

2009 Meeting

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Item 6 of the agenda

**Consideration of, with a view to enhancing international
cooperation, assistance and exchange in biological
sciences and technology for peaceful purposes, promoting
capacity building in the fields of disease surveillance,
detection, diagnosis, and containment of infectious diseases**

POLICY ISSUES FOR THE SEVENTH REVIEW CONFERENCE

Submitted by Canada¹

1. The Seventh Review Conference will be held in 2011, now less than two years away. Canada and the other members of the JACKSNNZ believe that States Parties to the Convention should begin to consider the range of important policy issues that they will deal with at the Review Conference. With this in mind, Canada is submitting the annexed discussion paper for the consideration of delegations over the coming months.
2. The paper, which was authored by Dr. Jeremy Littlewood of the Canadian Centre of Intelligence and Security Studies at Carleton University and was commissioned by the International Security Research and Outreach Programme of Foreign Affairs and International Affairs Canada, contains a range of ideas and proposals which may be of interest to States Parties. The views and positions expressed in the report are solely those of the author: the paper is contributed purely to stimulate informal discussion among States Parties in preparation for the Review Conference.

¹ This paper is a Canadian-sponsored discussion paper submitted by Japan, Australia, Canada, Republic of Korea, Switzerland, Norway and New Zealand (JACKSNNZ.)

Annex

**How to approach compliance issues in the Biological and Toxin Weapons Convention:
policy issues for the Seventh BTWC Review Conference in 2011**

Introduction

1. The threat posed to states from biological weapons exists in two areas: that from other states and that from non-state actors, with the latter (terrorist threat) now receiving much more emphasis from security experts than the concern with inter-state conflict. The Biological and Toxin Weapons Convention (BTWC) is sufficiently comprehensive – if implemented fully – to counter both state and non-state threats. Implementation of the Convention, however, lacks a coherent and continuous ‘serious administration’ that is strategic in design and intent. Although the norm against the use of biological and toxin weapons is robust and the legal, regulatory, and structured architecture that gives effect to that norm in national and international policy reasonably well developed, attention to the problem posed by biological weapons is haphazard due to the disparate nature of the mechanisms employed at the sub-national, national, and international levels to counter the threat. Different international organizations, agencies, and coalitions generally address discrete aspects of the overall problem, just as a range of national government departments are responsible for discrete areas of implementation under the BTWC and the other agreements and arrangements, e.g. United Nations Security Council Resolution 1540 (2004), the G8 Global Partnership, and the guidelines on Laboratory Biosafety and Biosecurity.

2. States parties to the BTWC have in the past reached agreement and developed additional understandings by consensus to address the threats posed by biological weapons. This evolutionary and incremental approach to strengthening the Convention and enhancing its implementation has served states parties and the international community well, taking advantage of propitious windows of opportunity to move the Convention forward when possible and maintaining the legitimacy of the BTWC when it has been subjected to harsh political pressures or in the face of scientific and technological developments. Nevertheless, for states parties collectively the horizon of activity has usually been in five year blocks, identified by a formal review conference and the activity that follows it before the next review conference. Indeed, for many states parties, attention is only focused on the BTWC at, and in the immediate run-up to, review conferences and other meetings.

3. The seventh review conference of the Convention is scheduled to occur in 2011, most likely towards the end of that year. No immediate crisis is on the horizon at this time, but a number of nagging disputes related to how and when to strengthen the Convention can be clearly identified. These disputes, if not resolved in a satisfactory manner, risk presenting states parties with what at least some significant actors consider to be two unpalatable choices in 2011. The first choice is whether or not to return to negotiations on a multilaterally agreed, legally binding, single additional agreement to implement formal compliance and cooperation mechanisms under the Convention: that is to say, a return to a process akin to the BTWC Protocol negotiations between 1995 and 2001. The second choice is whether or not to continue on the modest,

evolutionary track of meetings of experts and meetings of states parties intended to identify good practices related to implementation, but dependent on national decisions to give effect to identified good practice.

4. In order to avoid a political dispute that risks an either-or approach to these choices – one of which might be considered longer-term and strategic in its vision and the other more immediate and tactical in its execution, states parties may wish to contemplate a feasible middle way that addresses both immediate and longer term requirements for the Convention. The outline rationale and preliminary ground for that middle way is the subject of this paper.

5. Two tracks of activity are suggested to prepare for the Seventh Review Conference of the Biological and Toxin Weapons Convention in 2011. The first track is related to immediate and tactical requirements of states parties and tied to the specific purpose of the 2011 conference under its *review* function; namely to review the operation of the Convention to ensure its purposes are being met. The second track is concerned with specific proposals for work to be undertaken beyond the review conference, that is to say during the 2012 to 2016 period, whereby additional work would contribute to further strengthening of the Convention in the short term but also facilitate the development of measures that contribute to the establishment of a formal compliance strategy for the BTWC and its states parties in the future.

Background

6. The BTWC has been both lauded as a disarmament treaty, because of its complete prohibition on the development, production stockpiling and use of biological and toxin weapons, and derided as a weak ‘gentlemen’s agreement’, because it lacks the formal compliance framework that exists in other arms control, non-proliferation, and disarmament agreements such as the Nuclear Non-Proliferation Treaty (NPT) and the attendant International Atomic Energy Agency (IAEA) safeguards structures, or the Chemical Weapons Convention and the Organisation for the Prohibition of Chemical Weapons. The BTWC is not, however, without procedures, processes, and mechanisms to support it. It has in place the following:

- (i) a small, specialist unit of staff based in Geneva, the Implementation Support Unit (ISU), created in 2006;
- (ii) a regular, formal, review process begun in 1980 and continued roughly every five years since then;
- (iii) a procedure for the sharing of information that is intended to enhance confidence in implementation of the Convention’s provisions and share information that should reduce ambiguities, doubts, and suspicions;
- (iv) an agreed set of additional understandings related to most articles of the Convention which have been developed by states parties since 1980; and,
- (v) a legal and normative prohibition against the development, production, stockpiling, and ultimately the use, of biological and toxin weapons.

