

The Central Importance of Legally Binding Measures for the Strengthening of the Biological and Toxin Weapons Convention (BTWC)

GRAHAM S. PEARSON

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Weapons of Mass Destruction Commission
Postal address: SE-103 33 Stockholm, Sweden
Visitors' address: Regeringsgatan 30–32
E-mail: secretariat@wmdcommission.org
Website: www.wmdcommission.org

The Central Importance of Legally Binding Measures for the Strengthening of the Biological and Toxin Weapons Convention (BTWC)

Graham S. Pearson
Department of Peace Studies, University of Bradford

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Executive Summary

1. The Biological and Toxin Weapons Convention (BTWC) which entered into force in 1975 is the key multilateral instrument that totally prohibits the development, production, stockpiling or otherwise acquiring or retention of biological and toxin weapons. There are currently 152 States Parties and 16 Signatory States. This paper sets out the central role of the Convention and its prohibitions in preventing the development and acquisition of biological weapons.

2. It then outlines the extended understandings that the States Parties to the BTWC have agreed at successive Review Conferences thereby reaffirming the prohibition norm and the comprehensiveness of the scope of the Convention. It examines the steps taken at these Review Conferences to address compliance concerns through a consultative procedure and the politically binding submission of annual confidence-building measures.

3. In the decade from 1991 to 2001 the States Parties agreed to examine measures to strengthen the effectiveness and improve the implementation of the Convention. In 1992 and 1993 an Ad Hoc Group of Governmental Experts, known as VEREX, examined potential verification measures from a scientific and technological viewpoint. At the Special Conference in 1994, the States Parties considered the Final Report of VEREX and established a further Ad Hoc Group to negotiate a legally binding instrument to strengthen the effectiveness and improve the implementation of the Convention. These negotiations were within sight of being successfully completed in 2001 when at the eleventh hour, the United States rejected the approaches being taken to strengthen the BTWC and plunged the Convention into crisis.

4. The Review Conference in 2001 had to be suspended for 12 months and at its resumption in 2002 failed to agree a Final Declaration as it was only able to agree that the States Parties would meet annually to discuss five specified topics in the years between the Fifth and Sixth Review Conferences. The first such meeting in 2003 failed to achieve its mandate of promoting effective action. It is evident in 2004, two years before the Sixth Review Conference in 2006, that States Parties are still concerned about the termination of the Ad Hoc Group negotiations at the behest of the United States. There is a need for States Parties to consider *now* how to ensure a successful outcome to the 2006 Review Conference and how to strengthen the effectiveness and improve the implementation of the Convention. This paper proposes an approach that could be adopted should there be no indications of a change in the policy of the US administration which

currently favours national rather than international or multilateral action to ensure that biological and toxin weapons are indeed totally prohibited.

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THE CENTRAL IMPORTANCE OF LEGALLY BINDING MEASURES FOR THE STRENGTHENING OF THE BTWC

by Graham S. Pearson *

Introduction

1. The Biological and Toxin Weapons Convention (BTWC) was negotiated in the late 1960s and early 1970s being opened for signature on 10 April 1972 and entering into force on 26 March 1975. The BTWC totally prohibits the development, production, stockpiling or otherwise acquiring or retention of biological and toxin weapons. It was the first Convention to totally prohibit an entire class of weapons. This paper sets out the central role of the Convention and its prohibitions in preventing the development and acquisition of biological weapons. It then goes on to outline the developments during the decade from 1991 to 2001 when the States Parties agreed to examine measures to strengthen the effectiveness and improve the implementation of the Convention. These negotiations were within sight of being successfully completed in 2001 when at the eleventh hour, the United States rejected the approaches being taken to strengthen the BTWC and plunged the Convention into crisis. The Review Conference in 2001 had to be suspended for 12 months and then failed to agree a Final Declaration and was able to agree a modest new process under which the States Parties would meet to discuss five specified topics in the years between the Fifth and Sixth Review Conferences.

2. This paper sets the scene for the regime to totally prohibit biological and toxin weapons and examines this in the context of the forthcoming Sixth Review Conference in 2006. It sets out the vital importance of a successful outcome from this Review Conference and explores how this might be achieved together with a resumption of the negotiations to strengthen the BTWC regime through a legally binding instrument.

The Biological and Toxin Weapons Convention

3. The central prohibition of the BTWC is in Article I under which:

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

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

(2) Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict. [Emphasis added]

* Graham S. Pearson is Visiting Professor of International Security, Department of Peace Studies, University of Bradford, Bradford, West Yorkshire BD7 1DP, UK. Previously he was Director General and Chief Executive of the Chemical and Biological Defence Establishment, Porton Down, Salisbury, UK.

The words in bold are the “general purpose criterion” which ensures that all biological and toxin weapons – past, present and future – are prohibited under the Convention.

4. Other key elements of the BTWC are Article III which obliges States Parties **not** to transfer biological or toxin weapons

Each State Party to this Convention undertakes not to transfer to any recipient whatsoever, directly or indirectly, and not in any way to assist, encourage, or induce any State, group of States or international organizations to manufacture or otherwise acquire any of the agents, toxins, weapons, equipment or means of delivery specified in article I of this Convention.

and Article IV which requires all States Parties to implement national measures to implement the Convention:

Each State Party to this Convention shall, in accordance with its constitutional processes, take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition, or retention of the agents, toxins, weapons, equipment and means of delivery specified in article I of the Convention, within the territory of such State, under its jurisdiction or under its control anywhere.

Although there are no detailed provisions for verification of compliance with the Convention, there are provisions in Article V for the States Parties to consult about concerns and problems which may arise in relation to the Convention and in Article VI for States Parties to bring matters relating to a breach of the obligations under the Convention to the attention of the Security Council:

Article V

The States Parties to this Convention undertake to consult one another and to cooperate 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 Cooperation 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.

Article VI

(1) Any State Party to this convention which finds that any other State Party is acting in breach of obligations deriving from the provisions of the Convention may lodge a complaint with the Security Council of the United Nations. Such a complaint should include all possible evidence confirming its validity, as well as a request for its consideration by the Security Council.

(2) Each State Party to this Convention undertakes to cooperate in carrying out any investigation which the Security Council may initiate, in accordance with the provisions of the Charter of the United Nations, on the basis of the complaint received by the

Council. The Security Council shall inform the States Parties to the Convention of the results of the investigation.

5. Another important provision relating to cooperation and development is in Article X of the Convention:

(1) The States Parties to this Convention undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes. Parties to the Convention in a position to do so shall also cooperate in contributing individually or together with other States or international organizations to the further development and application of scientific discoveries in the field of bacteriology (biology) for prevention of disease, or for other peaceful purposes.

(2) This Convention shall be implemented in a manner designed to avoid hampering the economic or technological development of States Parties to the Convention or international cooperation in the field of peaceful bacteriological (biological) activities, including the international exchange of bacteriological (biological) agents and toxins and equipment for the processing, use or production of bacteriological (biological) agents and toxins for peaceful purposes in accordance with the provisions of the Convention.

6. Other Articles include provision for the Depositary Governments for the Convention to be the Soviet Union (now the Russian Federation), the United Kingdom and the United States and in Article XII the requirement for Review Conferences at five year intervals:

Five years after the entry into force of this Convention, or earlier if it is requested by a majority of Parties to the Convention by submitting a proposal to this effect to the Depositary Governments, a conference of States Parties to the Convention shall be held at Geneva, Switzerland, to review the operation of the Convention, with a view to assuring that the purposes of the preamble and the provisions of the Convention, including the provisions concerning negotiations on chemical weapons, are being realized. Such review shall take into account any new scientific and technological developments relevant to the Convention.

Review Conferences

7. Review Conferences have been held at five year intervals – the first in 1980, the second in 1986, the third in 1991 and the fourth in 1996. At each of these, the States Parties have agreed Final Declarations which have provided valuable reaffirmations and extended understandings of the provisions of the Convention. The fifth Review Conference held in 2001 and suspended until 2002 failed to agree a Final Declaration because of disagreement between States Parties in regard to the then ongoing negotiations of a legally binding instrument to strengthen the effectiveness and improve the implementation of the Convention.

8. In this section, developments arising from the first four Review Conferences are first outlined and then where appropriate summarised in tabular form as this shows how the extended understandings which reinforce the norm and strengthen the BTWC regime have developed.

Article I

9. This Article is the central prohibition of the BTWC. At the successive Review Conferences particular attention has been focused on compliance with the obligations of Article I and on the implications for Article I of scientific and technological developments. These are considered in turn here.

10. Compliance with Article I. The First Review Conference in 1980 was overshadowed by the reports of an anthrax release at Sverdlovsk in April 1979 which had resulted in a number of deaths. Charles Flowerree, Head of the US Delegation, had on the final day of the Review Conference stated that the US Government had initiated consultations with the Soviet Union under Article V of the Convention "which raised the question whether a lethal biological agent had been present in 1979 in the Soviet Union in quantities inconsistent with the provisions of the Convention."¹ Ambassador Issraelyan, heading the Soviet Union delegation had responded saying that "The Conference had been successful despite the tension resulting from a recent campaign by Western mass media. That campaign, together with statements such as that just made by the United States delegation, constituted an attempt to cast doubt on the Soviet Union's compliance with the Convention. ... The incident in 1979 referred to by the United States delegation had in fact resulted from an epidemic caused by the consumption of infected meat which had not been subjected to normal inspection before sale: it in no way reflected on the Soviet Union's compliance with the Convention."²

11. There was no reflection of this in the Final Declaration³ which in its Article I section simply focused on the scope of the Convention and stated that:

The Conference notes the importance of Article I as the Article which defines the scope of the Convention and reaffirms its support for the provisions of this Article.

12. The Second Review Conference in 1986 saw the United States in a statement⁴ in the General Debate saying that "it believed the Soviet Union had continued to maintain an offensive

¹ United Nations, 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, *Summary Record of the Twelfth Meeting*, BWC/CONF.I/SR.12, 25 March 1980, p.3. Available at <http://www.opbw.org>

² United Nations, 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, *Summary Record of the Twelfth Meeting*, BWC/CONF.I/SR.12, 25 March 1980, p.5. Available at <http://www.opbw.org>

³ United Nations, 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, *Final Declaration*, BWC/CONF.I/10, Part II, p.6, Geneva, 1980. Available at <http://www.opbw.org>

⁴ United Nations, Second 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

biological warfare programme and capability and had been involved in the production and use of toxins for hostile purposes in Laos, Kampuchea and Afghanistan." It also said that the United States had sought to make use of the consultative process provided for in Article V of the Convention with the Soviet Union "concerning the 1979 outbreak of anthrax in that country, Soviet involvement in the production, transfer and use of mycotoxins, and the Soviet Union's maintenance of an offensive biological warfare programme." The Soviet Union in its statement⁵ during the General Debate stated that "The Soviet Union scrupulously observed its obligations under articles I, II, III and IV of the Convention. It did not possess any bacteriological agents or toxins, weapons, equipment or means of delivery. It had never transferred such weapons to allied States or third countries nor provided information on their development. It had no stockpiles of weapons of that kind outside its territory and did not carry out any development of such weapons on the territories of other States."

13. This was reflected in the Final Declaration⁶ of the Second Review Conference in 1986 in its section on Article I which noted that:

The Conference notes statements by some States Parties that compliance with Articles I, II and III was, in their view, subject to grave doubt in some cases and that efforts to resolve those concerns had not been successful. The Conference notes the statements by other States Parties that such a doubt was unfounded and, in their view, not in accordance with the Convention. The Conference agrees that the application by States Parties of a positive approach in questions of compliance in accordance with provisions of the Convention was in the interest of all States Parties and that this would serve to promote confidence among States Parties.

14. At the Third Review Conference in 1991 this was further developed in the Final Declaration⁷ which in the Article I section stated:

The Conference emphasizes the vital importance of full implementation by all States parties of all provisions of the Convention and expresses concern at statements by some States parties that compliance with Articles I, II and III has been, in their view, subject to grave doubt in certain cases and that efforts since the Second Review Conference to resolve these problems have not been successful. The Conference agrees that the application by States parties of a positive approach in questions of compliance in accordance with the provisions of the Convention is in the interest of all States parties

Destruction, *Summary Record of the Third Meeting*, BWC/CONF.II/SR.3, 18 September 1986, pp.4-5. Available at <http://www.opbw.org>

⁵ United Nations, Second 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, *Summary Record of the Third Meeting*, BWC/CONF.II/SR.3, 18 September 1986, p.7. Available at <http://www.opbw.org>

⁶ United Nations, Second 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, *Final Declaration*, BWC/CONF.II/13/II, 1986, p.3. Available at <http://www.opbw.org>

⁷ United Nations, Third 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, *Final Declaration*, BWC/CONF.III/23/II, 1991, p.11. Available at <http://www.opbw.org>

and that continued non-compliance with its provisions could undermine confidence in the Convention.

15. At the Fourth Review Conference in 1996 the Final Declaration⁸ in the Article I section stated that:

The Conference emphasizes, once more, the vital importance of full implementation by all States Parties of all the provisions of the Convention, especially Articles I, II and III. The Conference agrees that the application by States Parties of positive approaches in accordance with the provisions of the Convention is in the interest of all States Parties and that any non-compliance with its provisions could undermine confidence in the Convention. Non-compliance should be treated with determination in all cases, without selectivity or discrimination.

At the Fifth Review Conference in 2001 adjourned until 2002, the States Parties failed to agree a Final Declaration even though one had been 95 per cent complete on the final day.

16. These developments in regard to compliance in the Article I section until the Fourth Review Conference can be summarised in the tabulation below.

Convention (Article I)	<i>Each State Party to this Convention undertakes never in any circumstances to develop, produce, stockpile or otherwise acquire or retain: (1) Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; (2) Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.</i>
First Rev Con 1980	<i>The Conference notes the importance of Article I as the Article which defines the scope of the Convention and reaffirms its support for the provisions of this Article.</i>
Second Rev Con 1986	<i>The Conference notes statements by some States Parties that compliance with Articles I, II and III was, in their view, subject to grave doubt in some cases and that efforts to resolve those concerns had not been successful. The Conference notes the statements by other States Parties that such a doubt was unfounded and, in their view, not in accordance with the Convention. The Conference agrees that the application by States Parties of a positive approach in questions of compliance in accordance with provisions of the Convention was in the interest of all States Parties and that this would serve to promote confidence among States Parties.</i>

⁸ United Nations, Fourth 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, *Final Declaration*, BWC/CONF.IV/9/II, 1996, pp.15-16. Available at <http://www.opbw.org>

Third Rev Con 1991	<i>The Conference emphasizes the vital importance of full implementation by all States parties of all provisions of the Convention and expresses concern at statements by some States parties that compliance with Articles I, II and III has been, in their view, subject to grave doubt in certain cases and that efforts since the Second Review Conference to resolve these problems have not been successful. The Conference agrees that the application by States parties of a positive approach in questions of compliance in accordance with the provisions of the Convention is in the interest of all States parties and that continued non-compliance with its provisions could undermine confidence in the Convention.</i>
Fourth Rev Con 1996	<i>The Conference emphasizes, once more, the vital importance of full implementation by all States Parties of all the provisions of the Convention, especially Articles I, II and III. The Conference agrees that the application by States Parties of positive approaches in accordance with the provisions of the Convention is in the interest of all States Parties and that any non-compliance with its provisions could undermine confidence in the Convention. Non-compliance should be treated with determination in all cases, without selectivity or discrimination.</i>
Fifth Rev Con 2001/2	No Final Declaration

17. Implications of scientific and technological developments for Article I. At successive BTWC Review Conferences, the language in the Final Declaration in the Article I section regarding scientific and technological developments has developed.

