

External Relations in mid-October. As well, the former Office of Special Projects would become the Special Projects Division, still under the Direction of Mr Serguei Batsanov (Russia), which would then oversee both the Health and Safety Branch and the Office of Confidentiality and Security. Ruth Mohlenkamp (Germany), formerly Head of the Policy Review Branch, was appointed Head of the Office of Confidentiality and Security. Per Run (Sweden), formerly Head of the Inspectorate Management Branch, was appointed the new Head of the Policy Review Branch. The Inspectorate Management Branch would be headed by Mr Renato Carvalho, formerly an inspection team leader.

As of 7 December, 464 of the allotted 507 fixed-term posts in the Secretariat were occupied. Of these, 325 were in the professional and higher category and 139 were in the general service category. Including staff on short-term and temporary assistance contracts and others the total personnel strength was 510 from nearly 70 nationalities. Following a decision by the Conference at its sixth session, the Secretariat continued to keep 30 fixed-term positions unfilled.

Subsidiary Bodies

Confidentiality Commission No date had yet to be decided upon for the next regular session of the Commission; its fifth session, planned for 18–20 April, was cancelled as part of the OPCW's austerity measures. In October, the Secretariat passed a third audit of its security critical network, which was overseen by the Office of Confidentiality.

Scientific Advisory Board (SAB) The SAB did not meet during the reporting period, and neither did any of its temporary working groups. Several SAB members were involved in activities outside the OPCW, in particular in relation to a project planned by the International Union of Pure and Applied Chemistry (IUPAC) in preparation for the 2003 Review Conference. A new temporary working group

on biomedical samples would likely be set up in early 2002. The work of the SAB during the coming year would focus on the preparations for the review conference, including work undertaken in coordination with the Secretariat task force on the review. Issues under examination included the destruction and verification of destruction of chemical weapons, scientific and technical developments that may impact on verification methods and instruments, and the impact of new scientific and technological developments on the Convention—for example on the Schedules of Chemicals and the definition of chemical weapons.

Future Work

Taking the highest priority in the programme or work of the OPCW for the coming year is the comprehensive implementation of the Convention in all its aspects. This involves verification, assistance and protection, international cooperation, national implementation, legal assistance, and universality, and will make an important contribution to the global effort to prevent and combat chemical terrorism. In order to accomplish this, decisions must be taken within the OPCW's decisionmaking bodies that will ensure the adequate funding of the organisation and address key verification issues: destruction, conversion, and the regime for chemical industry.

Much work continues to be undertaken within all bodies of the OPCW — the SAB, the Secretariat including the Inspectorate, the Council, and the open-ended working group (involving member states as well as the Secretariat) — with respect to the first Review Conference and the identification of key issues and/or aspects of the CWC's implementation that merit discussion and debate.

This review was written by Pamela Mills, the HSP researcher in The Hague.

The Biological and Toxin Weapons Convention

The Fifth Review Conference of the Biological and Toxin Weapons Convention (BWC) was held in Geneva from Monday 19 November to Friday 7 December. On the final day the Review Conference, having made considerable progress towards agreement of the Final Declaration but unable to conclude a complete text, decided by consensus “to adjourn its proceedings and reconvene at Geneva from 11 to 22 November 2002”. This followed the Preparatory Committee meeting held in Geneva on Wednesday to Friday 25 to 27 April (see *Quarterly Review no 15*) which had agreed a provisional agenda, draft rules of procedure and a recommended distribution of the posts of Chairmen and Vice-Chairmen of the subsidiary bodies (the Committee of the Whole, the Drafting Committee and the Credentials Committee) among the three regional groups.