7. In addition, the Convention is not the sole legal or normative agreement in place that contributes to biological disarmament. The Convention does not exist in a vacuum and it has its own political context. In simple form, the current political environment of the Convention might be explained in three contexts: the first related to its prohibitions and scope; the second related to its compliance procedures; and, the third related to its peaceful cooperation arrangements.

- (i) First, the scope of the Convention is sufficient – under its general purpose criterion (Article I) – to apply to any scientific and technological developments in the life sciences and other scientific disciplines. The Convention is, therefore, by consistent, common agreement, future proof in terms of its actual scope. This is a very positive aspect and explains in part the longevity of the BTWC.
- (ii) Second, the mechanisms for resolving concerns about implementation of, and compliance with, the BTWC are weak and require further elaboration. With the collapse of the Protocol negotiations in 2001, this has then led to efforts to promote an incremental evolution in relation to Article V and its cooperation and consultation mechanisms. Both the First (1980) and Second (1986) review conferences made progress in this area and additional politically binding obligations have been agreed since that time. However, these efforts have not been sufficient to meet the expectations of states parties inclined to the adoption of formal, legally binding, provisions. Furthermore, the collapse of the negotiations on the Protocol to the Convention in 2001 remains a source of contention and dispute.
- (iii) Third, what constitutes peaceful cooperation under the BTWC's Article X has been expanded by developing states under the Non-Aligned Movement (NAM) in a manner that replaces the original intention of the Convention's drafters – that implementation of the prohibition against biological weapons should not harm legitimate peaceful activities in the biological sciences – with an interpretation that claims an inalienable right to cooperation and transfers of resources from the developed to the developing world, i.e. that disarmament should lead to development;

8. As in previous review conferences, the stage for 2011 is being established with the focus on the weaknesses of the Convention and problems with its implementation. Previous review conferences up to 1996 focused on the state as the source of the main threat of biological weapons. An additional context for the Convention and the Seventh Review Conference is the dynamic nature of the actual biological weapons threat.

9. In basic terms, the vast majority of states parties to the Convention have never had a significant interest in biological and toxin weapons. At the time of its entry into force in 1975, the US had suggested that only four states had, or had a real interest in, such weapons. By the end of the 1980s this number was creeping up to around ten states. However, allegations of offensive biological and toxin weapons activity (for example, “yellow rain”) were rarely followed up with action to resolve compliance concerns, and when such actions were undertaken they usually occurred outside the Convention. The US, UK and Russia addressed the previous

Soviet activities and mutual concerns under a Trilateral Agreement until around 1996; Iraq – not a state party until 1991 – was addressed under the United Nations Special Commission (UNSCOM) and United Nations Monitoring, Verification and Inspection Commission (UNMOVIC); and South Africa – not a state party until 1993 – dismantled its programme nationally. Cuba called for a formal cooperation and consultation meeting in 1996 (under Article V of the BTWC, and in accordance with understandings that had been reached long before at the First Review Conference in 1980) to address its allegation of use of biological weapons by the US. While this meeting was procedurally successful, it is probably fair to say that it was substantively unsatisfactory to many states parties. More recently, the Libyan biological weapons interests have been addressed by the UK and US since the end of 2003.

10. In addition to long-standing state interest in biological weapons – albeit unusual and largely alleged rather than proven in many cases – a second type of threat has emerged from terrorist groups. This threat has not manifested itself to date in any substantive programme or mass casualty event. However, terrorist interest in biological weapons is in evidence and small scale incidents (e.g. in Japan and the US) have occurred to a degree that suggests the biological weapons threat from terrorists is not limited to one particular terrorist group or type of terrorism. Therefore, the broad context of the risk of biological weapons development includes possible use by states and non-state, i.e. terrorist, actors, and the BTWC, together with the broader anti-biological weapons regime, faces a number of challenges over the next five to ten years, including:

- (i) **Understanding the nature of the risk and threat spectrum.** These might be considered in three categories: small scale planned and/or actual attacks from ‘lone wolf’ actors, for example use of the toxin ricin for criminal or terrorist purposes, to ‘wannabe’ or amateur terrorist groups *interested* in biological or toxin weapons but without a capability to develop or use such weapons. Medium scale attacks from sophisticated terrorist groups likely to be able to develop a capability to use such weapons. Larger scale, including, potentially, mass destruction, capabilities from states that may either develop a break-out capability for biological weapons, view such weapons as a deterrent or counter to the threat of nuclear weapons, or use of such weapons for internal or state-to-state conflicts.
- (ii) **Formulating and implementing policy responses nationally and internationally to address the spectrum of risk and actual threats.** While many responses undertaken nationally and/or internationally can contribute to reducing the risk or threat, some responses will be discrete in their nature or be implemented in an isolated context, e.g. under the BTWC. Other responses are connected to each other within a layered structure or web of defences, but are usually operationalized within an identified setting, e.g. the G8 Global Partnership or United Nations Security Council Resolution 1540 (2004) or national and multi-national export control mechanisms.
- (iii) **Responding to actual use of biological or toxin weapons by any actor, as well as responding to known or suspected development of biological weapons capabilities.** In the event that biological weapons are used in the future, it is

relatively clear that some states parties could respond to such use, either nationally or through the Investigation mechanism of the United Nations Secretary General, as well as through the UN Security Council. A response to suspected use would presumably occur given the strength of the norm against such weapons, but it is unlikely that an investigative response would be as timely as necessary. A response to the suspected development of biological weapons capabilities is likely to be prone to political power realities, including having to take into account the possible use of veto powers in the UN Security Council, since agreed mechanisms for addressing suspicions or allegations of non-compliance are poorly developed and little understood.