18. Thus at the **First BTWC Review Conference** in 1980, the Final Declaration⁹ in this respect in Article I simply stated that:

The Conference notes the importance of Article I as the Article which defines the scope of the Convention and reaffirms its support for the provisions of this Article.

The Conference believes that Article I has proved sufficiently comprehensive to have covered recent scientific and technological developments relevant to the Convention.

Unlike all subsequent BTWC Review Conferences up to the Fourth one in 1996, no language was included in respect of the implications of scientific and technological developments in regard to either apprehensions about or the scope of the Convention.

19. By the **Second BTWC Review Conference** in 1986, the Final Declaration¹⁰ contained stronger language and had developed into two paragraphs -- one addressing apprehensions:

⁹United Nations, *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*, 3 - 21 March 1980, Final Declaration, BWC/CONF.1/10, Geneva, 1980. Available at <http://www.opbw.org>

¹⁰United Nations, *Second 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*

*The Conference, conscious of apprehensions arising from relevant scientific and technological developments, inter alia, in the fields of **microbiology, genetic engineering and biotechnology**, and the possibilities of their use for purposes inconsistent with the objectives and the provisions of the Convention, reaffirms that the undertaking given by the States Parties in Article I applies to all such developments. [Emphasis added]*

and the other making a clear reaffirmation as to the scope of the Convention:

*The Conference reaffirms that the Convention **unequivocally** applies to **all** natural or **artificially created** microbial or other biological agents or toxins **whatever their origin or method of production**. Consequently, toxins (both proteinaceous and non-proteinaceous) of a microbial, animal or vegetable nature and **their synthetically produced analogues** are covered. [Emphasis added]*

20. The first paragraph addressed apprehensions arising from developments *inter alia* in the fields of microbiology, genetic engineering and biotechnology and reaffirmed that the undertakings in Article I, the basic prohibition, applied to all such developments. The second paragraph addressing the scope has two sentences. The first sentence reaffirming that the Convention unequivocally applies to all natural or artificially created agents whatever their origin or method of production thereby emphasizing the all embracing scope of the Convention. The second sentence is an explanatory one that makes it clear that toxins of a microbial, animal or vegetable nature and their synthetically produced analogues are covered.

21. At the **Third BTWC Review Conference** in 1991 the Final Declaration¹¹ contained similar language, on this occasion combined into a single paragraph:

*The Conference, conscious of apprehensions arising from relevant scientific and technological developments, inter alia, in the fields of microbiology, genetic engineering and biotechnology, and the possibilities of their use for purposes inconsistent with the objectives and the provisions of the Convention, reaffirms that the undertaking given by the States Parties in Article I applies to all such developments. The Conference also reaffirms that the Convention unequivocally covers all microbial agents or toxins, naturally or artificially created **or altered**, whatever their origin or method of production. [Emphasis added]*

The first sentence repeated the apprehensions addressed at the Second Review Conference using identical language referring to microbiology, genetic engineering and biotechnology. The second sentence reaffirmed the scope which was further extended by addition of the words "or altered".

Destruction, 8th - 26th September 1986, Final Declaration, BWC/CONF.II/13, Geneva, 1986. Available at <http://www.opbw.org>

¹¹United 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, BWC/CONF.III/23, Geneva 1991. Available at <http://www.opbw.org>

22. At the **Fourth BTWC Review Conference** in 1996 the Final Declaration¹² was broadened, and again was in two paragraphs, one addressing apprehensions:

*The Conference, conscious of apprehensions arising from relevant scientific and technological developments, inter alia, in the fields of microbiology, biotechnology, **molecular biology**, genetic engineering and **any application resulting from genome studies**, and the possibilities of their use for purposes inconsistent with the objectives and the provisions of the Convention, reaffirms that the undertaking given by the States Parties in Article I applies to all such developments. [Emphasis added]*

and the other reaffirming the scope:

*The Conference also reaffirms that the Convention unequivocally covers all microbial or other biological agents or toxins, naturally or artificially created or altered, **as well as their components**, whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes. [Emphasis added]*

In the apprehensions paragraph, the developments to which the undertaking in Article I applied *inter alia* in the fields of *microbiology, biotechnology, molecular biology, genetic engineering and any application resulting from genome studies*, were broadened by the addition of *molecular biology* and of *any application resulting from genome studies*. The scope paragraph was also extended from that in 1986 by the addition of "*as well as their components*."

23. For the **Fifth BTWC Review Conference** which started on 19 November 2001 and was adjourned on 7 December 2001 until 11 November 2002, various proposals have been put forward for both the apprehensions and the scope paragraphs. One set of such proposals put forward by the Department of Peace Studies of the University of Bradford emerged from debate and discussions held at a NATO Advanced Research Workshop¹³ entitled "New Scientific and Technological Developments of Relevance to the Biological and Toxin Weapons Convention" held in Prague on 31 May to 2 June 2001. This was attended by 49 individuals from 19 countries and 28 of the experts from 17 of the 19 countries represented came from government departments or agencies which would be involved in or provide technical advisers to the national delegations participating in the Fifth Review Conference. The Workshop focussed on the consideration of *what advances might usefully be specifically referred to in the Final Declaration* of the Fifth Review Conference both in regard to the reaffirmation of the scope and in addressing apprehensions in order to ensure that there are no perceived omissions or exclusions which might be exploited in a way that is inconsistent with the objectives and purposes of the Convention.

¹²United 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*, Geneva, 25 November - 6 December 1996, BWC/CONF.IV/9, Geneva 1996. Available at <http://www.opbw.org>

¹³A personal report of this NATO Advanced Research Workshop is available as Graham S. Pearson, *New Scientific and Technological Developments of Relevance to the Fifth Review Conference*. Review Conference Paper No. 3, Department of Peace Studies, University of Bradford, July 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

24. During the Workshop, there was a shared recognition among the participants that the language relating to scientific and technological developments in Article I in the Final Declarations of previous Review Conferences had hitherto comprised *a reaffirmation of the scope* sometimes together with an *explanatory sentence* and an *apprehensions paragraph* with its listing following the words *inter alia* of particular broad areas. Initial ideas at the Workshop began with consideration of an extension of the listing of areas in the apprehensions paragraph which started from that in the Final Declaration of the Fourth Review Conference:

The Conference, conscious of apprehensions arising from relevant scientific and technological developments, inter alia, in the fields of microbiology, biotechnology, molecular biology, genetic engineering and any application resulting from genome studies, and the possibilities of their use for purposes inconsistent with the objectives and the provisions of the Convention, reaffirms that the undertaking given by the States Parties in Article I applies to all such developments.

and which was, during the Workshop, conceptually gradually extended by additional terms:

The Conference, conscious of apprehensions arising from relevant scientific and technological developments, inter alia, in the fields of microbiology, biotechnology, molecular biology, genetic engineering, neuroscience, bioinformatics and databases, and any application resulting from genome and proteome studies and derived techniques, and biological control in animals and plants as well as humans, and the possibilities of their use for purposes inconsistent with the objectives and the provisions of the Convention, reaffirms that the undertaking given by the States Parties in Article I applies to all such developments.

25. This led to the appreciation that an ever longer listing could be impracticable. It consequently would be preferable to use a broader term "*life sciences*" in the apprehensions paragraph which could be accompanied by an explanatory sentence concerning particular recent developments. In addition, it was recognized that the emphasis in the previous Final Declarations had tended to ignore concerns relating to animals and plants. It was consequently felt that there would be benefits from inclusion of specific language to make it clear that the scientific and technological developments that could be of concern apply to *animals and plants as well as to human beings*:

*The Conference, conscious of apprehensions arising from relevant scientific and technological developments, inter alia, in the life sciences in animals and plants as well as humans, and the possibilities of their use for purposes inconsistent with the objectives and the provisions of the Convention, reaffirms that the undertaking given by the States Parties in Article I applies to all such developments. **Consequently, biological control, genomics, proteomics, bioinformatics and databases and their applications are covered.***

The explanatory sentence "*Consequently, biological control, genomics, proteomics, bioinformatics and databases and their applications are covered.*" would make it clear that particular developments were included.

26. Insofar as the reaffirmation of the scope paragraph in Article I in the Final Declaration was concerned, it was considered that this could usefully build upon that adopted at the Fourth Review Conference together with an explanatory sentence as at the Second Review Conference to read as follows:

*The Conference also reaffirms that the Convention unequivocally covers all microbial or other biological agents or toxins, naturally or artificially created or altered, as well as their components, whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes. **Consequently, prions, proteins and bioregulators and their synthetically produced analogues and components are covered.***

The additional sentence would eliminate any doubt as to the scope of the Convention in covering these rapidly developing fields of the life sciences.

27. However, the Fifth Review Conference failed to agree a Final Declaration even though one had been 95 per cent complete on the final day of the Conference.

28. These developments at successive BTWC Review Conferences can usefully be summarised, thereby showing the developments in the language in the Article I section of the Final Declarations, as follows for the scope:

Convention (Article I)	<i>... Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;</i>
First Rev Con 1980	<i>The Conference notes the importance of Article I as the Article which defines the scope of the Convention and reaffirms its support for the provisions of this Article.</i> <i>The Conference believes that Article I has proved sufficiently comprehensive to have covered recent scientific and technological developments relevant to the Convention.</i>
Second Rev Con 1986	<i>... the Convention unequivocally applies to all natural or artificially created microbial or other biological agents or toxins whatever their origin or method of production.</i>
Third Rev Con 1991	<i>... the Convention unequivocally covers all microbial agents or toxins, naturally or artificially created or altered, whatever their origin or method of production.</i>
Fourth Rev Con 1996	<i>... the Convention unequivocally covers all microbial or other biological agents or toxins, naturally or artificially created or altered, as well as their components, whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes.</i>
Fifth Rev Con 2001/2	No Final Declaration

whilst in regard to the apprehensions:

Convention (Article I)	<i>... Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;</i>
First Rev Con 1980	<i>The Conference believes that Article I has proved sufficiently comprehensive to have covered recent scientific and technological developments relevant to the Convention.</i>
Second Rev Con 1986	<i>... apprehensions arising from relevant scientific and technological developments, <u>inter alia</u>, in the fields of microbiology, genetic engineering and biotechnology,</i>
Third Rev Con 1991	<i>... apprehensions arising from relevant scientific and technological developments, <u>inter alia</u>, in the fields of microbiology, genetic engineering and biotechnology,</i>
Fourth Rev Con 1996	<i>... apprehensions arising from relevant scientific and technological developments, <u>inter alia</u>, in the fields of microbiology, biotechnology, molecular biology, genetic engineering and any application resulting from genome studies,</i>
Fifth Rev Con 2001/2	No Final Declaration

Article IV

29. Article IV sets out the obligation of States Parties to take national measures to implement the Convention:

Each State Party to this Convention shall, in accordance with its constitutional processes, take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition, or retention of the agents, toxins, weapons, equipment and means of delivery specified in article I of the Convention, within the territory of such State, under its jurisdiction or under its control anywhere.

30. At the First Review Conference in 1980, the Final Declaration in its section on Article IV noted the importance of Article IV and *calls upon all States Parties which have not yet taken any necessary measures in accordance with their constitutional processes to do so immediately*. It then went on to invited States Parties *which have found it necessary to enact specific legislation or take other regulatory measures relevant to this Article to make available the appropriate texts to the United Nations Centre for Disarmament, for the purposes of consultation*.

31. The Second Review Conference agreed slightly stronger language as it noted the importance of Article IV and strengthened its call *upon all States Parties which have not yet taken any necessary measures in accordance with their constitutional processes, as required by the Article, to do so immediately*. It again invited States Parties to make available to the United Nations Department for Disarmament Affairs *information on and the texts of specific legislation enacted or other regulatory measures taken by them, relevant to this article*. Finally, a new paragraph was added:

The Conference notes the importance of:

- *legislative, administrative and other measures designed effectively to guarantee compliance with the provisions of the Convention within the territory under the jurisdiction or control of a State Party,*
- *legislation regarding the physical protection of laboratories and facilities to prevent unauthorised access to and removal of pathogenic or toxic material, and*
- *inclusion in textbooks and in medical, scientific and military educational programmes of information dealing with the prohibition of bacteriological (biological) and toxin weapons and the provisions of the Geneva Protocol*

and believes that such measures which States might undertake in accordance with their constitutional process would strengthen the effectiveness of the Convention.

32. The Third Review Conference in 1991 again noted the importance of Article IV. It again strengthened the language calling upon States Parties to enact the necessary national measures by including mention of penal legislation and setting out where such measures should apply and to whom:

The Conference notes those measures already taken by some States parties in this regard, for example the adoption of penal legislation, and reiterates its call to any State party that has not yet taken any necessary measures to do so immediately, in accordance with its constitutional processes. Such measures should apply within the territory of a State party, under its jurisdiction or under its control anywhere. The Conference invites each State party to consider, if constitutionally possible and in conformity with international law, the application of such measures to actions taken anywhere by natural persons possessing its nationality.

The additional paragraph first added in 1986 was again included and a new paragraph added welcoming regional and other initiatives dealing with the renunciation of weapons of mass destruction:

The Conference welcomes regional measures such as the Mendoza Declaration as well as other initiatives dealing with the renunciation of weapons of mass destruction, including biological weapons, as concrete positive steps towards the strengthening of the biological and toxin weapons Convention regime.

33. The Fourth Review Conference in 1996 underlined the importance of Article IV and, for the first time, set out what the national implementation measures are to ensure and emphasizing the importance of effective fulfillment of the obligations under the Convention in order to exclude the use of biological and toxin weapons in terrorist or criminal activity:

The Conference underlines the importance of Article IV. It reaffirms the commitment of States Parties to take the necessary national measures under this Article, in accordance with their constitutional processes. These measures are to ensure the prohibition and prevention of the development, production, stockpiling, acquisition or retention of the agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention anywhere within their territory, under their jurisdiction or under their control, in order to prevent their use for purposes contrary to the Convention. The States Parties recognize the need to ensure, through the review and/or adoption of national measures, the effective fulfilment of their obligations under the Convention in order, inter alia, to exclude use of biological and toxin weapons in terrorist or criminal activity.

Identical language to that used in 1991 is used in the call for all States Parties to enact appropriate national measures. The language about regional initiatives is made more general:

The Conference encourages cooperation and initiatives, including regional ones, towards the strengthening and implementation of the Biological and Toxin Weapons Convention regime.

A final new paragraph was added reaffirming that under all circumstances the use of biological and toxin weapons is effectively prohibited by the Convention:

The Conference reaffirms that under all circumstances the use of bacteriological (biological) and toxin weapons is effectively prohibited by the Convention.