On the opening day of the Review Conference, Ambassador Tibor Tóth of Hungary was elected President of the Review Conference, Ambassador Markku Reimaa of Finland elected as Chairman of the Committee of the Whole, Ambassador Munir Akram of Pakistan as Chairman of the Drafting Committee and Ambassador Ali-Ashgar Soltanieh of Iran as Chairman of the Credentials Committee. The provisional agenda was also adopted with its four substantive items:

10. Review of the operation of the Convention as provided for in its Article XII
 - (a) General debate
 - (b) Articles I - XV
 - (c) Preambular paragraphs and purposes of the Convention
11. Consideration of issues identified in the review of

Article XII contained in the Final Declaration of the Fourth Review Conference, and possible follow-up action

12. Work done to strengthen the Convention in accordance with the decision of the Special Conference

13. Other matters, including the question of future review of the Convention.

The three week Review Conference was structured so as to commence with two days of general debate in which representatives of 34 states parties, one signatory state, Egypt, and one observer, the International Committee of the Red Cross (ICRC), made statements. This was followed by the Committee of the Whole which met on Wednesday 21 November through to Thursday 29 November and carried out an article by article review of the Convention producing a report containing language proposed by individual states parties or groups of states parties for the Final Declaration. It presented this report on Friday 30 November. The Drafting Committee then met on Friday 30 November through to Friday 7 December, seeking consensus language for the Final Declaration.

91 states parties participated in the Review Conference: Albania, Algeria, Argentina, Armenia, Australia, Austria, Bahrain, Bangladesh, Belarus, Belgium, Bolivia, Brazil, Brunei Darussalam, Bulgaria, Canada, Chile, China, Colombia, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Dominican Republic, Estonia, Ethiopia, Federal Republic of Yugoslavia, Finland, France, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Italy, Jamaica, Japan, Jordan, Kuwait, Latvia, Lebanon, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Monaco, Mongolia, Netherlands, New Zealand, Nicaragua, Norway, Oman, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Senegal, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Viet Nam and Yemen. This was a significant increase on the 77 states parties that participated at the Fourth Review Conference in 1996: Algeria, Bahrain, Bolivia, Costa Rica, Dominican Republic, Estonia, Federal Republic of Yugoslavia, Guatemala, Honduras, Jamaica, Latvia, Lebanon, Lithuania, Monaco, Oman, Panama, Singapore, Venezuela and Yemen all participated in 2001 whilst Bosnia and Herzegovina, Ghana, Kenya, Nigeria and San Marino who had participated in 1996 did not in 2001.

Five signatory states participated: Egypt, Morocco, Myanmar, Nepal and United Arab Emirates, two more (Nepal and the UAE) than in 1996. Two states, Holy See and Israel, were granted observer status in 2001, two fewer than in 1996 when Algeria, the former Yugoslav Republic of Macedonia, Israel and Kazakhstan were accorded Observer status. Algeria has recently acceded to the BWC which now has 144 states parties and 18 signatory states (BWC/CONF.V/INF.1 dated 26 October 2001).

As usual, the Secretariat prepared background documents on the participation of states parties in the agreed confidence-building measures (CBMs) (BWC/CONF.V/2), on compliance by states parties (BWC/CONF.V/3) and on new scientific and technological developments of relevance

to the Convention (BWC/CONF.V/4). Information on compliance by states parties was provided by 22 states parties — listed as the statements appear in BWC/CONF.V/3 and its nine additions: Belarus, **Bulgaria**, Finland, Greece, **Japan**, Latvia, Lebanon, **Netherlands**, **Republic of Korea**, Russian Federation, United States, Yugoslavia; Pakistan; Argentina, **Australia**; **UK**; China; Uzbekistan; **Canada**; Cuba; **New Zealand**; and Poland. The countries shown in bold adopted the useful approach of addressing compliance on an article by article basis. Information on relevant scientific and technological developments was provided by five states parties: Bulgaria, South Africa, Sweden, the United States of America and the United Kingdom. The UK paper was comprehensive and at 29 pages was longer than the combined length of the other papers on scientific and technological developments.

In addition, a number of papers were submitted by states parties and circulated as Review Conference documents. These, together with other documents are listed in Box 1 [documents will be posted on <http://www.opbw.org> as they become available].