11. It should not be forgotten that the BTWC is one among a range of policy tools and agreements to address the biological weapons threat. It is widely viewed as the foundation of other policy responses, both normative and legal, such as the G8 Global Partnership activities in the Former Soviet Union, United Nations Security Council resolution 1540 (2004), and national implementation legislation in many states. As an international legal instrument, it may be robust enough to withstand severe tensions among its states parties but it remains bereft of agreed standardized procedures and structures for implementation, demonstrating compliance, facilitating international cooperation, and addressing suspected violations of the Convention. Political relations among states parties are, as of 2009, relatively good, but the disputes over verification between the US and others remain in the background. These issues are likely to come to the fore in the run up to the Seventh review conference and the anticipated 'key issues' facing states parties to the BTWC in 2011 will be:

- (i) the verification debate;
- (ii) the impact of scientific and technological developments and their impact on national implementation measures;
- (iii) the confidence-building measures under the BTWC;
- (iv) Article X and peaceful cooperation in the life sciences;
- (v) the procedures for addressing non-compliance and investigations of alleged use of biological weapons;
- (vi) the future of the Convention's Implementation Support Unit (ISU); and,
- (vii) the next intersessional work programme and meetings of states parties between 2012 and 2016.

12. These issues are sufficiently interlinked that a strategy can be developed to address all seven issues within both discrete and tactical contexts and under a wider strategic policy objective. As indicated above, that strategy involves two tracks of activity.

Track One: Comprehensive Review

13. At the Sixth Review Conference (2006) states parties decided that the Seventh Review Conference would be held no later than 2011 and would review the operation of the Convention while taking into account, among other things:

- (i) new scientific and technological developments relevant to the Convention;
- (ii) progress made by states parties on implementation of the obligations under the Convention; and,
- (iii) progress on implementation of the decisions and recommendations agreed upon in 2006.

14. Under (iii), a further sub-set of review requirements can be identified including:

- (i) evaluating the performance of the Implementation Support Unit (ISU) and its mandate;
- (ii) considering the work and outcome of the intersessional work programme (2007-2010);
- (iii) giving further and comprehensive attention to the confidence-building measures; and,
- (iv) considering progress towards the commitment to universal adherence to the BTWC.

15. The *review* aspect of a review conference is often taken for granted in considerations about next steps for the Convention. Any review undertaken is too often dependent on individual states parties or groups of states parties, or – increasingly – activities by non-governmental and civil society groups supportive of the objectives of the BTWC, for the simple reason that there is insufficient time to actually undertake a thorough review of the Convention and its implementation *and* reach consensus in three weeks on next steps in the ensuing years. For understandable reasons, attention is often focused on the future with the expectation that further work in the future will address any shortcomings in the present or past vis-à-vis implementation requirements and expectations. However, a meaningful review of activities is at the heart of successful implementation of the BTWC and actually understanding and identifying what works effectively and what does not work for states parties collectively or individually.

16. A thorough and comprehensive review is particularly important in 2011 for two reasons. First, by 2011 the Convention will be over 35 years old. Various strategies to strengthen the Convention have been attempted over the last three decades and 2011 is an opportune time to take stock and give serious consideration to what has actually worked, and been effective, in the past. Second, 2011 represents an opportunity to set out a new agenda for the future: one based on

continuous effort and attention, employing a range of measures, and focused on accountability and compliance encompassing both immediate activity and longer-term strategy.

17. States parties have consistently affirmed that ‘Review Conferences constitute an effective method of reviewing the operation of the Convention with a view to assuring that the purpose of the Preamble and provisions of the Convention are being realized’, but strategic and thoughtful input into that review process is too reliant on the activities of a few states parties or civil society groups.

18. For example, the scope of the Convention is contained in Article I of the BTWC and is affected by scientific and technological developments in the life sciences and other scientific and technological disciplines. Reviewing Article I of the BTWC and understanding and identifying the implications of scientific and technological developments is actually one of the areas where states parties have consistently performed very well and are in consensus agreement. Whereas in the first half of the Convention’s life, 1975 to 1991, the expertise of individual states parties fed into the review process – principally through the background documents submitted by states parties on an individual basis on new scientific and technological developments – other, non-state, actors have also begun to substantively think about and review the impact of scientific and technological developments on the Convention and, as a result of that work, submit recommendations and expert commentary to states parties on how new challenges might be addressed. Two examples in the run-up to the Sixth Review Conference provide evidence of this: the US National Academy of Sciences report and the UK Royal Society workshop.² Given that the vast majority of the knowledge, materials, equipment, technology, and infrastructure required to develop, produce, and potentially use biological weapons is dual use – i.e. has legitimate peaceful purposes as well as illegitimate (and prohibited) hostile purposes – and resides not only in state-run institutions or organizations, but also in private, industrial, or public sector organizations, the input of non-state groups into the actual development of measures to prevent the use of biological weapons by any actor is essential to the future health of the BTWC. The work of the National Academy of Sciences and the Royal Society are two examples that offer useful models for the future review and implementation of the Convention.

19. The scope of the Convention is, however, but one part of the overall agreement among states parties. Other areas, such as non-proliferation (Article III), national implementation (Article IV), cooperation and consultation mechanisms (Article V), investigation procedures for alleged non-compliance or violations (Article VI), the relationship of the Convention to other international agreements (Articles VIII and IX) and peaceful cooperation among states parties (Article X) lack the consistent, considered, and valuable inputs that are in evidence when Article I is under consideration. It is certainly correct that not all areas, or articles, of the BTWC require exactly the same amount of attention or consideration as Article I requires, but most, if not all, articles would benefit from a more thorough, systematic and thoughtful approach to feed into the review conference and deliberations by states parties.

