3) a complement or reinforcement to the BTWC's set of Confidence-Building Measures (CBMs)

34. The BTWC's set of CBMs, named as such since 1987, had their origins in the First Review Conference (March 1980) but became a distinct set only at the Second Review Conference (September 1986) where the first four cooperative measures were agreed as politically-binding commitments recorded in its final declaration. Their modalities were finalised by the Ad Hoc Meeting of Experts held as an appendix to the Second Review Conference in 1987. The Third Review Conference in 1991 enhanced and expanded the CBMs to the state in which we have them today, setting 15 April 1992 as the first reporting date under the current scheme.

compliance, see Nicholas A. Sims, *The Evolution of Biological Disarmament*, SIPRI Chemical & Biological Warfare Studies 19 (Oxford: Oxford University Press, 2001), pp 171-174.

35. The Seventh Review Conference is mandated by the Sixth to give them a comprehensive review in 2011. By then they will have stayed unchanged for twenty years. In this Review Conference Paper, the assumption is made that the Seventh Review Conference will decide to maintain a set of CBMs together with whatever improvements can be agreed, on a similar basis of annual returns to what we have now, and that changes are more likely to be made in the detail of the information requested and in the processes of collation, transmission and exchange, and possibly even their accessibility, than in the fundamental structure of the CBM scheme.

36. An Accountability Framework could usefully **complement** the CBMs by enabling States Parties to demonstrate compliance in areas outwith the scope of the CBMs, unconstrained by the forms on which CBM returns are required to be submitted. Activities in compliance with Article X are one example, activities in compliance with Article III another. Plentiful examples are generated by the whole area of national implementation activity pursuant to Article IV **other** than the legislation reportable currently as three yes/no box-ticks under CBM 'E' unchanged from 1991. States Parties may well have awareness-raising, educational and informational activities to report as evidence of how they are complying with Article IV.

37. Furthermore, States Parties which join the 1925 Geneva Protocol or, if already party to it but with a reservation purporting to retain a right of retaliation with BW, withdraw that reservation are acting in accordance with Article VIII as interpreted in the extended understandings recorded by the Review Conferences in their final declarations, most forcefully in 1996 and 2006. They will rightly want to announce what they have done, or report progress towards doing it, but cannot readily do so under the present CBM scheme. Again the Accountability Framework, in giving them this opportunity, complements the CBMs.

38. In those areas for which CBMs do exist, or will exist after 2011, if further CBMs are adopted in addition to those of 1986 and 1991, the Accountability Framework is likely to provide useful **reinforcement**. Officials engaged in collating information and drafting CBM returns in a national government would have an incentive to complete the forms in the knowledge that the representatives of their government would be using this along with other information when accounting to their treaty partners; it might be subjected to the organised scrutiny of the BTWC States Parties and they might have to supply clarifications or answer other questions in the context of the Accountability Framework. The officials' awareness of collective scrutiny would constitute an incentive to present information which is likely to be read and discussed, in at least one of two possible fora, which has not been the case with national compliance reporting or CBM returns in the past.

39. The Accountability Framework would also encourage punctual submission of the annual CBM return but there would still be room for other information, outside the area of overlap, to be given under the rubric of accountability reporting.

40. The question can be asked as to whether the annual collective scrutiny which is at the heart of the Accountability Framework should be extended to CBMs; and, if so, how this should be done. An Accountability Session (or sessions) is needed in its own right, while letting the Annual Meeting of States Parties give space separately to

the discussion of CBM returns. Proposals for the improvement of the CBM mechanism should, in any case, continue to be made ready for the Seventh Review Conference – for example through the series of 2009-10 workshops organised by the Geneva Forum under the sponsorship of the governments of Germany, Norway and Switzerland – on the assumption that the CBM and Accountability Framework mechanisms will be kept separate to run in parallel at least up to the Eighth Review Conference in 2016.