34. As already noted above, the Fifth Review Conference in 2001/2002 failed to agree a Final Declaration.

35. The developments in regard to the importance of Article IV at the successive Review Conferences can usefully be summarised.

Convention (Article IV)	<i>Each State Party to this Convention shall, in accordance with its constitutional processes, take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition, or retention of the agents, toxins, weapons, equipment and means of delivery specified in article I of the Convention, within the territory of such State, under its jurisdiction or under its control anywhere.</i>
First Rev Con 1980	<i>The Conference notes the provisions of Article IV, which requires each State Party to take any necessary measure to prohibit and prevent the development, ...</i>
Second Rev Con 1986	<i>The Conference notes the importance of Article IV, under which each State Party shall, in accordance with its constitutional processes, take any necessary measures to prohibit or prevent any acts or actions which would contravene the Convention.</i>

Third Rev Con 1991	<p><i>The Conference notes the importance of Article IV, under which each State party shall, in accordance with its constitutional processes, take any necessary measures to prohibit or prevent any acts or actions which would contravene the Convention.</i></p> <p><i>The Conference notes those measures already taken by some States parties in this regard, for example the adoption of penal legislation, and reiterates its call to any State party that has not yet taken any necessary measures to do so immediately, in accordance with its constitutional processes. Such measures should apply within the territory of a State party, under its jurisdiction or under its control anywhere. The Conference invites each State party to consider, if constitutionally possible and in conformity with international law, the application of such measures to actions taken anywhere by natural persons possessing its nationality.</i></p>
Fourth Rev Con 1996	<p><i>The Conference underlines the importance of Article IV. It reaffirms the commitment of States Parties to take the necessary national measures under this Article, in accordance with their constitutional processes. These measures are to ensure the prohibition and prevention of the development, production, stockpiling, acquisition or retention of the agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention anywhere within their territory, under their jurisdiction or under their control, in order to prevent their use for purposes contrary to the Convention. The States Parties recognize the need to ensure, through the review and/or adoption of national measures, the effective fulfilment of their obligations under the Convention in order, <u>inter alia</u>, to exclude use of biological and toxin weapons in terrorist or criminal activity.</i></p> <p><i>The Conference notes those measures already taken by a number of States Parties in this regard, for example the adoption of penal legislation, and [continues as at Third Review Conference]</i></p>
Fifth Rev Con 2001/2	No Final Declaration

Article V

36. In regard to Article V concerning problems relating to the objective of the Convention, the Final Declaration of the First Review Conference in 1980 contained the following language:

The Conference notes the importance of Article V which contains the undertaking of States Parties 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.

The Conference considers that the flexibility of the provisions concerning consultations and cooperation on any problems which may arise in relation to the objective, or in the application of the provisions of, the Convention, enables interested States Parties to use various international procedures which would make it possible to ensure effectively and adequately the implementation of the Convention provisions taking into account the concern expressed by the Conference participants to this effect.

These procedures include, inter alia, the right of any State Party subsequently to request that a consultative meeting open to all States Parties be convened at expert level.

The Conference, noting the concerns and differing views expressed on the adequacy of Article V, believes that this question should be further considered at an appropriate time.

37. At the Second Review Conference in 1986, the Final Declaration was considerably developed in regard to Article V and set out the procedure to be followed in regard to consultations carried out under this Article:

The Conference notes the importance of Article V and reaffirms the obligation assumed by States Parties to consult and co-operate with one another in solving any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention.

The Conference reaffirms that 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 Conference confirms the conclusion in the Final Declaration of the First Review Conference that these procedures include, inter alia, the right of any State Party to request that a consultative meeting open to all States Parties be convened at expert level.

The Conference stresses the need for all states to deal seriously with compliance issues and emphasises that the failure to do so undermines the Convention and the arms control process in general.

The Conference appeals to States Parties to make all possible efforts to solve any problems which may arise in relation to the objective of, or in the application of the provisions of the Convention with a view towards encouraging strict observance of the provisions subscribed to. The Conference further requests that information on such efforts be provided to the Third Review Conference.

The Conference, taking into account views expressed concerning the need to strengthen the implementation of the provisions of Article V, has agreed:

- that a consultative meeting shall be promptly convened when requested by a State Party,

- that a consultative meeting may consider any problems which may arise in relation to the objective of, or in the application of the provisions of the Convention, suggest ways and means for further clarifying, *inter alia*, with assistance of technical experts, any matter considered ambiguous or unresolved, as well as initiate appropriate international procedures within the framework of the United Nations and in accordance with its Charters,

- that the consultative meeting, or any State Party, may request specialised assistance in solving any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention, through, *inter alia*, appropriate international procedures within the framework of the United Nations and in accordance with its Charter,

- the Conference considers that States Parties shall co-operate with the consultative meeting in its consideration of any problems which may arise in relation to the objectives of, or in the application of the provisions of the Convention, and in clarifying ambiguous and unresolved matters, as well as co-operate in appropriate international procedures within the framework of the United Nations and in accordance with its Charter.

38. In addition, the Final Declaration in 1986 in regard to Article V of the Convention agreed that all States Parties should provide an annual exchange of data under four confidence-building measures in order to "*prevent or reduce the occurrence of ambiguities, doubts and suspicions.*" The four measures, subsequently further elaborated in March/April 1987, address:

"1. Exchange of data, including name, location, scope and general description of activities, on research centres and laboratories that meet very high national or international safety standards established for handling, for permitted purposes, biological materials that pose a high individual and community risk or specialise in permitted biological activities directly related to the Convention.

2. Exchange of information on all outbreaks of infectious disease and similar occurrences caused by toxins that seem to deviate from the normal pattern as regards type, development, place, or time of occurrence. If possible, the information provided would include, as soon as it is available, data on the type of disease, approximate area affected, and number of cases.

3. Encouragement of publication of results of biological research directly related to the Convention, in scientific journals generally available to States Parties, as well as promotion of use for permitted purposes of knowledge gained in this research.

4. Active promotion of contacts between scientists engaged in biological research directly related to the Convention, including exchanges for joint research on a mutual agreed basis."

39. At the Third Review Conference in 1991, the Final Declaration in regard to Article V reaffirmed the obligations set out in the Final Declaration of the Second Review Conference and further elaborated the procedure to be followed in regard to consultations carried out under this Article:

The Conference notes the importance of Article V and reaffirms the obligation assumed by States parties to consult and cooperate with one another in solving any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention.

The Conference reaffirms the agreement reached at the Second Review Conference, and agrees that in order to strengthen the implementation of the provisions of Article V the following provisions should be adopted:

- *A formal consultative meeting could be preceded by bilateral or other consultations by agreement among those States parties involved in the problems which had arisen;*
- *Requests for the convening of a consultative meeting shall be addressed to the Depositaries, who shall immediately inform all States parties of the request and shall convene within 30 days an informal meeting of the interested States parties to discuss the arrangements for the formal consultative meeting, which shall be convened within 60 days of receipt of the request;*
- *With regard to the taking of decisions, the consultative meeting shall proceed in accordance with rule 28 of the rules of procedure of the Review Conference;*
- *The costs of the consultative meeting shall be met by the States parties participating in accordance with the United Nations assessment scale prorated to take into account differences between the United Nations membership and the number of States parties participating in the meeting;*
- *A consultative meeting may consider any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention, suggest ways and means for further clarifying, inter alia, with assistance of technical experts, any matter considered ambiguous or unresolved, as well as initiate appropriate international procedures within the framework of the United Nations and in accordance with its Charter;*
- *The consultative meeting, or any State party, may request specialized assistance in solving any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention, through, inter alia, appropriate international procedures within the frame work of the United Nations and in accordance with its Charter;*

- *The States parties agree that, should the consultative meeting, or any State party, make use of such procedures within the framework of the United Nations, including lodging a complaint with the Security Council under Article VI of the Convention, the Secretary-General may be kept informed;*

- *The Conference considers that States parties shall cooperate with the consultative meeting in its consideration of any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention, and in clarifying ambiguous and unresolved matters, as well as cooperate in appropriate international procedures within the framework of the United Nations and in accordance with its Charter.*

The Conference reaffirms that consultation and cooperation 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.

40. The Third Review Conference also took note of the situation regarding the confidence-building measures agreed at the Second Review Conference and agreed to extend these:

The Conference notes the importance of the confidence-building measures agreed upon at the Second Review Conference, as well as the modalities elaborated by the Ad Hoc Meeting of the Scientific and Technical Experts from States parties to the Convention held in 1987. The Conference recognizes the exchange of information that took place on this agreed basis between 1987 and 1991. The Conference urges all States parties to submit information to future rounds of information exchange.

With a view to promoting increased participation and strengthening further the exchange of information, the Conference agrees to reaffirm those measures established at the Second Review Conference with the following improvements: to add a declaration on "Nothing to declare" or "Nothing new to declare"; to amend and extend the exchange of data on research centres and laboratories; to amend the exchange of information on outbreaks of infectious diseases and similar occurrences caused by toxins; to amend the measure for the active promotion of contacts; and to add three new confidence-building measures entitled "Declaration of legislation, regulations and other measures"; "Declaration of past activities in offensive and/or defensive biological research development programmes"; and "Declaration of vaccine production facilities".

Accordingly, the Conference, mindful of the provisions of Article V and Article X, and determined to strengthen the authority of the Convention and to enhance confidence in the implementation of its provisions, agrees that the States parties are to implement, on the basis of mutual cooperation, the following measures set out in the annex to this Final Declaration, in order to prevent or reduce the occurrence of ambiguities, doubts and suspicions, and in order to improve international cooperation in the field of peaceful bacteriological (biological) activities:

1. Declaration form on "Nothing to declare" or "Nothing new to declare"

2. *Confidence-building measure "A":*

- *Part 1: Exchange of data on research centres and laboratories;*

- *Part 2: Exchange of information on national biological defence research and development programmes.*

3. *Confidence-building measure "B":*

- *Exchange of information on outbreaks of infectious diseases and similar occurrences caused by toxins.*

4. *Confidence-building measure "C":*

- *Encouragement of publication of results and promotion of use of knowledge.*

5. *Confidence-building measure "D":*

- *Active promotion of contacts.*

6. *Confidence-building measure "E":*

- *Declaration of legislation, regulations and other measures.*

7. *Confidence-building measure "F":*

- *Declaration of past activities in offensive and/or defensive biological research and development programmes.*

8. *Confidence-building measure "G":*

- *Declaration of vaccine production facilities.*

The Conference also agrees that the exchange of information and data, using the revised forms, be sent to the United Nations Department for Disarmament Affairs no later than 15 April on an annual basis and should cover the previous calendar year.

41. In addition, the Third Review Conference in 1991 took a significant step forward under Article V to *strengthen the effectiveness and improve the implementation of the Convention* by agreeing to establish an Ad Hoc Group of Governmental Experts, which became known as VEREX, to examine potential verification measures from a scientific and technical standpoint:

The Conference, determined to strengthen the effectiveness and improve the implementation of the Convention and recognizing that effective verification could

reinforce the Convention, decides to establish an Ad Hoc Group of Governmental Experts open to all States parties to identify and examine potential verification measures from a scientific and technical standpoint.

The Group shall meet in Geneva for the period 30 March to 10 April 1992. The Group will hold additional meetings as appropriate to complete its work as soon as possible, preferably before the end of 1993. In accordance with the agreement reached in the Preparatory Committee, the Group shall be chaired by Ambassador Tibor Tóth (Hungary), who shall be assisted by two Vice-Chairmen to be elected by the States Parties participating in the first meeting.

The Group shall seek to identify measures which could determine:

- Whether a State party is developing, producing, stockpiling, acquiring or retaining microbial or other biological agents or toxins, of types and in quantities that have no justification for prophylactic, protective or peaceful purposes;*
- Whether a State party is developing, producing, stockpiling, acquiring or retaining weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.*

Such measures could be addressed singly or in combination. Specifically, the Group shall seek to evaluate potential verification measures, taking into account the broad range of types and quantities of microbial and other biological agents and toxins, whether naturally occurring or altered, which are capable of being used as means of warfare.

To these ends the Group could examine potential verification measures in terms of the following main criteria:

- Their strengths and weaknesses based on, but not limited to, the amount and quality of information they provide, and fail to provide;*
- Their ability to differentiate between prohibited and permitted activities;*
- Their ability to resolve ambiguities about compliance;*
- Their technology, material, manpower and equipment requirements;*
- Their financial, legal, safety and other organizational implications;*
- Their impact on scientific research, scientific cooperation, industrial development and other permitted activities, and their implication for the confidentiality of commercial proprietary information.*

In examining potential verification measures, the Group should take into account data and other information relevant to the Convention provided by the States parties.

The Group shall adopt by consensus a report taking into account views expressed in the course of its work. The report of the Group shall be a description of its work on the identification and examination of potential verification measures from a scientific and technical standpoint, according to this mandate.

The report of the Group shall be circulated to all States Parties for their consideration. If a majority of States Parties ask for the convening of a conference to examine the report, by submitting a proposal to this effect to the Depositary Governments, such a conference will be convened. In such a case the conference shall decide on any further action. The conference shall be preceded by a preparatory committee.

The work of VEREX and the subsequent developments at the Special Conference of the States Parties in September 1994 which established the Ad Hoc Group is addressed in the next section of this paper.

42. At the Fourth Review Conference in 1996 the Final Declaration in regard to Article V was relatively short as the States Parties were well aware of the ongoing activities of the Ad Hoc Group and were being careful to do nothing that might impede this ongoing work. Consequently, the Final Declaration had a single paragraph relating to the procedures to be followed in respect of consultations carried out under Article V:

The Conference stresses the need for all States Parties to deal effectively with compliance issues. In this connection, the States Parties had agreed to provide a specific, timely response to any compliance concern alleging a breach of their obligations under the Convention. Such responses should be submitted in accordance with the procedures agreed upon by the Second Review Conference and further developed by the Third Review Conference. The Conference reiterates its request that information on such efforts be provided to the Review Conferences.

43. Likewise, the confidence-building measures were reviewed but not further developed:

In accordance with the decision of the Third Review Conference, the Conference reviewed the effectiveness of the confidence-building measures as agreed in the Final Declaration of the Third Review Conference. The Conference notes the continued importance of the confidence-building measures agreed upon at the Second and Third Review Conferences, as well as the modalities elaborated by the Ad Hoc Meeting of Scientific and Technical Experts from States Parties to the Convention, held in 1987.

The Conference notes the background information document prepared by the United Nations Secretary-General providing data on the participation of States Parties in the agreed confidence-building measures since the Third Review Conference. The Conference welcomes the exchange of information carried out under the confidence-

building measures, and notes that this has contributed to enhancing transparency and building confidence. The Conference recognizes that participation in the confidence-building measures since the last Review Conference has not been universal, and that not all responses have been prompt or complete. In this regard, the Conference also recognizes the technical difficulties experienced by some States Parties with respect to preparing CBM responses. In this regard, the Conference urges all States Parties to complete full and timely declarations in the future. The Conference notes that the Ad Hoc Group of States Parties established by the Special Conference in 1994 is, as part of its continuing work, considering the incorporation of existing and further enhanced confidence-building and transparency measures, as appropriate, in a regime to strengthen the Convention.