Review Conference documents

Documents submitted by states parties:

BWC/CONF.V/5 — Legislation in the Federal Republic of Germany on the Prohibition of Biological Weapons

BWC/CONF.V/6 — Technical assistance, exchange and cooperation undertaken by Australia in the field of biotechnology

BWC/CONF.V/7 — Federal Republic of Germany — Developments in non-profit and industrial applications of genetic engineering, biotechnology and other areas of life sciences

BWC/CONF.V/8 — Federal Republic of Germany — Transparency in biodefence

BWC/CONF.V/9 — Implementation of Article X of the Convention — France's policy on scientific cooperation in biology and medicine in the field of health

BWC/CONF.V/10 — Background information on the compliance of Article IV — Brazil

BWC/CONF.V/10/Corr. 1 — Background information on the compliance of Article IV — Brazil

BWC/CONF.V/11 — The reply of the Libyan Arab Jamahiriya

Further key documents:

BWC/CONF.V/1 — Provisional agenda for the Fifth Review Conference

BWC/CONF.V/2 — Background information document on the participation of the States Parties in the agreed Confidence-Building Measures (CBMs)

BWC/CONF.V/3 — Background document on compliance by States Parties with their obligations under 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 — Background document 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/12 — 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: Interim Report

BWC/CONF.V/INF.1 — List of States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction

Opening Remarks

After being elected, **Ambassador Tibor Tóth** made some opening remarks in which he expressed his thanks for being elected President. He started by saying 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.” Ambassador Tóth noted that the negotiations on the compliance protocol came 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.

He went on to note that another challenge is 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:

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.

Jayanatha Dhanapala, Under Secretary-General for Disarmament Affairs then presented a statement from United Nations Secretary-General Kofi Annan which said:

Preventing the use or threat of use of biological agents and toxins is more important than ever. The horrific attacks of 11 September in the United States could have been far worse if weapons of mass destruction had been used. The challenge for the international community is clear: to implement, to the fullest extent possible, the prohibition regime offered by the Convention.

The statement went on to note:

in recent weeks the world has seen the use of biological agents to create chaos and terror, violating the international norm. ... Full implementation of the Biological Weapons Convention must be given higher priority. Relevant national legislation needs to be tightened, and the acquisition or use

of these weapons needs to be criminalized. The international community also has to be prepared to assist Member States should prevention fail. The United Nations, for its part, stands ready to play a coordination role in this regard. ...

The renewed global focus on terrorism has brought concerns about biological and toxin weapons to the fore. Missing this opportunity, given difficulties in negotiations on other weapons of mass destruction, would only exacerbate the current crisis in multilateral disarmament diplomacy in general. I urge you to come together, overcome your differences, and take these next crucial steps in the history of this landmark Convention.

General Debate

The general debate started on the morning of Monday 19 November with six statements — by the European Union, the United States, South Africa, Japan, Pakistan and China. **Ambassador Jean Lint** of Belgium opened the general debate with a statement on behalf of the EU and the Central and Eastern European countries associated with the EU — Bulgaria, the Czech Republic, Estonia, Hungary, Lithuania, Poland, Romania, Slovakia, and Slovenia — and the associated countries, Cyprus, Malta and Turkey. The statement was thus on behalf of 27 states parties. He started by noting that, particularly in the last year, “important events had taken place which are directly relevant to the BTWC”. Referring to 11 September as well as the anthrax attacks, the statement went on to say that the EU “believes that disarmament and non-proliferation on a general and multilateral basis are today more than ever essential in order to deny terrorists and terrorist organisations any access to more powerful means to implement their abominable activities”. He continued: “The international community is entitled to expect that States taking part in this Conference will spare no effort to prevent biological weapons from being used by terrorists.”