The Next Steps

41. In order to take the Accountability Framework forward at the Seventh Review Conference, the next step would be for a State Party – or a group of like-minded States Parties such as the JACKSNNZ group – to prepare and circulate a paper to the States Parties of the BTWC during the coming year. After all, the originally appointed Chairman¹⁹ for the MX and MSP in 2010, in his letter of 25 February 2010 to the States Parties²⁰, 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 seminars and other events to begin considering options for 2011, including on the margins of the Meeting of Experts and Meeting of States Parties.

The Chairman subsequently further emphasised this in his Regional Group Meetings on 29/30 March 2010²¹ when he 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*.

42. Such a paper on the Accountability Framework might usefully include some consideration of the language that might be included in the Final Document of the Seventh Review Conference. This might be a section entitled *Accountability*

¹⁹ The nomination of Ambassador Carlos Portales of Chile as Chairman for the 2010 meetings was approved at the Meeting of States Parties in December 2009. At the Regional Group meetings (see note 21) in March, Ambassador Portales said that he would no longer be in Geneva after 14 May 2010 and that the intention was that his successor as Ambassador would be appointed as Chairman.

²⁰ 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 Portales 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)

²¹ 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+2930+M arch.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/EFCF26EC708AB682C12576F600527FF1/$file/Chairman+talking+points+group+meetings+2930+March.pdf)

Framework that could appear in *Part III. Decisions and Recommendations* and be along the following lines:

Accountability Framework

The Conference noting their Solemn Declaration in which they have reaffirmed

(iv) Their determination to comply with all their obligations undertaken pursuant to the Convention and their recognition that States Parties not in compliance with their Convention obligations pose fundamental challenges to the Convention's viability, as would use of bacteriological (biological) weapons by anyone at any time;

recognise that an Accountability Framework would greatly enhance confidence in compliance with the Convention by all States Parties. Within this framework information provided by States Parties regarding their compliance with all provisions of the Convention shall be considered by the Annual Meeting of States Parties in an accountability session or sessions at which clarification of information provided may be sought and supplied as necessary. This consideration during the intersessional period prior to the next Review Conference shall be applied to approximately one quarter of the States Parties each year according to a schedule to be prepared by the ISU and approved by the President of the Seventh Review Conference, and such States Parties shall be invited to submit information regarding their compliance with all provisions of the Convention prior to their consideration at the Annual Meeting.

Conclusions

43. It is suggested in this Review Conference Paper that the Accountability Framework **does** fit into each of the three categories suggested, within the *treaty architecture* of the BTWC. It **can** be regarded as (1) an appropriate international procedure under Article V, as (2) a functional substitute for verification, and as (3) a complement and reinforcement to the BTWC's set of CBMs.

44. Ultimately, however, the Accountability Framework concept as now developed will stand or fall by its usefulness in practice rather than its categorisation in theory. So, for those States Parties trying to make the BTWC work better, it does not matter whether it can, or cannot, be allocated to a particular slot within the *treaty architecture*.

45. The test of usefulness in practice is one the Accountability Framework appears to be well placed to pass. Historically much of the frustration and scepticism which the BTWC has generated, or with which it has been surrounded, has had to do with uncertainty. Where uncertainty prevails, no one can be sure of others' compliance. Attempts by some States Parties to hold others accountable have been, when not merely rhetorical, unsatisfactory and inconclusive. There are several possible explanations for such a state of affairs but at least part of it can be attributed to the

lack of an organised forum for collective scrutiny of the performance of all States Parties by all States Parties.

46. With information provided regularly by States Parties to demonstrate their compliance comes the possibility of collective scrutiny and clarification as necessary of the information so provided at the Annual Meeting of States Parties.

47. A State Party should welcome the opportunity to present in a dedicated forum an account of what it is doing to implement each applicable provision of the BTWC. National compliance reporting from 1979 to 2006 was not only infrequent but patchy and unsatisfactory because the first six Review Conferences did not organise themselves in such a way as to allow time for the compliance reports to be discussed. A key point of the Accountability Framework is that it is systematic and involves regular reporting which is to be subjected to collective scrutiny. This gives substance to the principle of accountability and the practice of reciprocity among treaty partners.

48. It is recommended that a State Party or a group of States Parties who wish to see an Accountability Framework taken forward should prepare and circulate a paper to the States Parties of the BTWC during the coming year.