The final sentence refers to the ongoing work of the Ad Hoc Group and to the prospect that the confidence-building measures could be incorporated, as appropriate, in a regime to strengthen the Convention.

44. The Final Declaration also stressed its determination to strengthen the Convention by stating:

The Conference stresses its determination to strengthen effectiveness and improve the implementation of the Convention, and its recognition that effective verification could reinforce the Convention.

In this regard, the Conference recalls that:

- *The Third Review Conference established the Ad Hoc Group of Governmental Experts open to all States Parties to identify and examine potential verification measures from a scientific and technical standpoint.*
- *The Group held four sessions in 1992-1993 and circulated its report to all States Parties in September 1993.*
- *A Special Conference was held in September 1994 to consider the report, and decided to establish an Ad Hoc Group open to all States Parties. The Conference considered the work of the Ad Hoc Group under agenda item 12 and its conclusions are reflected in the section of this document entitled "Consideration of the work of the Ad Hoc Group established by the Special Conference in 1994".*

45. At the Fifth Review Conference in 2001/2002 the States Parties failed to agree a Final Declaration even though one had been 95 per cent complete on the final day of the Conference.

VEREX, The Special Conference and the Ad Hoc Group

VEREX

46. It was noted above that at the Third Review Conference the States Parties in the Final Declaration agreed:

The Conference, determined to strengthen the effectiveness and improve the implementation of the Convention and recognizing that effective verification could reinforce the Convention, decides to establish an Ad Hoc Group of Governmental Experts open to all States parties to identify and examine potential verification measures from a scientific and technical standpoint.

This Ad Hoc Group of Governmental Experts to identify and examine possible verification measures from a scientific and technical standpoint became known as VEREX.

47. VEREX met four times in 1992 and 1993 for two weeks on each occasion on 30 March - 10 April 1992, 23 November - 4 December 1992, 24 May - 4 June 1993, and 13 - 24 September 1993. It identified and evaluated some 21 potential verification measures which were divided into two categories:

Off-site Measures

- Surveillance of publications
- Surveillance of legislation
- Data on transfers, transfer requests and production
- Multilateral information sharing
- Exchange visits (off-site)
- Declarations
- Surveillance by satellite
- Surveillance by aircraft
- Ground-based surveillance (off-site)
- Sampling and identification (off-site)
- Observation (off-site)
- Auditing (off-site)

On-site Measures

- Exchange visits - international arrangements
- Interviewing (on-site)
- Visual inspection (on-site)
- Identification of key equipment (on-site)
- Auditing (on-site)
- Sampling and identification (on-site)
- Medical examination (on-site)
- Continuous monitoring by instruments (on-site)

- Continuous monitoring by personnel (on-site)

It should be appreciated that the approach taken by VEREX was to invite participants to identify potential verification measures which were then evaluated according to the criteria set out in the Final Declaration of the Third Review Conference (and reproduced earlier in this paper). There was no attempt by VEREX to identify which measures had the greatest potential. All measures were evaluated in a similar way and their advantages and disadvantages listed.

48. The final report¹⁴ of VEREX issued in 1993 concluded that:

The Ad Hoc Group of Governmental Experts concluded that the potential verification measures as identified and evaluated could be useful in varying degrees in enhancing confidence, through enhanced transparency, that the States Parties were fulfilling their obligations under the BWC. While it was agreed that reliance could not be placed on any single measure to differentiate conclusively between prohibited and permitted activity and to resolve ambiguities about compliance, it was also agreed that the measures could provide information of varying utility in strengthening the BWC. Some measure in combination could provide enhanced capabilities by increasing, for example, the focus and improving the quality of information, thereby improving the possibility of differentiating between prohibited and permitted activities and of resolving ambiguities about compliance.

Based on the examination and evaluation of the measures described above against the criteria given in the mandate, the Group considered, from the scientific and technical standpoint, that some of the potential verification measures would contribute to strengthening the effectiveness and improve the implementation of the Convention, also recognising that appropriate and effective verification could reinforce the Convention.

Following circulation of the VEREX Final Report to States Parties, a majority requested that a Special Conference be convened to consider the final report of VEREX and this Special Conference was held on 19 - 30 September 1994.

Special Conference, September 1994

49. At the Special Conference¹⁵, the States Parties "*determined to strengthen the effectiveness and improve the implementation of the Convention*", agreed to establish a further Ad Hoc Group with the objective being "*to consider appropriate measures, including possible verification measures, and draft proposals to strengthen the Convention, to be included, as appropriate, in a **legally binding instrument**, to be submitted for the consideration of the States Parties. In this context, the Ad Hoc Group shall, inter alia, consider: [Emphasis added]*

¹⁴United Nations, *Ad Hoc Group of Governmental Experts to Identify and Examine Potential Verification Measures from a Scientific and Technical Standpoint*, Report BWC/CONF.III/VEREX/9, Geneva 1993. Available at <http://www.opbw.org>

¹⁵United Nations, *Special 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 Report, BWC/SPCONF/1 Geneva, 19–30 September 1994. Available at <http://www.opbw.org>

- *Definitions of terms and objective criteria, such as lists of bacteriological (biological) agents and toxins, their threshold quantities, as well as equipment and types of activities, where relevant for specific measures designed to strengthen the Convention;*
- *The incorporation of existing and further enhanced confidence building and transparency measures, as appropriate, into the regime;*
- *A system of measures to promote compliance with the Convention, including, as appropriate, measures identified, examined and evaluated in the VEREX Report. Such measures should apply to all relevant facilities and activities, be reliable, cost effective, non-discriminatory and as non-intrusive as possible, consistent with the effective implementation of the system and should not lead to abuse;*
- *Specific measures designed to ensure effective and full implementation of Article X, which also avoid any restrictions incompatible with the obligations undertaken under the Convention, noting that the provisions of the Convention should not be used to impose restrictions and/or limitations on the transfer for purposes consistent with the objectives and the provisions of the Convention of scientific knowledge, technology, equipment and materials."*

The mandate also required that

- *"Measures should be formulated and implemented in a manner designed to protect sensitive commercial proprietary information and legitimate national security needs."*
- *"Measures shall be formulated and implemented in a manner designed to avoid any negative impact on scientific research, international cooperation and industrial development."*

The remit for the Ad Hoc Group also made it clear that *"the regime would include, inter alia, potential verification measures, as well as agreed procedures and mechanisms for their efficient implementation and measures for the investigation of alleged use."*

Ad Hoc Group

50. The Ad Hoc Group (AHG) under the chairmanship of Ambassador Tóth of Hungary held a procedural meeting on 3 - 5 January 1995¹⁶ and then substantive meetings each of two weeks on 10 -21 July 1995¹⁷, 27 November - 8 December 1995¹⁸, 15 - 26 July 1996¹⁹, and 16 -27

¹⁶ United 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*, Procedural Report, BWC/AD HOC GROUP/3, 6 January 1995. Available at <http://www.opbw.org>

¹⁷ United 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*, Procedural Report, BWC/AD HOC GROUP/28, 24 July 1995. Available at <http://www.opbw.org>

September 1996²⁰. It then decided to intensify its work and agreed to meet three times in 1997 for three weeks each time on 3 - 21 March 1997²¹, 14 July - 1 August 1997²² and 15 September - 3 October 1997²³. The AHG initially functioned by the appointment of four Friends of the Chair (FOC) to assist the Chairman in his consultations and negotiations on particular issues and who chaired the sessions concerned with the four elements of the mandate:

- a. Definitions of Terms and Objective Criteria - Dr Ali Mohammadi of the Islamic Republic
- b. Confidence-Building and Transparency Measures - Ambassador Tibor Toth of Hungary
- c. Measures to Promote Compliance - Mr Stephen Pattison of the United Kingdom of Great Britain and Northern Ireland
- d. Measures Related to Article X - Ambassador Jorge Berguno of Chile.

These FOCs came from the Non-Aligned Movement Group, the Eastern Group, the Western Group and the Non-Aligned Movement Group respectively which reflected the issues that had been seen as being of particular importance by those Groups.

51. At successive AHG meetings, these FOC produced papers that reflected the discussions that had taken place yet were without prejudice to the positions of delegations on the issues under consideration in the Ad Hoc Group and did not imply agreement on the scope or content of the paper. These FOC papers were considered by the AHG in plenary session and amended as requested by delegations so that they reflected the views expressed before they were accepted for attachment to the procedural reports of the meetings.

52. Following the decision to intensify their work, the AHG successfully transitioned in July 1997 to consideration of a rolling text of the draft legally binding instrument. The first draft of

¹⁸ United 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*, Procedural Report, BWC/AD HOC GROUP/29, 12 December 1995. Available at <http://www.opbw.org>

¹⁹ United 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*, Procedural Report, BWC/AD HOC GROUP/31, 26 July 1996. Available at <http://www.opbw.org>

²⁰ United 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*, Procedural Report, BWC/AD HOC GROUP/33, 27 September 1996. Available at <http://www.opbw.org>

²¹ United 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*, Procedural Report, BWC/AD HOC GROUP/34, 27 March 1997. Available at <http://www.opbw.org>

²² United 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*, Procedural Report, BWC/AD HOC GROUP/36, 4 August 1997. Available at <http://www.opbw.org>

²³ United 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*, Procedural Report, BWC/AD HOC GROUP/38, 6 October 1997. Available at <http://www.opbw.org>

this rolling text was prepared by inserting language from these FOC papers into an outline for the legally binding instrument which had been prepared at the March 1997 AHG meeting. Additional Friends of the Chair were appointed at the July 1997 AHG meeting:

- a. Legal Issues -- Ambassador John Campbell of Australia
- b. Investigations Annex -- Mr Peter Goosen of South Africa

with a further two being appointed at the September 1997 AHG meeting:

- c. Confidentiality -- Ambassador Dr Gunther Siebert of Germany
- d. National Implementation & Assistance -- Mr Ajit Kumar of India.

Reports of the successive AHG meetings have been published in the *CBW Conventions Bulletin* every three months from December 1997 through to September 2001.²⁴

53. The rolling text of the draft legally binding instrument was developed at successive meetings of the AHG in 1998, 1999, 2000 and 2001. In 1998, the AHG met on four occasions for a total of 11 weeks from 5 – 23 January, 9 – 13 March, 22 June – 10 July, 14 September – 9 October. Three new Friends of the Chair were appointed in September 1998:

- a. Seat of the Organization -- Ambassador Akira Hayashi of Japan
- b. Preamble -- Malik Azhar Ellahi of Pakistan
- c. Organization/implementational issues -- Ambassador Tibor Toth of Hungary.

54. In 1999, the AHG met on 5 occasions for a total of 16 weeks from 4 – 22 January, 29 March – 9 April, 28 June – 23 July, 13 September – 8 October, 22 November – 10 December. There were no changes to the FOCs during 1999.

55. In 2000, the AHG met on 4 occasions for a total of 13 weeks from 17 January – 4 February, 13 – 31 March, 10 July – 4 August, 20 November – 8 December. There were no changes to the FOCs during 2000 but at the November-December 2000 meeting the Chairman recognized that work was required in a number of areas additional to that of completion of the text of the Protocol. Consequently, the Chairman requested that Facilitators should assist the Ad Hoc Group in the following areas:

- a. Harmonization of timelines for activities and measures in the Protocol -- Ambassador Ali Ashgar Soltanieh of Iran
- b. Structural harmonization of issues in the Protocol -- Ambassador Henrik Salander of Sweden

²⁴ Graham S. Pearson, *Strengthening the Biological and Toxin Weapons Convention*, Quarterly Reviews no 1 through to no 16, The CBW Conventions Bulletin issues no 38 (December 2001) to no 53 (September 2001). Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

- c. Editorial issues in the Protocol -- Dr Ben Steyn of South Africa and Dr John Walker of the UK
- d. Declaration on the Establishment of a Preparatory Commission -- Mr Peter Goosen of South Africa, Mr Fu Zhigang of China and Mr Gennady A. Loutai of the Russian Federation
- e. The Headquarters Agreement with the Host Country -- Ambassador Donald A. Mahley of the USA who will be assisted by Ambassador Krzysztof Jakubowski of Poland, Mr Adrian White of Australia, Mr Malik Azhar Ellahi of Pakistan, Ms Katarina Ranganitt of Sweden and Sra. Rodriguez Camejo of Cuba as well as additional personnel as considered necessary
- f. Harmonization of Legal Aspects of the Protocol -- to be appointed.

56. In 2001, the AHG met on 3 occasions for a total of 8 weeks from 12 – 23 February, 23 April – 11 May, 23 July – 7 August. A key development in 2001 was the preparation of a Chairman’s composite text which was issued on 30 March 2001.

The Chairman’s composite text, March 2001

57. The Chairman on 30 March 2001 provided to capitals as well as to delegations in Geneva an over 200 page composite Protocol text²⁵ entirely based on the rolling text and containing compromises to bridge the remaining gaps based on the informal conceptual consultations that the Chairman had had with delegations and the Friends of the Chair over the past nine months. The composite text retained the clean parts of the rolling text, while adopting a conservative approach with regard to any new ideas necessary for compromises. The key elements in the Chairman’s composite text are summarised here.

58. The key elements were requirements for declarations by all States Parties of:

- Initial Declarations – two were required. The first of offensive biological weapons programmes and/or activities conducted in the period between 1 January 1946 and entry into force of the Convention for that State Party and secondly of defensive biological weapons programmes and/or activities conducted during the 10 years prior to the entry into force of the legally-binding instrument for that State Party. This requirement was based on that for past offensive programmes and/or activities as in the Confidence-Building Measure F agreed by the States Parties at the Third Review Conference in 1991.

²⁵ United Nations, *Protocol to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction*, Future BWC/AD HOC GROUP/CRP.8, 30 March 2001. Available at <http://www.opbw.org> The Chairman’s composite text was also subsequently issued as Annex B to United 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*, Procedural Report, BWC/AD HOC GROUP/56-1, 18 May 2001. Available at <http://www.opbw.org>

- Annual Declarations. Requirements were for annual declarations of national biological defence programmes and/or activities, maximum biological containment facilities, high biological containment facilities which exceed 100 m² *and* have produced vaccines *or* other specified production *or* have carried out genetic modification of any agent or toxin listed in Annex A, plant pathogen containment, specified work with listed agents and toxins and specified production facilities. Again these were developed from the Confidence-Building Measures agreed by States Parties at the Third Review Conference in 1991.

59. These declarations were then followed up through provisions for visits to declared facilities which fell into three categories:

- Randomly-selected transparency visits intended to increase confidence in the consistency of declarations with the activities of the facility and encouraging submission of complete and consistent declarations and to enhance the transparency of these facilities.
- Voluntary assistance visits under which States Parties could request visits to a facility in order to obtain technical assistance and information.
- Declaration clarification procedures which could be initiated by the Director-General or a State Party in regard to the content of a declaration submitted by a State Party in order to resolve any ambiguity, uncertainty, anomaly or omission. If this related to a facility which was believed to meet the criteria for declaration and which had not been declared, the Director-General could request the State Party to submit a declaration for the facility concerned. Should the declaration clarification procedure not resolve the issue and if a suggested voluntary clarification visit was not offered, then the Director-General would make a report to the Executive Council which could take a decision to initiate a clarification visit.