² USA, The National Academies Institute of Medicine and National Research Council, Committee on Advances in Technology and the Prevention of their Application to Next Generation Biowarfare Threats.

Globalization, Biosecurity, and the Future of the Life Sciences, Washington DC: The National Academies Press, 2006, 299 pp.; UK Royal Society International Workshop on the Biological & Toxin Weapons Convention, 4-6 September 2006

20. This more elaborate process involving consideration of relationships between the various Articles is, in fairness, beginning to happen as a result of the meetings of experts instituted in 2003. Since that time states parties have considered nearly all of the Convention's substantive articles in a forum that involves states parties and input from civil society and non-governmental experts. This has created both increased understanding and a sense of shared responsibility among the two communities: states parties and civil society. In the run up to the 2011 Conference, states parties, perhaps in conjunction with civil society groups, should institute a fuller review of activities and commitments agreed at preceding review conferences to identify which commitments have been fulfilled, which commitments remain works in progress, and which commitments have not been implemented. In effect, states parties should review and audit their previous decisions to assist in the development of future work priorities. This is a time intensive, but routine, undertaking which might be undertaken by a group of states parties, the ISU, or a civil society group on behalf of a state party. A recent example to follow would be the Swiss Government's funding of the *Compendium of Proposals to Improve the CBM Mechanism*.³

21. **PROPOSAL ONE: A small group of states parties in conjunction with each other and civil society should undertake a review and audit of all the previous decisions made at review conferences to identify which additional understandings have been successful and effective and which have not in order to assist in the development of future work priorities. This should be done in the period March 2010 to March 2011.**

Table I Article IV and Article X commitments agreed in 2006

2006 Commitment		Follow-up 2007 to 2010	Follow-up required after 2011
Article IV	Commit to take necessary national measures to implement BTWC Ensure safety & security of microbial and other agents & toxins Encouraged to provide information on implementation to other parties Commitment to national measures to strengthen surveillance & detection of disease outbreaks nationally, regionally, internationally Inclusion in medical, scientific & military educational programs information on the Convention Training & education programmes for those granted access to agents and toxins relevant to the Convention Provide assistance to other states parties on		

³ Filippa Lentzos and R. Alexander Hamilton, 'Compendium of Proposals to Improve the CBM Mechanism' BIOS Centre, London School of Economics (LSE) July 2009.

2006 Commitment	Follow-up 2007 to 2010	Follow-up required after 2011
implementation Designate national contact point for coordination of implementation and communication		
Article X Promote technology transfer & cooperation Promote basic objectives of BTWC Ensure any promulgation of science & technology fully consistent with BTWC Use existing means to promote Article X where possible Not impose restrictions or limitations on exchanges consistent with BTWC objectives Review national regulations for consistency with all articles of BTWC Develop frameworks for disease surveillance Provide appropriate information on how article is implemented		

22. This should be done for each article of the Convention and consider all previous review conferences. The purpose is to assist in the identification of areas for priority work in the future. This activity, if undertaken between 2010 and mid-2011, would assist states parties in completing the three identified tasks in the 2006 final declaration: (1) new scientific and technological developments relevant to the Convention; (2) progress made by states parties on implementation of the obligations under the Convention; and, (3) progress on implementation of the decisions and recommendations agreed upon in 2006. It would also assist in the development of useful proposals for the review conference in 2011.

23. Table I, below, is for illustrative purposes and summarizes the agreements made in 2006 for two articles.

24. A review would consider for each state party and the states parties collectively, what has been done between 2006 and 2011 to implement that undertaking and what further work, if any, needs to occur after 2011. The table provides a framework that requires elaboration by each party.

25. Notwithstanding that the above could be undertaken by a single state party, it is more likely to be completed in a coherent manner by a group of states parties working together or with a civil society organization. However, there are a range of activities that individual states parties can undertake which, if done correctly, can make use of existing practices and permit a national emphasis in any recommendations. This is a two-step process that entails completion of a task recommended and encouraged since 1980, namely the development and submission of a comprehensive report on national compliance with the undertakings of the Convention, and drawing lessons from that national report to develop proposals for the next review conference.

26. PROPOSAL TWO: Each state party should submit a comprehensive compliance report to the review conference in 2011. A comprehensive report would require states parties to consider in detail how they achieve compliance nationally and, through the submission of the report, demonstrate to other states parties implementation of the Convention. The report should be precise and provide full details of implementation mechanisms and activities.

27. As currently developed, the report on compliance is a national, and essentially voluntary, undertaking. While some states parties have consistently submitted reports to each review conference, most states parties do not report, and those that have reported in the past have done so in a haphazard manner. There has been little guidance on what actually constitutes compliance and what a compliance report should look like. The article-by-article approach is the standard formulation. For the Seventh Review Conference, states parties should simply be encouraged, in the strongest possible terms, to submit a compliance report. A proposal should then be tabled to states parties to formalize the process for future years, making the compliance report a standard document of record for actual implementation of the BTWC by each party. Such a report, done comprehensively, would provide the basic information required to develop a compliance strategy for the Convention. In conjunction with the information submitted in the confidence-building measures, it would provide for each state party a national record of implementation.