60. Provisions were also made for investigations which fell into two categories:

- Field investigations would be carried out in geographic areas where exposure of humans, animals or plants had given rise to a concern about possible non-compliance with Article I of the Convention, and
- Facility investigations which would be carried out inside the perimeter of a particular facility at which there was a substantiated concern that it was engaged in activities prohibited under Article I of the Convention.

61. Other elements of the Chairman's composite text included provisions for assistance and protection against biological weapons, for scientific and technological exchange for peaceful purposes and technical co-operation, for strengthening the implementation of Article III of the Convention (which prohibits transfers of agents, weapons, equipment and means of delivery specified in Article I of the Convention), for establishing an organization to implement the

legally binding instrument and for national implementation measures, including penal legislation, to be taken by each State Party.

62. There were high hopes at the July-August 2001 meeting of the Ad Hoc Group that the Chairman's composite text could form the basis for the negotiations to be completed by the Fifth Review Conference scheduled to be held in November/December 2001. An article²⁶ in the ASA Newsletter on the Chairman's composite text concluded that "*Consideration of the composite Protocol text as a whole shows that this brings significant benefits to all States Parties when compared to the existing regime based on the Convention alone. A comparison of the Protocol regime with that of the CWC [in the article] shows the two regimes to be closely comparable with several elements elaborated in the Protocol regime that have no explicit counterpart in the CWC. It is evident that the Protocol negotiation can indeed be completed before the Fifth Review Conference and result in an effective and valuable strengthening of the prohibition regime against biological weapons.*"

The United States Rejection, July 2001

63. This promise was not fulfilled. The next meeting of the Ad Hoc Group from 23 July to 17 August 2001 started well with on the first two days, over 50 of the 55 or so States Parties engaged in the negotiation of the Protocol speaking in favour of completing the negotiation on the basis of the Chairman's composite Protocol text. Belgium, speaking on behalf of the European Union and the associated States (totalling 28 States in total) said that "*the European Union reiterated its determination to respect the decision of the Fourth Review Conference to complete the negotiation of the Protocol prior to the Fifth Review Conference.*" The statement went on to say that the European Union "*reaffirms that even if on certain points the Composite Text does not fully correspond to what we would like to see, nevertheless we think that it is a basis on which political decisions could be taken. Indeed a Protocol based on the Composite Text and which would respect the general balance of it could certainly consolidate the Convention and would be a useful supplement to existing multilateral regimes in the field of disarmament and non-proliferation and therefore would enhance everyone's security.*" Brazil spoke on behalf of 36 States, including some of those who had been associated with the EU statement, saying that "*we continue to believe that the Chairman's Composite Text (CRP.8) provides the basis to conclude our work expeditiously in accordance with the mandate of the Ad Hoc Group and the undertakings regarding the conclusion of the negotiations as agreed by consensus at the 1996 Review Conference. We consider that CRP.8 reflects a careful and sustained endeavour to reach comprehensive and balanced compromises. We believe that a Protocol based on your text would enhance international confidence that the prohibitions of the Convention are being upheld and that its provisions are being implemented.*"

64. Then on the third day, 25 July 2001, the United States delivered a 10 page detailed statement rejecting not only the Chairman's composite Protocol but also the approach to the Protocol. A

²⁶ Graham S. Pearson, *The BTWC Protocol: The Chairman's Composite Text*, ASA Newsletter 01-04, 31 August 2001. Available at <http://www.asanltr.com/>

detailed evaluation²⁷ was made in August 2001 which examined the United States statement of 25 July 2001 in detail and analysed its various elements. It was concluded that the US elements and assertions were based on illogical assessments and were incorrect and not valid. Several were based on alleged concerns that had no basis in the actual composite Protocol text. It was evident that the United States was indeed making a huge mistake and was failing to take all possible steps to strengthen the international norm totally prohibiting biological weapons and to counter the proliferation of biological weapons. The US was primarily evaluating the Protocol against some national standards -- and not against the Protocol mandate that the United States not only agreed to but was instrumental in drawing up having proposed many of the elements.

65. The essence of the United States rejection of the Protocol was encapsulated in the State Department briefing of 25 July 2001 which said "The protocol, which was proposed, adds nothing new to our verification capabilities. And it was the unanimous view in the United States government that there were significant risks to US national interests and that is why we could not support the protocol. Implementation of such a protocol would have caused problems...for our biological weapons defense programs, would have risked intellectual property problems for our pharmaceutical and biotech industries and risked the loss of integrity and utility to our very rigorous multilateral export control regimes." These assertions are all incorrect.

66. First, the assertion that the composite Protocol added nothing new to our verification capabilities was simply not true. The Protocol required mandatory declarations of the activities and facilities of greatest relevance to the Convention, the declaration follow-up procedures promoted the consistency of declarations and addressed any ambiguity, uncertainty, anomaly or omission, and also provided for field and facility investigations of compliance concerns. To assert that these added nothing new to our verification capabilities failed completely to recognize that there are no such provisions under the Convention alone.

BTWC and its Protocol Regime	BTWC alone
Mandatory declarations -- measures to ensure submission	Confidence-Building Measures -- patchy and variable (if made)
Declaration follow-up procedures -- analysis of declarations -- randomly-selected transparency visits	None -- none -- none
Declaration clarification procedures -- clarification visits	None -- none
Voluntary assistance visits	None
Non-compliance concerns -- Consultations >>>> Investigations	Art V consultation procedures Art VI complaint to UN Security Council
Field investigation	Possible UN Secretary-General investigation if invited by State Party concerned
Facility investigation	None

²⁷Graham S. Pearson, Nicholas A. Sims and Malcolm R. Dando, *The US Rejection of the Composite Protocol: A Huge Mistake based on Illogical Assessments*, University of Bradford, Department of Peace Studies, Evaluation Paper No 22, August 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

67. Second, the assertion that the Protocol would cause problems for the biological weapons defense programs of the United States was at complete variance with the assessments of all the other States Parties engaged in the negotiations who also have biological weapons defence programmes. Nor was there anything in the Protocol that requires the provision of any national security information in the declarations of biological weapons defence programmes. Indeed, Protocol Article 13 explicitly protects the right of States Parties to carry out such programmes. This assertion is in sharp contrast to the fact that already, without the obligations in the composite Protocol, the United States in 2001 was much more open and provided more information to the public about its biological defence programme than did any other country.

68. Third, the assertion that the Protocol would have risked intellectual property problems for the US pharmaceutical and biotech industries ignored the fact that the Protocol contains stronger provisions for the protection of commercial proprietary information than did the Chemical Weapons Convention when that emerged from its negotiations in Geneva. Furthermore, there are no requirements for the provision of commercial proprietary information in any of the mandatory declarations. Moreover, the frequency of visits to such facilities in the United States under the Protocol is necessarily seven or less per year -- a minute fraction of the thousands of inspections carried out by regulatory agencies in the United States.

69. Fourth, the assertion that the Protocol would have risked the loss of integrity and utility to the US very rigorous multilateral export control regimes was simply not true. The Protocol included provisions in Article 7, requiring all States Parties to review, amend or establish controls over the transfer of biological materials and technology, that would bring clear benefits - both in countering proliferation and limiting the availability of materials and equipment for bioterrorism - for the international community and the United States as all States Parties would be required under the Protocol to regulate such transfers.

Comparison of the Chairman's composite text and the Chemical Weapons Convention

70. As it is now over four years since the United States rejected the Chairman's composite text (CRP. 8), it is useful to reconsider what the provisions were in the Chairman's composite text and how these compared with the provisions in the Chemical Weapons Convention. It needs to be noted that the Chemical Weapons Convention contains detailed provisions relating to the destruction of chemical weapons because the CWC was negotiated when a number of States had admitted to having stockpiles of chemical weapons and to having chemical weapon production facilities which are required to be destroyed under the CWC. In contrast, when the BTWC was negotiated in the early 1970s the US had already announced that it would destroy its stockpile and no other State admitted to having stockpiles of biological weapons or to biological weapon production facilities. Consequently, Article II of the Convention makes no mention of production facilities and simply states that:

Each State Party to this Convention undertakes to destroy, or to divert to peaceful purposes, as soon as possible but not later than nine months after entry into force of the Convention, all agents, toxins, weapons, equipment and means of delivery specified in article I of the Convention, which are in its possession or under its jurisdiction or

control. In implementing the provisions of this article all necessary safety precautions shall be observed to protect populations and the environment.

As the BTWC has been in force since 1975 and no State has admitted to a stockpile of biological weapons there were no provisions in the Chairman's composite text requiring the declaration and destruction under verification of such weapons.

71. It is appropriate to compare the Chairman's composite text regime with the CWC regime – as both Conventions address toxins, bioregulators and peptides and thus rightly have a significant area of overlap, both have general purpose criteria which embrace all possible agents, past, present and future, and both address dual use materials and technology.

Classical CW	Industrial Pharmaceutical Chemicals	Bioregulators Peptides	Toxins	Genetically Modified BW	Traditional BW
Cyanide Phosgene Mustard Nerve Agents	Aerosols	Substance P Neurokinin A	Saxitoxin Ricin Botulinum Toxin	Modified/ Tailored Bacteria Viruses	Bacteria Viruses Rickettsia Anthrax Plague Tularemia
Biological and Toxin Weapons Convention					
← Chemical Weapons Convention					
← Poison				← Infect	

The CWC regime is the one of **greatest** relevance to the BTWC Protocol regime and it is already evident that National Authorities for the two regimes are likely to be colocated in a number of countries.

72. It is hardly surprising that the Chairman's composite text regime adopted some concepts where appropriate from the CWC regime. It was not, however, just a simple copy which ignored the fundamental differences between the two areas. The Chairman's composite text was, however, much more elaborated than the CWC and had been finely tailored to address the fundamental difference in the nature of biological agents as well as to capture the facilities of greatest relevance to the Convention. If we ignore the chemical weapon and chemical weapon production facility elements of the CWC, then the basic architecture of the BTWC Protocol regime and the CWC regime is the **same**. The qualitative differences between the regimes are in the detail: the BTWC Protocol regime has built on the confidence-building measures agreed by **all** the States Parties at the Second Review Conference in 1986 and extended at the Third Review Conference in 1991. In respect of the monitoring of dual-purpose materials and facilities, the two regimes are very comparable, with the Protocol regime imposing a less onerous but more

focussed burden in respect of declarations and visits whilst the international cooperation provisions are much more extensive than those of the CWC.

73. The two regimes are compared in the table below.

BTWC and the Chairman's composite Regime	CWC Regime
Mandatory declarations -- range of facilities (BL-4, BL-3*, work with listed agents*, production, ...) -- requires declaration of biological defence -- measures to ensure submission	Mandatory declarations -- focussed on chemical production facilities -- no declarations yet of chemical defence -- no measures to ensure submission
Declaration follow-up procedures -- explicit and structured -- analysis of declarations -- randomly-selected transparency visits	Declaration follow-up procedures --implicit and unstructured -- routine inspections of production facilities for scheduled chemicals and DOCs (discrete organic chemical)
Declaration clarification procedures -- clarification visits	No declaration clarification procedures -- implicit not elaborated
Voluntary assistance visits	No provision for voluntary assistance visits -- implicit not elaborated
Non-compliance concerns -- Consultations >>> Investigations	Non-compliance concerns -- Consultations >>> Investigations
Field investigation -- includes investigation of releases	Investigation of alleged use -- no investigation of other releases
Facility investigation -- team size and duration limited	Challenge inspection -- duration limited
Transfer procedures	Transfer controls
Assistance -- provisions similar to CWC	Assistance
International Cooperation -- elaborated in detail -- Cooperation Committee --targeted on genuine need to counter disease -- real benefits over time >>health, prosperity	International Cooperation -- not elaborated in detail -- no provision for Cooperation Committee
Organization -- CoSP, ExC & Technical Secretariat -- TS has role to analyse epidemiological info	Organization -- CoSP, ExC & Technical Secretariat -- no parallel role
Confidentiality Provisions -- elaborated in detail in Article and Annex	Confidentiality Provisions -- no Article but an Annex -- not as elaborated

National implementation -- Penal legislation required -- National Authority	National implementation -- Penal legislation required -- National Authority
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* Indicates that only selected facilities meeting certain combinations of conditions, **not** all such facilities are to be declared.

74. This comparison demonstrates that the two regimes are indeed comparable and effective. Indeed, the **quality** of the Chairman's composite regime is certainly **as good as, if not better than**, that of the CWC. Both address dual purpose materials and technologies. Lessons have been learned from the CWC implementation experience. The Chairman's composite text has successfully been crafted so that it will achieve the requirement for an effective and reliable regime which, in accordance with the AHG mandate, will strengthen the effectiveness and improve the implementation of the BTWC and thereby strengthen the norm against biological weapons. There is no doubt that a regime based on the Chairman's composite would be of immense value to **all** States Parties -- both developed and developing -- bringing improved health, safety, security and prosperity. Indeed it should be noted that there is a relationship between the co-operative measures and international security: improving the international community's ability to deal with the consequences of infectious disease will help make it easier to identify deliberate outbreaks of disease that are the result of the use of biological weapons. National improvements in biosafety, good manufacturing practice and the regulations covering the handling, transportation and use of biological agents and toxins through the Protocol cooperation measures will improve national infrastructure as well as transparency and over time will contribute to building confidence.

75. The Chairman's composite text is also important for its contribution to the web of deterrence²⁸ which comprises:

- A strong international and national prohibition regime reinforcing the norm that biological weapons are totally prohibited
- Broad international and national controls on the handling, storage, use and transfer of dangerous pathogens
- Preparedness including both active and passive protective measures and response plans that have been exercised
- Determined national and international response to any use or threat of use of biological weapons ranging from diplomatic sanctions through to armed intervention,

which are together mutually reinforcing and lead a would-be possessor, whether a "rogue State" or a non-State actor to judge that acquisition and use of BW would not be valuable, would be

²⁸Graham S. Pearson, *The Vital Importance of the Web of Deterrence*, Sixth International Symposium on Protection against Chemical and Biological Warfare Agents, Proceedings, Stockholm, 10 - 15 May 1998, pp. 23-31. Graham S. Pearson, *Prospects for Chemical and Biological Arms Control: The Web of Deterrence*, The Washington Quarterly, Spring 1993, pp.145 - 162.

detected and incur an unacceptable penalty. Any single element of the web of deterrence alone is insufficient -- all elements are vital and all need to be strengthened as they thereby reinforce the deterrent effect. The Chairman's composite text through its strengthening of the international prohibition regime not only reinforces the norm that biological weapons are totally prohibited, its requirements also strengthen the international and national controls on the handling, storage, use and transfer of dangerous pathogens and the determined international response to any use or threat of use of biological weapons. In other words, the Chairman's composite text would contribute to the strengthening of all the elements of the web of deterrence.