28. A further step for the review function of the conference is the elaboration of detailed proposals for the final document. At this stage, late 2009, it is too early to commit to specific proposals for 2011. Furthermore, meaningful and feasible proposals are best developed by like-minded states acting in a coordinated manner or groups of states to reflect ideas that appeal to developed and developing states parties. However, the development of useful proposals takes time. Proposal one above is essentially a preparatory step intended to assist in the development of specific proposals and recommendations for 2011. Concurrent with that review and audit activity, states parties can develop their thinking in two ways. First, through national work that identifies issues related to implementation that can be resolved by new agreements or understandings under the BTWC. For example, there may be issues related to the timing, format, or information requested under the CBMs that are evident to those states that submit CBMs but the issues can only be resolved by agreement under the BTWC, not by action at the national level. In this respect, the development and completion of a comprehensive national report on compliance would assist this process. Second, by working with other states parties, more thematic issues can be considered in the period 2010 to mid-2011. Scientific and technological developments would be one example here, and synthetic biology and genomics is one issue that might require new attention in 2011. Another example is peaceful cooperation and how to carry that debate forward in the wake of discussions at previous review conference and the work undertaken in 2009. States parties might usefully benefit from the input of civil society in this area. The Geneva Forum held a successful conference in early 2006 that facilitated the development of concrete proposals for the Sixth Review Conference. To facilitate civil society input, national or regional workshops might be arranged with civil society groups to develop proposals and ideas for 2011. An alternative approach would be to mandate the ISU to set up a separate area on the BTWC-ISU website that acts as a wiki or clearing house for the input of proposals from states and civil society groups in order to identify where similar themes are emerging.

29. **PROPOSAL THREE: Conduct a national review of implementation to develop proposals for the Seventh Review Conference.**

30. **PROPOSAL FOUR: Arrange, or establish, actual or virtual workshops involving states parties and civil society to feed concrete ideas into the preparations for the review conference. This might be coordinated and facilitated by the ISU in Geneva.**

31. Many of the discrete proposals made at previous review conferences build on ideas and mechanisms already in existence. While it is incorrect to claim that all the good ideas for the BTWC have already been put on the table at previous conferences, much that has been done in the past is worth reconsidering and expanding upon. The fundamental objective of the four proposals above is to facilitate more useful and coherent development of proposals for 2011 by states in their national capacity, by states parties working in like-minded groups or collectively, and by states parties with input from civil society. If undertaken early enough, i.e. in 2010 to mid-2011, states parties should arrive at the review conference with well thought out and cohesive proposals for immediate adoption and implementation. One of the consistent weaknesses of past review conferences is that an actual *review* rarely occurs. These proposals are intended to mitigate that weakness.

Track Two: Compliance enhancement

32. The Seventh Review Conference of the BTWC is likely to see states parties debate the future development of the Convention and its role in addressing the above issues. A discussion on verification, and more specifically whether or not states parties should agree to (re)embark upon multilateral negotiations for a verification and/or compliance protocol as an additional legally-binding agreement, is highly likely to feature prominently in the run up to, and at, the Seventh Review Conference. Although a formal, legally binding compliance framework developed by states parties would be beneficial to each state party and the Convention itself, achieving consensus on its form, procedures, and substantive provisions is not likely to be within the capabilities of states parties for the foreseeable future. There are, in simple terms, significant paradigmatic, political, and procedural differences among states such as the US, Iran, Russia, China, the member states of the European Union, developing states in the NAM, and others, as well as within the traditional United Nations caucus groupings – Western, Eastern, and Non-Aligned – on this issue that reaching agreement to begin negotiations is unlikely; and, even if that were to occur, the negotiations would stretch on for at least four years. One consequential concern might be that little (if anything) would be done by states parties to address contemporary problems during that period of negotiations.

33. As such, the time does not appear to be ripe for a legally binding compliance agreement among states parties. Since such a debate would occupy resources and time, and divert effort from issues which can be addressed via other mechanisms, the principal objective in the period December 2009 to November 2011 would be under this approach to provide an alternative vision for the medium to longer term strengthening of the BTWC to that afforded by focusing at this stage on the legally binding verification protocol approach.

34. To achieve that objective will require a clear statement of intention that until the context for compliance/verification negotiations is ripe, the issue should not be pursued at the expense of other means to enhance compliance with the BTWC. Rather than employ a single-track strategy – verification negotiations – states parties should address the gamut of issues and challenges facing the Convention through an interlinked framework of activities that will achieve both short term and longer term objectives. In the short term, specific problems can be addressed and discrete mechanisms developed to resolve or reduce the scope of such problems. In the longer term, addressing the immediate issues in a manner that is comprehensive and internationally agreed will facilitate improvements in the political climate and contribute to the procedural and substantive processes that are required to bring the verification/compliance discussions to a ripe moment.

35. Underlying this call for a new strategy is an assumption that unless an alternative is developed before 2011, states parties will return to Geneva for the Seventh Review Conference and be faced with a simplistic choice of either a return to the negotiation table for multilateral negotiations on verification of the Convention, or continue with an intersessional process along the same lines as the 2003-2005 and 2007-2010 work programs.

36. The difficulty is that neither option is likely to generate consensus and, therefore, suggests a prospect of stalemate and inactivity in terms of the continued evolution of the BTWC. The basic aim of an agreement in 2011 should be the development of an approach that tactically permits policy developments in many areas, but strategically offers a compelling vision for the development of a formal compliance framework for the BTWC.

37. There is a risk, however, that in rejecting the two options above – return to verification versus more of the same – any alternative middle ground will be perceived as unambitious, or failing to address the scale of the challenges facing the BTWC during a political climate that is perceived as being more propitious for multilateral solutions to the challenges facing the Convention, i.e. a U.S. Government more inclined to multilateralism and negotiations.