76. Under the Chairman's composite text regime, the States Parties would have over time gained confidence in the compliance of the other States Parties and any State Party contemplating breaching the Convention would be deterred through the prospect that such a breach would be detected by the measures in the regime. Increasingly, States not Party to the regime would be isolated and any proliferators could be countered better by the multilateral body of the States Parties to the regime.

Subsequent developments

77. The events of 11 September 2001 and the subsequent anthrax letter attacks in the United States which killed five people and caused immense public alarm and concern in the US raised hopes that, prior to the Review Conference starting on 19 November 2001, the United States might reconsider its decision to reject the legally binding instrument *to strengthen the effectiveness and improve the implementation* of the Convention. However, there was no sign of any such reconsideration by the Bush administration.

78. Instead, the State Department on 19 October 2001 issued two fact sheets – one entitled “*New ways to strengthen the international regime against biological weapons*” and the other a summary of the proposals within the first fact sheet. This was followed up on 1 November 2001 by a statement by President George W. Bush on biological weapons. The Presidential statement said that “*The United States is committed to strengthening the Biological Weapons Convention (BWC) as part of a comprehensive strategy for combating the complex threats of mass destruction and terrorism. With this objective, my Administration is proposing that all Parties:*

- *Enact strict national criminal legislation against prohibited BW activities with strong extradition requirements;*
- *Establish an effective United Nations procedure for investigating suspicious outbreaks or allegations of biological weapons use;*
- *Establish procedures for addressing BWC compliance concerns;*
- *Commit to improving international disease control and to enhance mechanisms for sending expert response teams to cope with outbreaks;*

- *Establish sound national oversight mechanisms for the security and genetic engineering of pathogenic organisms;*
- *Devise a solid framework for bioscientists in the form of a code of ethical conduct that would have universal recognition; and*
- *Promote responsible conduct in the study, use, modification, and shipment of pathogenic organisms.”*

The Presidential statement concluded by stating that “*Our objective is to fashion an effective international approach to strengthen the Biological Weapons Convention. The ideas we propose do not constitute a complete solution to the use of pathogens and biotechnology for evil purposes. However, if we can strengthen the Convention against the threat of biological weapons, we will contribute to the security of the people of the United States and mankind as a whole.*”

79. It is clear from the detail in the State Department fact sheets that these proposals are all crafted for action by individual States Parties rather than for multilaterally negotiated action. Indeed the fact sheet specifically identifies the measures that the United States intended to put forward at the November 2001 Review Conference as being as follows:

“1. Measures to strengthen Article IV (national implementation)

- a. National criminal legislation supplemented by an enhanced extradition regime*
- b. Security standards for pathogenic microorganisms*
- c. Genetic engineering oversight*
- d. Professional code of conduct*

2. Measures to strengthen Article V (consultation and cooperation)

- a. Mechanism for investigating suspicious outbreaks of disease*
- b. Procedures for addressing BWC compliance concerns*

3. Measures to strengthen Article VII (assistance to victims) and Article X (technical and scientific cooperation)

- a. Biosafety standards*
- b. Infectious disease control*
- c. International rapid response teams.”*

It goes on to state that “*In developing these proposals, we have sought to identify measures that: (a) could be agreed in a BWC context, and (b) would be valuable even if they are respected and implemented only by responsible states and are violated by irresponsible states.*”

Fifth Review Conference, November—December 2001

80. The President of the Review Conference, Ambassador Tibor Tóth of Hungary, in his opening remarks said that although any review conference was a crucial event *interpreting the past and projecting the future within a timeframe of a decade* this was not an easy task even under normal circumstances. *"This time... the Fifth Review Conference will have to penetrate much deeper into [the] past and future than any of its predecessors."* He noted that the negotiations on the compliance protocol had come to an abrupt halt in August and that the Fifth Review Conference *"will have to chart the course for future action that will determine the state of the whole of the biological weapons prohibition regime for a much longer period of time than just the next five years ahead. That time scale altogether is close to a generation; the potential ramifications could transcend even further into the future."*

81. He went on to note that another challenge was posed by the recent use of biological weapons in the incidents using anthrax as a weapon of terror which was forcing us to live with the notion that the use of these weapons is becoming a *de facto* part of our everyday life. He said that *"Such a notion is slowly eroding all the prohibition layers, both politically and legally binding, as contained in the consensus final declarations of all the previous Review Conferences and in the Biological Weapons Convention itself. The Convention is facing perhaps the greatest challenges in its 26-year history. All of this is puts us in a situation profoundly different to that faced by previous Review Conferences."* He concluded by calling on all delegations to participate in a constructive spirit, to stay realistic and *"at the same time live up to the requirements of preserving the integrity of the regime in accordance with the expectations of the international community. Action or lack of action will shape the future of the biological weapons prohibition regime much beyond the Fifth Review Conference. We will have to reconfirm at the Conference the importance the international community attaches to the integrity of each and every prohibition norm....We must not accept the slow erosion of the norms that served us for decades, if not longer. We must comprehend that in the light of political and public expectations we have no other viable choice but to overcome these challenges."*

82. The Review Conference made good progress during its three week meeting and had, by the morning of the final day, reached the position where the President of the Review Conference was reporting to the media that 75 per cent of the Final Declaration had been consolidated and that the outstanding critical issues were non-compliance with the Convention, follow-up to the Review Conference, and the question of the Ad Hoc Group and whether or not this should resume its work.

83. Late in the afternoon of the final day, Friday 7 December 2001, agreement had been reached on the language in the Final Declaration relating to the first eleven Articles of the Convention -- and it was known that consensus language was available for Articles XIII, XIV and XV -- when the United States tabled new language for Article XII. The draft language being considered for Article XII had been as follows:

"1. The Conference decides that a Sixth Review Conference shall be held in Geneva at the request of the majority of States Parties, or in any case, not later than 2006."

2. *The Conference decides that the Sixth Review Conference shall consider, inter alia,*

- ...

- *The impact of scientific and technological developments relating to the Convention;*

- *The relevance of the provisions of, and the implementation of the Chemical Weapons Convention on the effective implementation of the Biological and Toxin Weapons Convention, duly taking into account the degree of universality attained by such conventions at the time of the Fifth Review Conference;*

- *The effectiveness of confidence-building measures as agreed at the Second and Third Review Conferences;*

- *The requirement for, and the operation of, the requested allocation by the United Nations Secretary-General of staff resources and other requirements to assist the effective implementation of the relevant decisions of the Fourth Review Conference;*

3. *The Review Conference reaffirms that conferences of States Parties to review the operation of the Convention should be held at least every five years."*

84. The new language proposed for Article XII by the United States, without prior consultation with any of the other States Parties, was as follows:

"1. The Conference decides, beginning in November 2002, that States Parties will meet annually between the Fifth Review Conference and the Sixth Review Conference to

(a) consider and assess progress by States Parties in implementing the new measures adopted at the Fifth Review Conference; and

(b) consider new measures or mechanisms for effectively strengthening the BWC

2. *The Conference decides that an Expert Group may meet, following each annual meeting of the States Parties if agreed at the annual meeting. The Experts group will examine matters as directed by the States Parties at the preceding annual meeting. The Experts Group will not negotiate measures, but may provide a report, adopted by consensus, to the States Parties on matters examined.*

3. *The Conference takes note of the work of the Ad Hoc Group, and **decides that the Ad Hoc Group and its mandate are hereby terminated** and replaced with the process elaborated in paragraphs 1 and 2. [Emphasis added]*

4. *The Conference decides that the Sixth Review Conference will be held in November 2006."*

85. This proposal by the United States was received with shock and anger not only because of its proposed termination of the Ad Hoc group and its mandate but also because of its unexpected introduction less than two hours before the Review Conference was scheduled to end thereby jeopardizing the whole Review Conference and the progress towards agreement of a Final Declaration. In order to avoid complete failure of the Review Conference, there was no alternative other than to adjourn the Review Conference until 11 to 22 November 2002. The President of the Review Conference noted to the media that the Review Conference had been quite close to finishing its work, *"both in terms of the volume of the elements which were consolidated and in terms of the understandings which had been reached."* and added that *"the draft Final Declaration was 95 per cent ready"* although *"there seemed to be a serious absence of understanding concerning the issue of the Ad Hoc Group where the differences between positions appeared to be irreconcilable"*, at least in the time remaining at the Review Conference.

86. In an analysis made in December 2001 in a detailed report²⁹ on the Fifth Review Conference in *The CBW Conventions Bulletin* I noted that in considering the reasons for the failure of the Review Conference to agree its Final Declaration on 7 December 2001, the onus has to be placed squarely upon the United States. Although the United States statement to the Review Conference attracted much attention because of its naming of States Parties and States that the United States considered not to be in compliance with the Convention, this was not without precedent as at the Third Review Conference in 1991 both the United States and the United Kingdom had named the Soviet Union and Iraq as being non-compliant whilst at the Fourth Review Conference in 1996 statements were made by Australia, France, United States and the United Kingdom naming the former Soviet Union and Iraq as States Parties considered not to be in compliance with the Convention. The difference in 1996 was that in respect of both the former Soviet Union and Iraq there were ongoing mechanisms (the trilateral process and UNSCOM) which sought to address the compliance concerns. It was notable how John Bolton in his press conference in Geneva (see transcript at <http://www.us-mission.ch/press2001/1119boltonpress.htm>) was repeatedly asked – and pointedly declined to answer -- whether the United States intended to use the procedures set out at previous Review Conferences, and used by Cuba in 1997 – to address compliance concerns. This was in marked contrast to the United States proposed language for Article V of the Final Declaration of the Fifth Review Conference which in regard to addressing problems concerned with the Convention stated that *"The Conference ... reaffirms that any State Party which identifies such a problem should, as a rule, use these procedures to address and resolve it."* and went on, after noting that these procedures had been satisfactorily invoked since the Fourth Review Conference – a reference to the Cuban invoking of the Article V procedures – to add *"The Conference ... calls on any State Party which identifies a problem ... to use these procedures, if appropriate, to address and resolve it."*

87. It became evident during the Review Conference that the United States, whilst content to call for national measures, would not consent to any language which required multilateral action or sought to arrive at legally binding measures to strengthen the regime. It also apparently had

²⁹ Graham S. Pearson, *Report from Geneva*, 17th Quarterly Review, CBW Conventions Bulletin, no 54, December 2001. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

difficulty in accepting language referring to other international treaties such as the Convention on Biological Diversity or the Cartagena Protocol on Biosafety to which the United States is not a Party even though such language had been agreed at previous Review Conference. The tabling, within two hours of the end of the Review Conference, of language, without any prior consultation even with close allies, proposing termination of the Ad Hoc Group and its mandate showed a serious misreading of the widespread desire of all the other States Parties to strengthen the effectiveness and improve the implementation of the Convention in accordance with the mandate of the Ad Hoc Group. The attitude of the United States to the Review Conference and the Biological and Toxin Weapons Convention is very hard to understand let alone explain. The rest of the world appreciates and recognizes the value of the multilateral regime against biological weapons in strengthening collective security and following the events of 11 September and the subsequent anthrax attacks in the United States, it would have been expected that the United States would have been aware of -- and would have wished to benefit from -- the considerable benefits that could accrue from multilaterally strengthening the BWC regime as national measures are always going to be subject to national interpretation and are unlikely to be harmonised internationally. The United States has missed a real opportunity to help to protect itself -- and its fellow States Parties -- from the dangers of biological weapons. It is possible that the explanation in the United States failure to seize this opportunity lies in the disconnect between those who make the policy decisions in Washington and those engaged in multilateral fora.

88. In looking ahead to the adjourned Review Conference, there was much to be said for like-minded States -- such as the 36 States Parties on whose behalf Brazil had spoken in support of the Chairman's composite text in July 2001 (Argentina, Australia, Austria, Belize, Brazil, Bulgaria, Canada, Chile, Croatia, Cyprus, the Czech Republic, Denmark, Ecuador, Greece, Guatemala, Hungary, Iceland, Ireland, Italy, Luxembourg, Malta, Mexico, the Netherlands, New Zealand, Nicaragua, Norway, Peru, Republic of Korea, Romania, Slovakia, Slovenia, South Africa, Spain, Sweden, Turkey and Ukraine) together with the other members and associated countries of the European Union (such as Belgium, Estonia, Finland, France, Germany, Liechtenstein, Lithuania, Poland, Portugal, and United Kingdom) as well as States Parties such as Jamaica, Japan, Latvia, Monaco, Singapore, and Switzerland which together would come to over 50 States Parties -- to have consulted together to agree on how to have proceeded in November 2002 should the United States still not recognised the importance to collective security of a multilaterally strengthened BWC regime. It is also worth remembering that the rules of procedure of the Review Conference do state that *"If, notwithstanding the best efforts of delegates to achieve consensus, a matter of substance comes up for voting, the President shall defer the vote for 48 hours and during this period of deferment shall make every effort ... to facilitate the achievement of general agreement."* and then goes on to add that *"If by the end of the period of deferment the Conference has not reached agreement, voting shall take place and decisions shall be taken by a two-thirds majority of the representatives present and voting, providing that such majority shall include at least a majority of the States participating in the Conference."*

Resumed Fifth Review Conference, November 2002

89. At the resumed Fifth Review Conference on 11 to 22 November 2003, the President presented his proposal, following wide consultations throughout the year, for the final product of the Conference in the form of a draft decision establishing follow-up meetings over the next three years, which reflected the conclusion that he had reached that this was the only outcome which could realistically hope to be achieved that would ensure a continued multilateral approach to the implementation and strengthening of the Convention in a way that involved all States Parties. The draft decision called for a one-week annual meeting of States Parties each year until 2006, with each such meeting to be preceded by a two-week meeting of experts. Five topics were set out for consideration by these meetings:

- i. The adoption of necessary, national measures to implement the prohibitions set forth in the Convention, including the enactment of penal legislation;*
- ii. National mechanisms to establish and maintain the security and oversight of pathogenic microorganisms and toxins;*
- iii. Enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease;*
- iv. Strengthening and broadening national and international institutional efforts and existing mechanisms for the surveillance, detection, diagnosis and combating of infectious diseases affecting humans, animal, and plants;*
- v. The content, promulgation, and adoption of codes of conduct for scientists.*

Items i and ii would be addressed in 2003, iii and iv in 2004 and v in 2005.

90. It became clear during the resumed Fifth Review Conference that the draft decision was not for negotiation and, although many States Parties expressed concern, the draft was eventually agreed and incorporated into the Final Report of the Review Conference which made it clear that these annual meetings would be *to discuss, and promote common understanding and effective action on* the identified annual topics. There was no Final Declaration from the Fifth Review Conference.

91. The decision agreed by the resumed Fifth Review Conference represented a modest step forward which found consensus support by *all* States Parties -- and, as such, was better than the indications earlier in the year which suggested that agreement might not be forthcoming even on annual meetings prior to the Sixth Review Conference in 2006. It is, however, evident that the individual items in the decision are all taken from the items identified in the US statements of October and November 2001. This is understandable since the aim was to identify items that would be supported by all States Parties, including the United States. It was, however, regrettable that at the Review Conference the opportunity was missed to adopt a Final Declaration as the reaffirmations and extended understandings provided by such Final

Declarations do significantly contribute to the strengthening of the norm and regime totally prohibiting biological weapons. Certainly the international situation in 2002 regarding the Biological and Toxin Weapons Convention was not one in which there was no urgency to strengthen the norm and regime and thereby send a clear message to States Parties and to sub-State actors that these weapons are totally prohibited. A detailed report³⁰ on the resumed Fifth Review Conference appeared in *The CBW Conventions Bulletin* no 58 (December 2002).

Annual Meetings of the States Parties

92. In 2003, the States Parties held a one week Meeting of States Parties in November 2003 prepared by a two week Meeting of Experts in August 2003 under an Eastern Group Chairman, Ambassador Tóth of Hungary, to consider the two topics:

- i. The adoption of necessary, national measures to implement the prohibitions set forth in the Convention, including the enactment of penal legislation;*
- ii. National mechanisms to establish and maintain the security and oversight of pathogenic microorganisms and toxins;*

The outcome of the Meeting of Experts was a 4 page factual report to which was annexed an undigested collation, in the languages of submission, all the presentations, statements and contributions to the discussion that were provided in writing.

93. Although there were hopes that the Meeting of States Parties would focus on the requirement in the mandate *to discuss, and promote common understanding and effective action* on the two topics, the outcome was a modest statement that the States Parties agreed:

To review, and where necessary, enact or update national legal, including regulatory and penal, measures which ensure effective implementation of the prohibition of the BTWC, and which enhance effective security of pathogens and toxins.

The positive effect of cooperation between States Parties with differing legal and constitutional arrangements. States Parties in a position to do so may wish to provide legal and technical assistance to others who request it in framing and/or expanding their own legislation and controls in the areas of national implementation and biosecurity.

The need for comprehensive and concrete national measures to secure pathogen collections and the control of their use for peaceful purposes. There was a general recognition of the value of biosecurity measures and procedures, which will ensure that such dangerous materials are not accessible to persons who might or could misuse them for purposes contrary to the BTWC.

³⁰ Graham S. Pearson, *Report from Geneva*, 18th Review, CBW Conventions Bulletin, no 58, December 2002. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

94. In an analysis³¹ at the time it was noted that the Meeting of States Parties had barely managed to reach agreement on a short statement of substance and had failed to fulfil the promise which had been apparent at the end of the Meeting of Experts in August 2003. The Final Report of the Meeting of States Parties just managed to avoid paralleling that of the Meeting of Experts which comprised a procedural report and an annexed, but unanalyzed, collation of all the presentations, statements and contributions. While there is significant value in maintaining a full record of the contributions made by States Parties, the lack of analysis and distillation, together with the short period of time, two months, between the Meeting of Experts and the Meeting of the States Parties contributed to the limited outcome of the Meeting of States Parties. It cannot be said to have successfully promoted *common understanding and effective action* as required by the mandate.

95. In 2004, the Meeting of States Parties was held in Geneva from 6 to 10 December. It was preceded by the Meeting of Experts under a NAM Chairman, Mr Peter Goosen of South Africa, on 19 to 30 July 2004 which addressed the two topics for consideration in 2004:

iii. Enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological and toxin weapons or suspicious outbreaks of disease;

iv. Strengthening and broadening national and international institutional efforts and existing mechanisms for the surveillance, detection, diagnosis and combating of infectious diseases affecting humans, animals and plants;

The Meeting of Experts in July 2004 made significant progress especially through its decision to annex to its report the list of “*considerations, lessons, recommendations, conclusions and proposals*” prepared by the Chairman. This provided the States Parties with an excellent starting point from which to develop language to meet the requirement of the mandate for the Meeting of State Parties in December 2004 to ‘*discuss, and promote common understandings and effective action*’.

96. The Chairman wrote to the States Parties on 29 October 2004 to advise them that further work had been undertaken on the list in Annex II and that it had been possible to synthesize these proposals, etc, into a much more manageable form, which was attached to the letter. It was underlined that the synthesized version of the document continued to be based on the presentations, statements, working papers and interventions made by delegations, and did not include any new ideas. All that had been done was to remove repetitions and merge similar concepts. The Chairman concluded by pointing out that the very limited duration of one week for the Meeting of States Parties would not provide time for delegations to again make extensive presentations and that attention needed to be directed to specifically addressing the mandate. The synthesis attached to the letter was subsequently issued as BWC/MSP/2004/L.1 dated 1 December 2004 and translated into all of the UN languages.

³¹ Graham S. Pearson, *Report from Geneva*, CBW Conventions Bulletin, no 62, December 2003. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

97. During the Meeting of States Parties, the Chairman circulated a short paper setting out in six paragraphs the possible outcome for the meeting. After consideration and the circulation of two further versions, agreement was reached on seven paragraphs of substance³². For each agenda item, one paragraph set out some common elements recognized by the States Parties whilst a second paragraph said that the States Parties had agreed upon the value of a number of items. In regard to the topic relating to investigation of alleged use the agreed paragraphs were:

20. On the mandate to discuss, and promote common understanding and effective action on enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease, the States Parties recognised that:

a) capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease promote the object and purpose of the Convention;

b) States Parties' national preparedness and arrangements substantially contribute to international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease;

c) the Secretary-General's investigation mechanism, set out in A/44/561 and endorsed by the General Assembly in its resolution A/Res/45/57, represents an international institutional mechanism for investigating cases of alleged use of biological or toxin weapons.

21. The States Parties consequently agreed on the value of:

a) continuing to develop their own national capacities for response, investigation and mitigation, in cooperation with the relevant international and regional organisations, and, if in a position to do so, assisting and encouraging, with the necessary agreement, other States Parties to do the same;

b) the Sixth Review Conference considering, inter alia, the further development of current procedures for the provision of assistance, by those in a position to do so, to States Parties in cases of alleged use of biological weapons or suspicious outbreaks of disease.

98. A useful paragraph was also agreed which helped to bridge the outcome of the Meeting of States Parties to the Sixth Review Conference in 2006:

23. States Parties are encouraged to inform the Sixth Review Conference of, inter alia,

³² 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*, Report of the Meeting of States Parties, BWC/MSP/2004/3, Second Meeting, Geneva, 6–10 December 2004. Available at <http://www.opbw.org>

any actions, measures or other steps that they may have taken on the basis of the discussions at the 2004 Meeting of Experts and of the outcome of the 2004 Meeting of States Parties in order to facilitate the Sixth Review Conference's consideration of the work undertaken at the meetings in 2004 and of a decision on any further action in accordance with paragraph 18 (e) of the decision adopted at the Fifth Review Conference (BWC/CONF.V/17).

It was evident during the Meeting of States Parties that a number of States Parties were looking ahead to the Sixth Review Conference and what the outcome might be³³.

99. The topic for the meetings in 2005 under a Western Group Chairman, Ambassador John Freeman, from the United Kingdom will be:

v. The content, promulgation, and adoption of codes of conduct for scientists.

It is evident that this topic is already attracting attention in a number of countries around the world.

Prospects for the Sixth Review Conference, 2006

100. It is timely *now* to consider the prospects for the Sixth Review Conference as the States Parties are half way through the period between the Fifth and Sixth Review Conferences and an appraisal can be made as to the effectiveness of the new process thus far. In considering the annual meetings of the States Parties, it needs to be recognised that the consideration by the States Parties of the five topics being addressed in 2003 to 2005 is being tightly constrained and there are no indications that the Chairmen of the annual meetings are trying to show flexibility in their interpretation of what might be considered at the meetings. It was also evident that the outcome in 2003 was minimal with no clear statement of actions, let alone any action plans, to be taken by States Parties by the time of the Sixth Review Conference. The outcome in 2004 was much better with a clear statement of common understandings and of what action might be of value. States Parties were also urged to inform the Sixth Review Conference of any actions, measures or other steps that they may have taken.

101. This needs to be taken into account when the *relevance* of the five topics to the strengthening of the BTWC regime is considered. The two topics in 2003 – national measures to implement the prohibitions in the Convention and national measures for the security and oversight of dangerous pathogens and microorganisms – are both directly relevant to the strengthening of the regime but the outcome of the 2003 meetings was minimal and ineffective – a missed opportunity, in other words. The two topics for 2004 – enhancing international capabilities for responding to the alleged use of biological and toxin weapons and strengthening mechanisms for the surveillance of human, animal and plant diseases – differ in regard to their relevance. The first – responding to alleged use – is directly relevant whilst the second – surveillance of human, animal and plant diseases – is more directly related to international health and is less directly related to strengthening the BTWC regime. The topic for 2005 – codes of

³³ Graham S. Pearson, *Report from Geneva*, CBW Conventions Bulletin, no 66, December 2004. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

conduct for scientists – is loosely related to the strengthening of the BTWC regime and cannot be seen as the panacea to solve all the problems. Consequently, the annual meetings of the States Parties should be seen for what it is – a means of enabling the States Parties to maintain dialogues and to exchange much information on national practices without actually strengthening the BTWC regime in an effective way.

102. In looking ahead to the Sixth Review Conference, it needs to be recognised that the disagreement about the negotiations of a legally binding instrument to strengthen the Convention have *not* yet been resolved. At the Meeting of Experts in July 2004, at least two States Parties – Russia and Iran – in their opening plenary statements made it clear that they still regarded a legally binding instrument as being what the Convention needed for its strengthening and for the improvement of its implementation whilst Germany noted the failure saying that *“following the failure in 2001 to achieve a legally binding instrument to verify compliance with the Convention, the States Parties took a pragmatic decision at the 5th Review Conference to launch a new process to strengthen the Convention.”* The Russian Federation said that *“We would like to recall here of the fact that for a long time the mechanism to investigate an alleged use of biological weapons has been the subject for negotiations on the development of a control mechanism under the Convention. We consider it necessary to use the results achieved during these negotiations and being supported by a majority of States Parties to the BWC, including on types of investigation and volumes of information provided on the spot. I would like to underscore the following: the consideration of this issue at our meeting cannot be an adequate replacement for elaboration of the BWC control mechanism. This is only an intermediate stage.”* Iran said that *“after failure and suspension of seven years negotiations on the Protocol to the Convention, world has faced rapid development of biotechnology and escalation of bioterrorism threats thus it has become more imperative and important to discuss, within a multilateral legally binding frameworks, the concrete measures to strengthen the effectiveness of the Convention. The preference of a certain country for unilateral actions to combat weapons of mass destruction including biological weapons cannot obliterate the primacy of the principles and rules of multilateralism on this matter. The lack of multilateral coordination will result in the failure of the regime established by the BWC. Legitimate action in the area of international security must be founded on multilateral agreements.”* The United States opposition to multilateral developments was made clear in a statement regarding the allegations of use when the United States said that *“the expert discussions this week serve to underscore and promote understandings of the international processes available for addressing allegations of BW use and suspicious outbreaks of disease: resorting to the UN Security Council under Article VI, convening a formal consultative meeting under procedures developed to implement Article V, and conducting international investigations authorized by the UN Secretary-General. The United States believes that all three of these mechanisms remain viable and that revisions to their scope or procedures are neither necessary nor appropriate.”*

103. These tensions were again evident at the Meeting of States Parties in December 2004 although the atmosphere was more positive than a year ago. It was particularly noticeable in the statements in the General Debate as well as in some of the NGO statements and activities, that attention is increasingly being given to the Sixth Review Conference in 2006. There was useful recognition that the Review Conference needs to review the Convention in its entirety and that a Final Declaration that builds upon and extends the understandings agreed at previous Review

Conferences is a key outcome to maintain the vitality of the Convention. The NGO statements in informal session recognized the value of an interim supportive institution to nurture and support the regime and the benefits from annual Conferences of States Parties analogous to those held by the States Parties to the CWC.

104. The outcome of the Meeting of States Parties in 2004 was significantly better than that of the corresponding meeting in 2003. Not only was the substance incorporated into the final report but its structure and content were distinctly better. This augurs well for the Meetings of Experts and of States Parties in 2005 addressing the topic of *"the content, promulgation, and adoption of codes of conduct for scientists"*.

105. There were two statements in the General Debate made on behalf of a group of States Parties – one by Malaysia on behalf of the NAM and Other States Parties and the other by the Netherlands on behalf of the European Union together with Bulgaria, Romania, Turkey and Croatia as well as Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia and Serbia and Montenegro and the EFTA countries, Iceland and Liechtenstein. There was no statement on behalf of the Western Group – the last time there had been such a statement was at the resumption of the Fifth Review Conference in 2002 – or by the Eastern Group. The statement of the NAM was able to draw upon the political statement from the XIV Ministerial Meeting of the NAM in August 2004 whilst the EU statement reflected the political coherence of the EU and its associated States.

106. The NAM statement called for multilateral negotiations aimed at concluding a non-discriminatory legally binding agreement to strengthen the Convention as the XIV Ministerial Meeting of the NAM in August 2004 had agreed:

The Ministers of the States Parties to the Biological and Toxin Weapons Convention (BWC) reaffirmed their conviction that the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (biological) and Toxin Weapons and on their Destruction is essential for the maintenance of international and regional peace and security. They reaffirmed the Movement's continued determination, for the sake of humankind, that the possibility of any use of bacteriological (biological) agents and toxins as weapons should be completely excluded, and the conviction that such use would be repugnant to the conscience of humankind. They recognised the particular importance of strengthening the Convention through multilateral negotiations for a legally binding Protocol to the Convention. They believed that the effective contribution of the Convention to international and regional peace and security would be enhanced through universal adherence to the Convention. They stressed the importance for all States Parties to pursue the objectives that were set forth by the Fourth Review Conference and underlined that the only sustainable method of strengthening the Convention is through multilateral negotiations aimed at concluding a non-discriminatory legally binding agreement. They have been deeply disappointed at the inability that has been demonstrated in the endeavours of the States Parties of the BWC to successfully undertake initiatives to strengthen the implementation of the Convention. They further regretted the limited nature of the decision that was taken during the resumed session of the Fifth Review Conference held from 11-15 November 2002 in

Geneva and were disappointed that the opportunity to strengthen the Convention was foregone and that limited work, which at best only has the potential of enhancing the implementation of the Convention, is all that could be achieved despite the Movement's best endeavours. They believed that, however, the Movement has succeeded in preventing any attempt to foreclose the option of more meaningful work in the future. In this regard, the movement has succeeded in preserving multilateralism as the only vehicle for preventing reprehensible use of disease as instruments of terror and war in a sustainable way.

This call for multilateral negotiations to agree a legally binding instrument to strengthen the Convention was underlined by several of the NAM countries in their subsequent individual statements.

107. The EU statement attached high priority to the reinforcement of the BTWC which is the cornerstone of the efforts to prevent biological agents and toxins being developed as weapons and the EU remained committed to develop measures to verify compliance with the BTWC.