38. An alternative middle ground approach might only appear attractive when put into context of the actual range of outcomes possible in 2011. In particular, there is no guarantee of a successful review conference in 2011 – however success is defined – and all states parties must avoid assuming that there will be a consensus final document *and* further work undertaken. The range of outcomes includes:

- (i) No agreement in 2011 on a Final Document and no further work until a decision is reached after 2011, i.e. failed Review Conference in fact and in name;
- (ii) Agreement in 2011 on a Final Document and nothing further, i.e. a review activity but no additional intersessional work program of any description, thus resulting in a minimalistic outcome that fails to address the above challenges;
- (iii) Agreement in 2011 on a Final Document and more of the same, i.e. a return to the existing work program model - which should be approached as the minimal outcome acceptable – noting it is not the desirable outcome;

- (iv) Agreement in 2011 on a Final Document and a return to negotiations, i.e. verification/compliance, but likely to involve extended further meetings on issues such as mandates and timeframes, and likely to result in stalled development focused on process with a promise of verification in the future, but little substantive work in the initial years. This might be viewed as the “AHG BTWC model” given past experience of the VEREX (1992-93) BWC Ad Hoc Group between 1994 and 1998;
- (v) Agreement in 2011 on a Final Document and something different, i.e. recognizable to states parties, but sufficiently different and holding promise to enhance implementation of the Convention nationally and internationally through multilateral measures that point in the direction of, and leave open for later consideration, the development of a formal compliance framework for the Convention. **This, in effect, is the proposed middle ground objective.**

39. It is certainly not beyond possibility that the future of the Convention will be held hostage by a small number of states parties that favour verification or the status quo and refuse to countenance any other outcome. With that in mind, preparing the middle ground for a majority of states parties serves two important purposes. First, it facilitates sidelining hard line thinking among a few states parties by proposing a viable alternative that is acceptable to a majority of states parties. Second, early preparation of the middle ground permits a greater number of states parties to have their considerations taken into account and, therefore, anchors them to a process in which they have invested political capital.

40. To initiate discussions on the development of the middle ground, a modified intersessional work program is proposed that involves predominantly technical meetings of experts, formal political meetings of states parties, and technical and political meetings on special topics. It expands the current process from two weeks to three weeks of activity and creates an additional layer of activity that is focused on thinking about some of the more difficult issues related to compliance. This modified intersessional work program is intended to chart a course between the two potentially stalemating options while offering a coherent approach toward potentially realizing – but, necessarily, leaving open for the time being – the longer term objective is the creation of a formal compliance strategy. Indeed, any language suggesting agreement on such a longer term objective would likely doom the proposal to failure, and so the selection of language will be very important on this sensitive, potentially show-stopping, issue.

Agreement on annual one week Meeting of Experts to deal with technical and other information sharing activities.

41. A continuation of the Meeting of Experts is envisaged in the period after 2011 in order to build on the positive developments in recent years and retain the best elements of the current program – outreach, information-sharing, and awareness raising within and among states parties and within, and involving, civil society. A technical, rather than overtly technical and political meeting also maintains momentum and keeps the various stakeholders involved in the BTWC process. Furthermore, with stakeholder involvement the process prevents states parties from reverting to wholly closed meetings. Revising the formula for the Meeting of Experts is not

overly controversial: states parties have held a wide variety of different kinds of meetings in the past – experts meeting in 1987 to establish the CBMs, scientific and technical experts meeting under the VEREX process throughout 1992 and 1993, and the Meeting of Experts since 2003. The topics that should be considered after 2011 may only come to light at the review conference itself. It is too early to propose specific activities for meetings of experts at this time. However, in box one (below) multiple iterations are offered to *illustrate* different balances and approaches to the issue that blend state, non-state (civil society), compliance, implementation, and cooperation issues.

Figure One: example of possible future meetings of experts to illustrate topics that might be addressed.

2012	2013	2014	2015
Art.X implementation strategy	National implementation mechanisms	S & T developments mid-term review	Non-compliance & Investigation mechanisms
Role of civil society, private sector, and Industry in BWC implementation	Enhancing BTWC relationship to other arrangements, e.g. UNSG investigation mechanism; Global Partnership; CWC; Convention on Biodiversity, WHO, OIE, FAO, UNIDO etc.	Confidence-Building measures and information sharing arrangements	Impact of terrorist interest in BW on BTWC
Art. I & III Scope of BTWC and non-proliferation requirements	Art. V & VI Compliance arrangements via consultation and investigation mechanisms	Art. VIII & IX Relationship to Geneva Protocol and CWC in future years	Art. X Cooperation between states parties
Legislation, regulations & other measures, CBM “E”, UNSCR 1540, & capacity building arrangements for implementation	Information-sharing, establishment of national, regional, and international contacts, CBM C & D, ISU role in publication of results of research, promotion of knowledge & promotion of contacts	Requirements for information on national activities, CBM A, Data on laboratories, legislation, and compliance reports	Responses to disease outbreaks, assistance, reporting, CBMs B & G & vaccine production facilities

42. The Meeting of Experts would retain its information-sharing and wide-ranging approach that permitted states parties and interested stakeholders in national and international implementation of the Convention to work in a contained, focused manner. It would not take decisions. The meeting could, however, issue reports or guidance on best practices, future developments that require consideration, or recommendations to states parties if so required.

Agreement on annual formal political Meetings of States Parties

43. Building, again, on existing practice as it has emerged since 2002, the Meeting of States Parties would be retained as a forum for all parties to consider issues discussed in the preceding months, as well as a wider range of activities. The emphasis in the renewed intersessional program of work would be on the wider range of activities.

44. In the proposed process, states parties would be able to take decisions where consensus existed and when such decisions do not have a financial impact on the agreed scales of payment for the BTWC between review conferences. For example, states parties could not add staff to the Implementation Support Unit (ISU) since that would impact on the financial assessments projected and agreed at the preceding review conference. States parties could, however, agree that a new CBM be created and implemented nationally, because the predominant cost would fall on the national government and not the ISU. Other examples would be that states parties could draft and require a report to be sent to the review conference in 2016, or that a document or report be endorsed by states parties (for example a recognition of best practice in national implementation mechanisms). Any decision-making element would need to be couched in very careful terms because of the financial implications of permitting states parties to change BTWC intersessional implementation mechanisms. Significant changes would, therefore, essentially remain in the power of review conferences; minor or other decisions could, however, be permitted under this modified decision-making procedure.