UN Secretary-General High Level Panel on Threats, Challenges and Change

108. It was also evident that the States Parties at the Meeting of States Parties were aware of – and indeed the Chairman had drawn attention in his opening remarks to – the report³⁴ of the UN Secretary-General's High Level Panel on Threats, Challenges and Change which had been issued on Thursday 2 December 2004; the Thursday prior to MSP/2004. This had made recommendations of direct relevance to the Convention and some were even relevant to the mandate for this year. Recommendation 27 that “*States Parties to the Biological and Toxin Weapons Convention should without delay return to negotiations for a credible verification protocol, inviting the active participation of the biotechnology industry.*” was specifically quoted by Norway and alluded to by New Zealand.

109. The report of the High Level Panel also included an additional recommendation 34 that “*States Parties to the Biological and Toxin Weapons Convention should negotiate a new biosecurity protocol to classify dangerous biological agents and establish binding international standards for the export of such agents.*” The report makes it clear that in this context, the States Parties to the Convention should refrain from participating in such biotechnology commerce with non-members. Whilst the merit underlying this recommendation is evident, it is not clear that this should be a **separate** biosecurity protocol from the credible verification protocol addressed in recommendation 27 as the negotiations towards a legally binding instrument which were suspended in July 2001 included provisions that could have met the requirements of recommendation 34. It has also to be recognized that recommendation 34 is also close to the areas dealt with by the Convention on Biological Diversity and the Cartagena Protocol on Biosafety. Consequently, it is not evident that recommendation 34 has been fully thought through as it is unrealistic to expect the States Parties to the BTWC to engage in simultaneous negotiations of two legally binding protocols. It would be more logical to take on board the

³⁴ United Nations General Assembly, *Note by the Secretary-General*, A/59/565, 2 December 2004.

essence of this recommendation in the carrying through of recommendation 27 in a single set of negotiations aimed at a comprehensive strengthening of the effectiveness and improvement of the implementation of the Convention.

110. It is also evident from the report of the High Level Panel that there is one recommendation where the danger from biological and toxin weapons has been ignored because there is no organization to implement the Biological and Toxin Weapons Convention. This is recommendation 36 that “*The Directors-General of the IAEA and the Organization for the Prohibition of Chemical Weapons (OPCW) should be invited by the Security Council to report to it twice-yearly on the status of safeguards and verification processes, as well as on any serious concerns they might have which might fall short of an actual breach of the Treaty on the Non-Proliferation of Nuclear Weapons and the Chemical Weapons Convention.*” It is regretted that this recommendation did not include the Director General of a future organization for the prohibition of biological weapons to report likewise.

111. Although there is clearly much to be considered before there are any decisions on whether to implement the recommendations of the Secretary-General’s High Level Panel and the Secretary-General has urged that *we should move quickly and take action on recommendations wherever we can*, there is little doubt that future statements on behalf of the NAM and by individual NAM States will not miss any opportunity to cite recommendation 27 as being in support of the NAM position for multilateral negotiations of a legally binding instrument to strengthen the Convention. If no remedial action is taken, it seems probable that there could all too easily be a situation at the Sixth Review Conference that is a repeat of that at the Fifth Review Conference with the States Parties **other** than the NAM Group being portrayed as those that have prevented progress.

112. The issue regarding the strengthening of the effectiveness and improving the implementation of the Convention cannot be ducked at the Sixth Review Conference. It should be clear to all States Parties – large and small – that the BTWC is *the* vital counter to those considering the use of disease or toxins as a means of attacking humans, animal or plants. Consequently, it is simply too *dangerous* for the international community *not* to reaffirm at the Sixth Review Conference the comprehensiveness of the prohibitions under the Convention and all the other elements which together add to the extended understandings cumulated over the successive Review Conferences.

113. The international community needs to make the States Parties aware that in this age of increased global concern about weapons of mass destruction and the fears of terrorism acquiring such weapons that it would be quite *unacceptable* to simply agree on a further set of annual topics to bridge the gap to the Seventh Review Conference. It is far too clear to all that the BTWC is the *weakest* of the regimes addressing weapons of mass destruction and the one that *most* requires strengthening through legally binding measures.

114. The real requirement is for a resumption of negotiations towards a legally binding instrument to strengthen the effectiveness and improve the implementation of the Convention. It should be obvious to every State Party – and to the United States – that the provisions in the Chairman’s composite text compared to the Convention alone were such that the draft legally

binding instrument would have provided all States Parties with a *far better* regime for international peace, security and safety than that available from the Convention alone.

115. As there is clearly tension among the States Parties regarding the resumption of negotiations towards a legally binding instrument, there would be prudence in those States Parties who recognise the importance of strengthening the effectiveness and improving the implementation of the Convention preparing a contingency plan for the possibility that the Sixth Review Conference is like the Fifth Review Conference a near failure. Those States Parties that are concerned about maintaining the effectiveness of the comprehensive prohibition regime for biological and toxin weapons need to prepare **prior** to the Sixth Review Conference so as to achieve a successful outcome in any event – a win-win situation. However, this necessitates **advance** planning well before the Sixth Review Conference so that agreement is reached on how to deal with the outcomes of the annual meetings of States Parties as well as the question of resumed negotiations of a legally binding instrument.

116. A study³⁵ prepared for the Weapons of Mass Destruction Commission by VERTIC sets out a range of measures as an interim solution pending the negotiation of a legally binding instrument to strengthen the Biological and Toxin Weapons Convention. This is a particularly attractive proposal as the BTWC needs to be strengthened sooner rather than later and a legally binding instrument will take time to negotiate even if it were to start from the Chairman's composite text of March 2001. The modular elements set out in the VERTIC paper are:

- An interim BWC secretariat
- An enhanced BW use investigation mechanism
- A confidence-building measures unit
- A legal advisers network
- BWC national authorities network
- BWC technical implementation support unit

What is particularly attractive about this approach is that whilst the first two elements require international action to set them up – by the BTWC States Parties and by the UN Security Council/General Assembly respectively – the last four elements can be set up by a group of willing States Parties and does not require agreement by all States Parties.

Aims for the Sixth Review Conference

117. A strategy therefore needs to be adopted by a group of willing States Parties **prior** to the Sixth Review Conference so that there is planning for a successful outcome and the achievement of a win-win situation. The aim should be for the Sixth Review Conference to achieve the following:

- a. A Final Declaration that builds upon the language of the earlier Review Conferences and thereby extends the understandings that strengthen the BTWC.

³⁵ Trevor Findlay & Angela Woodward, VERTIC, *Enhancing BWC Implementation: A Modular Approach*, Weapons of Mass Destruction Commission Paper No. 23, Stockholm, 2004.

- b. To establish an interim secretariat³⁶ to nurture and sustain the Convention between Review Conferences.
- c. To agree to hold annual Conferences of the States Parties analogous to those held by the States Parties to the CWC. Such annual Conferences might be preceded by an annual Meeting of Experts to consider the advances in science and technology relevant to the Convention³⁷.
- d. To agree to resume negotiations of a legally binding instrument to strengthen the effectiveness and improve the implementation of the Convention.
- e. To establish a confidence-measures unit should the interim secretariat not have a mandate to carry out these functions.
- f. To establish a legal advisers network should the interim secretariat not have a mandate to carry out this function.
- g. To establish a BTWC national authorities network should the interim secretariat not have a mandate to carry out this function.
- h. To establish a BTWC technical implementation support unit should the interim secretariat not have a mandate to carry out these functions.

Contingency plans need to be prepared by a coalition of willing States Parties to ensure that the Sixth Review Conference does not fail to agree a Final Declaration even if agreement on the second and third aims is not achieved. The modular improvements set out as items e. to h. could all be established by a coalition of willing States Parties who would provide the necessary resources for the improvements which would be open for all States Parties to utilize and benefit from.

118. In considering which States Parties could provide a coalition of the willing, the European Union is a leading candidate as it has in its political statements set out the importance that it

³⁶ The argument for an interim supportive institution have been cogently set out by Nicholas A. Sims, *The Functions of the BTWC Review Conferences: Maximizing The Benefits From The Fifth Review Conference*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 2, April 2001. Available at <http://www.brad.ac.uk/acad/sbtwc> and Nicholas A. Sims, *Nurturing the BWC: Agenda for the Fifth Review Conference and Beyond*, The CBW Conventions Bulletin, Issue No. 53, September 2001, pp. 3-5. Available at <http://www.fas.harvard.edu/~hsp>

³⁷ The United Kingdom in its contribution to the background paper on advances in science and technology relevant to the Convention suggested that the Fifth Review Conference should consider establishing a mechanism for States Parties to work together on a more frequent basis that the current five year interval to conduct such scientific and technical reviews and to consider any implications at the necessary level of expertise. See United Nations, Fifth 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, 19 November - 7 December 2001, *Background Paper on New Scientific and Technological Developments Relevant to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction*, BWC/CONF.V/4/Add.1, 26 October 2001, para. 18. Available at <http://www.opbw.org>

ascribes to the Biological and Toxin Weapons Convention. The EU Strategy against Weapons of Mass Destruction³⁸ states that:

- Reinforcing the BTWC and the CWC and, in this context, continuing the reflection on verification instruments. The BTWC does not contain at present a verification mechanism. The EU must find ways to strengthen compliance. A group of experts to give advice on how this could be done could be established. The EU will take the lead in efforts to strengthen regulations on trade with material that can be used for the production of biological weapons. The EU will also take the lead in supporting national implementation of the BTWC (e.g. in providing technical assistance). The EU will consider giving support to states with administrative or financial difficulties in their national implementation of the Chemical Weapons Convention and the BTWC.

This EU Strategy followed on from the earlier concrete measures adopted³⁹ by the European Council on 15 April 2002 which included:

Timely, consistent and full implementation of reporting obligations imposed either by the international instruments or by the final reports of review conferences (Chemical Weapons Convention declarations, BWC-CBMs, reports on the Amended II Protocol to the CCW, Article 7 reports regarding the Ottawa Convention) and the creation of necessary conditions for processing the resulting information (e.g. translate and process information coming from BWC-CBMs in usable databases);

The EU is consequently committed to strengthening compliance with the BTWC, to supporting national implementation and to providing technical assistance and other support to States Parties with administrative or financial difficulties in their national implementation, and to translating and processing the information coming from the BTWC Confidence-Building measures. The EU is thus committed to the aims set out above for the Sixth Review Conference. Moreover, the Netherlands on behalf of the EU at the Meeting of States Parties to the BTWC in Geneva on 6 to 10 December 2004 said that the EU remained committed to develop measures to verify compliance with the BTWC. The EU supported and promoted wholeheartedly the universal adherence to the BTWC and recognizing that 2005 will see both the 30th anniversary and of the entry into force of the BTWC and the 80th anniversary of the Geneva Protocol opening for signature, the EU believed that States Parties should make a particular effort to promote progress to universality of these instruments.

119. The requirement is for the EU as a coherent political group to devise a package of measures that will together strengthen the Convention at the Sixth Review Conference that can attract broad support and, should consensus not be forthcoming, can be taken forward by a coalition of the willing on as wide an international basis as possible or perhaps on a regional basis in one or more regions. This would offer the prospect of a successful outcome to the Sixth Review

³⁸ Council of the European Union, *Fight against the proliferation of weapons of mass destruction – EU Strategy against proliferation of Weapons of Mass Destruction*, 10 December 2003, 15708/03.

³⁹ Council of the European Union, *Implications of the terrorist threat on the non-proliferation, disarmament and arms control policy of the EU - Council conclusions*, 2421st Council meeting, General Affairs, Luxembourg, 15 April 2002.

Conference one way or another – either by consensus or by a coalition of the willing.

120. In regard to the negotiations of a legally binding instrument to strengthen the effectiveness and improve the implementation of the Convention, it is suggested that a contingency plan should be based on either the EU or a troika of States Parties taking an initiative to revive the negotiations of a legally binding instrument. It should be recalled that Australia initiated a Ministerial meeting on 23 September 1998 in New York at which 57 States Parties⁴⁰ (including the United States) to the BTWC agreed a declaration⁴¹ (see WP.324 available at <http://www.opbw.org>) about the Ad Hoc Group negotiations that *'The Ministers affirm their strong support for the Biological and Toxin Weapons Convention and for strengthening the effectiveness and improving the implementation of the Convention. The Ministers underline the political and security imperatives of concluding, as a matter of priority, a protocol to the Convention. ... They strongly believe that benefits in terms of security and development will accrue to all States Parties to the protocol.'* and that *'The Ministers are determined to see this essential negotiation brought to a successful conclusion as soon as possible ...'*. This represented a *political* commitment by all the principal States Parties engaged in the negotiations, including China, Iran, Russia, the United States as well as South Africa and many other States.

121. The initiative to revive the negotiations of a legally binding instrument could be launched by the EU or by a troika – such a troika might be made up of Australia (as the initiator of the political commitment of 1998), South Africa (as a NAM state that has made an immense contribution to the negotiation of the legally binding instrument) and Norway (as a State outside the European Union which has experience of the Ottawa process which led to the land mines Convention). It is suggested that the EU or such a troika should arrange a meeting of States Parties to the BTWC to discuss a legally binding instrument to strengthen the effectiveness and improve the implementation of the Convention and which could use the Chairman's composite text as a starting point.

Conclusions

122. The BTWC is the central pillar of the regime totally prohibiting biological and toxin weapons. There is no alternative to this regime. However, the regime totally prohibiting biological and toxin weapons is the weakest of the regimes addressing weapons of mass destruction and, consequently, is the one most in need of being strengthened. Such strengthening needs to be through legally binding measures negotiated multilaterally and applying to all States

⁴⁰ The 57 States Parties which participated in the Ministerial Meeting on 23 September 1998 were: Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Czech Republic, Denmark, Fiji, Finland, France, Germany, Greece, Hungary, Indonesia, Iran (Islamic Republic of), Ireland, Italy, Japan, Jordan, Kenya, Kuwait, Luxembourg, Malaysia, Mexico, Myanmar, 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, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Zimbabwe.

⁴¹ Australia, *Declaration of the Informal Ministerial Meeting on the Negotiation Towards Conclusion of the Protocol to Strengthen the Biological Weapons Convention*, Working Paper, BWC/AD HOC GROUP/WP.324, 9 October 1998. Available at <http://www.opbw.org>

Parties. Whilst national measures and the exchange of information between States Parties is valuable, it is no alternative to the agreement of legally binding measures.

123. The dangers that humans, animals or plants might be attacked by biological or toxin agents is of greater concern today with especial concern being expressed in the United States to the dangers of bioterrorism. Global peace and security demands that the effectiveness of the BTWC be strengthened and its implementation improved. Whilst the **preferred** solution would be for the Sixth Review Conference in 2006 to reaffirm the extended understandings gained in previous Review Conference, to establish an interim secretariat and to restart the negotiations of a legally binding instrument to strengthen the effectiveness and improve the implementation of the Convention, there are no indications in 2004 that the United States recognizes these benefits, which other States Parties do recognize, of making progress in this way. Consequently, those States Parties who recognize the vital importance for global peace and security of strengthening the effectiveness and improving the implementation of the Convention are urged to develop a **contingency** plan prior to the Sixth Review Conference so that a win-win situation can be achieved and builds upon the political commitment made by Ministers of 57 States Parties in 1998 to the early completion of such negotiations.

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