45. In practical terms an array of procedures could be envisaged. Some would be institutional and indicate a shift to the 'serious administration' of a nascent secretariat, a bureau of officials, and power to serving or appointed chairs of meetings or topics to act on behalf of all states parties, as per the 2007 to 2010 work program.

46. If decision-making powers are a step too far for some parties, limited authority to propose 'interim voluntary courses of action' (IVCA) where consensus exists might be adopted immediately but formalized at a later review conference. This element of the ongoing process will engage in voluntary information sharing on activities undertaken to promote understanding of, attention to, and compliance with the object and purpose of the Convention. A further option is to encourage willing states parties to trial or pilot agreed activities with a review of implementation practicalities undertaken upon submission of a fuller report. For example, if a comprehensive implementation strategy for Article X was developed in 2012, immediate implementation of that strategy might be accepted as a pilot project involving half a dozen states parties, say for example, Iran, Brazil, UK, Bulgaria, Nigeria, and Malaysia. These parties would then report to all states parties on their experience and the strategy and processes could be amended in light of experience by the few before adoption by all parties.

47. An additional new element for the Meeting of States Parties would be to expand the ideas of the 'Accountability Framework' from 2006 (BWC/CONF.VI/WP.1). Assuming a one week Meeting of States Parties that permits up to one day for statements and proposals, one day for administration issues such as agreement of the final report, three days are available to address broader issues. One day would, presumably, be given over to considering the report of the Meeting of Experts. The remaining time could usefully be developed as a means to address

recurring issues, such as the information exchange under the CBMs, and new issues, such as developments in other fora of relevance to the Convention. The emphasis would be on information sharing and more formal reporting to take place annually according to an agreed approach (e.g. two volunteers per Regional Group per year) or for some states to volunteer information. It would build directly on key issues of interest to states parties: national implementation measures, confidence-building measures, implementation support, international cooperation, and reporting on – and thereby demonstrating – compliance.

Agreement on annual meeting on special topics

48. The Meeting of Experts and Meeting of States Parties formula devised in 2002 was a practical, but deliberately unambitious, response to the prevailing political realities of the time. While the process has been both more useful and a greater success than originally envisaged, it still lacks important elements that are necessary for the health of the Convention. To be specific, the process remains constraining in terms of topics under discussion and deliberately keeps certain issues off the agenda.

49. There are many practical reasons for ensuring certain issues are not on the agenda of states parties at certain times since they impact on consensus decision making at the review conference and the tone and tenor of meetings between states parties. Nevertheless, states parties do now find themselves in an ostensibly more propitious political climate vis-à-vis multilateralism than in the recent past. Expectations may be high. Furthermore, it remains the stated policy of a number of states parties, the European Union Member States for example, to return to verification of the Convention at the appropriate time. By 2011 it will have been ten years since the demise of the Ad Hoc Group negotiations. Ten years arguably will constitute both the 'longer term' and the more enticing political climate a number of states parties have been waiting for.

50. In simple terms, a further track of activity is necessary beyond 2011 to assuage such states parties that the legally binding, multilaterally negotiated and nondiscriminatory agreement is not being kicked into the long grass indefinitely. While recognizing the difficulty of actually negotiating such an agreement and noting that during those negotiations other activities necessary to the health of the Convention will likely be put in abeyance, the fact remains that an agreed compliance framework or compliance strategy, standardized in form and expectations, and containing very specific procedures and commitments would be beneficial to states parties. Special topic meetings are intended to assist states parties in getting to a position where they can negotiate and agree such a framework or strategy for compliance. The special topics meetings, however, should not be envisaged or designed as a discussion solely on the verification question. The focus should be compliance with the Convention and how that is, and can be, demonstrated by states parties. Two issues are significant here. First, compliance with the Convention is not an absolute all or nothing issue. Compliance represents a spectrum of activities. Second, through an exploration of compliance states parties will be better placed to understand the technical (scientific) and political viability of a wider array of measures and how such measures can contribute to strengthening the Convention. These special topic meetings are, therefore, building blocks that will facilitate the development of consensus in the future for an agreement on a formal compliance strategy for the BTWC.

51. Given this focus, the special topics meetings will be required to address a number of contentious issues. This will be difficult for states parties. Whether or not states parties are willing to address such issues is of itself an indicator of how serious they are, or are not, about the development of a formal compliance framework in the future. Future negotiations should be rapid rather than a long drawn out affair focused on process rather than substance. Negotiations are no substitute for action and the existing challenges facing the Convention do not permit states parties to delay action to counter the challenges or ignore them in the hope that negotiations completed in a number of years will resolve such issues. Thus, rapid negotiations require the grounds for agreement to be explored and developed in pre-meetings and the special topic meetings are intended to assist that process.

52. Placing contentious issues on the agenda in this way will permit states parties to determine what the market will bear, how serious various actors are in their pursuit of a formal compliance framework, and allow technical and political consideration of these issues in a manner that does not contaminate or disrupt, too much, other activities under the Convention. Such a method would also permit input from non-governmental actors, which is essential given the nature of the dual use materials and equipment required for biological weapons and the multiple actors, states, international organizations, regional bodies, professional associations, companies, and individuals that play a crucial role in actual implementation of, and compliance with, the BTWC.

53. The issues which might be discussed under the special topics meetings are varied. Below are some initial suggestions and the rationale for the inclusion of the topic. These suggestions are not exclusive and can be revised or amended by states parties.

Topic One: the scientific and technical environment of compliance with the BWC.

54. Prior to the Ad Hoc Group, the Verification Experts Group (VEREX) of states parties conducted a scientific and technical study of the feasibility of various mechanisms from a technical perspective. For example, what on-site measures might be employed in any inspections of facilities? Since VEREX was completed in 1993 the development of science and technology has increased. Vaccine production mechanisms employed in 2010 and beyond may not be the same as those explored in the early 1990s. Such changes need to be considered in detail. Any serious attempt at a compliance strategy for the Convention requires knowledge of the scientific and technical environment in which it is to operate. States parties need to be aware of this environment and should consider its implications before any decisions related to demonstrating compliance are made.

Topic Two: developments in science and technology that affect implementation of the Convention.

55. While arguably linked to the above, this is actually a different area of interest that is important to the BTWC. Developments in a wide array of scientific fields – materials

technology, synthetic biology, nanotechnology, chemistry – will impact on *existing* implementation structures for states parties. Whether or not a compliance strategy is developed in the future, states parties will need to be aware of these developments and alter implementation mechanisms accordingly to address them. If topic one is viewed as an assessment for the future, topic two should be viewed as an assessment that impacts on contemporary arrangements. It might be understood as a commitment to hold a mid-term, inter-review conference assessment of scientific and technological developments in order to address the concerns expressed by various parties and actors that a once in every five years approach is insufficient given the scale and scope of developments in the scientific and technological arenas.

Topic Three: Information-sharing and confidence building measures.

56. The confidence building measures under the Convention are due for a “comprehensive review” in 2011 as mandated by the Sixth Review Conference. How to undertake a comprehensive review is open to question. The second review conference offered one model that permitted agreement on the core outlines and left the development of the detailed reporting structures to a further Meeting of Experts mandated to reach consensus. Decisions reached by consensus in 1987 were, under this framework, binding on all parties from that moment. An alternative approach was used in 1991. A working group of experts was tasked during the review conference to develop new CBMs and revise the reporting formats and the decisions were taken under and during the review conference itself. In 2011, during the expected comprehensive review, states parties might use either of those approaches, or adopt a mixed approach that utilizes elements from both strategies. Even new CBMs, however, should be subjected to review and an assessment of implementation before 2016 (Eighth review conference): one option that will serve both the contemporary and future environments is to examine and explore information sharing practices by states parties that could enhance confidence in compliance with undertakings. This topic would not, therefore, be limited to existing CBMs but may serve as an appropriate venue for consideration of additional CBMs or additional practices, including voluntary measures, new politically-binding measures, or measures undertaken in other international agreements. Such a meeting would also permit states parties to develop guidelines for a formalized compliance reporting process.

Topic Four: International peaceful cooperation under the Convention.

57. Any future activities will require the ‘balance’ sought by non-aligned and other states parties. This necessitates a discussion on peaceful cooperation. Activity in 2009 has certainly assisted states parties in understanding the issues at stake related to Article X of the Convention. Previous conferences and meeting have identified a range of activities that would be possible under Article X and the interest of civil society groups – as evidenced by their involvement in 2009 meetings – also needs to be exploited and given further opportunities to be heard. A detailed and practical discussion on Article X, involving such issues as expectations, best practices, feasibility of proposals would, therefore, be of benefit to the Convention.

Topic Five: Procedures to address non-compliance.

58. As with all of the above, this area is contentious and has the potential to result in fractious discussions among states parties. It is correct to note that the major compliance concerns related to the Convention have been partially addressed by exogenous procedures (though these would be considered by many knowledgeable observers to be insufficiently robust and timely). However, the Convention, and more particularly its states parties, can only avoid a discussion on elaborating procedures to address suspected or alleged non-compliance for so long. Procedures to address non-compliance are therefore considered as a potential special topic. Such discussions may focus and elaborate on procedures within the Convention, for example Articles V and VI, or give consideration to the relationship between the Convention and its states parties to other mechanisms, for example those under the CWC or the UNSG investigation mechanism. Either way, it would be a useful investment to consider these issues before a compliance problem breaks into the open and, given how essential such procedures are to any meaningful compliance framework in the future, before states parties move to negotiating more formal procedures.

59. The five topics above are not exhaustive. For example, what constitutes compliance, the relationship between the BTWC and the CWC (especially in regard to toxins), as well as the relationship between the Convention and other arrangements might be additional elements under consideration. Likewise, the very contentious issue of incapacitating weapons may appear as a candidate, or others may put the topic of definitions of terms on the agenda. The topics themselves are clearly important, but, hypothetically if the above 'special topics' meetings are agreed in principle or discussed, what is included and what is excluded for discussion will also serve as a barometer for any future negotiations. Put in stark terms, if contentious topics are not ripe for discussion in a contained setting such as the one envisaged here, proceeding with negotiations under a multilateral agreement that would have to involve many, if not all, of the above is to retread the road to failure in 2001.

60. The special topics arrangement envisaged here therefore serve a number of functions: first, it provides the space and forum to discuss medium-to-longer term ambitions; second, it permits states parties to prepare for such discussions without the necessity of developing a formal negotiation position; third, it serves as a test of the will of states parties to move beyond rhetoric of group positions and engages them in detailed discussions on issues identified as important in the past; finally, it is a non-committal but useful exercise that will inform states parties of possible elements in a compliance strategy in order to identify ways forward for continued evolutionary development of the Convention.

Conclusion

61. The above identifies a work program to prepare for 2011 and for issues beyond the Seventh Review Conference. The proposed approach effectively rules out a return to the negotiations on verification in 2011 as well as ruling out the continuation of the limited modest arrangements adopted since 2002. The alternative strategy will require action in 2011, but a significant portion of it will necessitate action after the review conference because of the limitations of a three week conference and due to the nature of the work being proposed. An expansion of work is envisaged, from two weeks to three weeks per year, with new, but still

modest, responsibilities placed on the annual Meeting of States Parties and formalized, but contained, discussions on some of the more contentious issues related to compliance with and implementation of the BTWC. The proposals above are intended to offer a number of means to address issues that require attention in the near future, issues that require attention in the medium term, and to explore issues that are of a longer-term nature. All this should assist states parties in the development of an agreed, formal, compliance framework for the BTWC in the medium term.