Further, the EU statement said: “The EU also appeals to States Parties to adopt, during this Conference, concrete measures in the fight against biological weapons.” After deeply regretting the failure to agree an instrument to reinforce the Convention, the statement urged that the Review Conference must be the opportunity to give a new impulse to our work by defining a series of commitments and additional measures that States Parties should adopt in order to:

strengthen the implementation of the Convention in all of its provisions: compliance with the fundamental norm in Article I, non-proliferation and export controls, measures in case of concerns over compliance with the Convention (e.g. investigation measures), technical assistance and international cooperation.

In respect of the agreed confidence-building measures, the EU appeals to all states parties to cooperate fully and regularly in the exchange of information. It was noted that modifications could be made to some CBMs to ease their implementation from a technical point of view. In addition, the EU proposed that “some of the confidence-building measures be made legally-binding” and added that “these confidence-building measures will only prove fully useful in the wider context of legally binding measures aimed at strengthening the Convention in a multilateral framework”.

The statement concluded by saying that “It is essential that the Conference agree to a regular follow-up to the work to enable the States Parties to strengthen the Convention comprehensively.”

John Bolton, Under Secretary of State for Arms Control and International Security, then made a statement on behalf of the United States in which he referred to President Bush’s warning in his address to the UN General Assembly:

the world faces the horrifying prospect of terrorists searching for weapons of mass destruction, the tools to turn their hatred into holocaust. ... We, the parties to the Biological Weapons Convention, must demonstrate an unwavering commitment to fighting this undeniable threat. We must overcome years of talking past each other, and address the real issues. Will we be courageous, unflinching, and timely in our actions to develop effective tools to deal with the threat as it exists today, or will we merely defer to slow-moving multilateral mechanisms that are oblivious to what is happening in the real world?

He went on to say:

Before we consider new ways to strengthen the Biological Weapons Convention, however, we must first confront the failure of many States to abide by that very document. Too many States are Parties to the BWC but have not lived up to their commitments. Any nation ready to violate one agreement is perfectly capable of violating another, denying its actual behavior all the while. The United States will simply not enter into agreements that allow rogue states or others to develop and deploy biological weapons. We will continue to reject flawed texts like the BWC draft Protocol, recommended to us simply because they are the product of lengthy negotiations or arbitrary deadlines, if such texts are not in the best interests of the United States and many other countries represented here today.

He then went on to stress:

While the vast majority of the BWC’s parties have conscientiously met their commitments, the United States is extremely concerned that some states are engaged in biological weapons activities that violate the Convention. We also are concerned about potential use of biological weapons by terrorist groups, and states that support them.

Insofar as Usama bin Laden and his al-Qaeda terrorist organization is concerned:

rest assured that the United States will not rely alone on treaties or international organizations to deal with such terrorist groups or the states that support them. Neither the Biological Weapons Convention nor the former draft BWC Protocol would stop biological terrorism by groups like al Qaeda or restrain their rogue-state patrons.

Beyond al-Qaeda, the most serious concern to the US is Iraq:

The United States strongly suspects that Iraq has taken advantage of three years of no UN inspections to improve all phases of its offensive BW program. The existence of Iraq’s program is beyond dispute, in complete contravention of the BWC. The BWC Protocol would have neither hindered nor stopped it.

The Under Secretary of State noted other countries: “Also extremely disturbing is North Korea’s BW program. The United States believes North Korea has a dedicated, national-level effort to achieve a BW capability and that it has developed and produced, and may have weaponized, BW agents in violation of the Convention.” The United

States believes Iran “probably has produced and weaponized BW agents in violation of the Convention”, that Libya “has an offensive BW program in the research and development stage, and it may be capable of producing small quantities of agent” and that Syria (which has not ratified the BWC) “has an offensive BW program in the research and development stage, and it may be capable of producing small quantities of agent”. Finally, the US is concerned about the growing interest of Sudan (a non state party) in developing a BW programme.

John Bolton then went on to say:

we need to look beyond traditional arms control measures to deal with the complex and dangerous threats posed by biological weapons. Countering these threats will require a full range of measures—tightened export controls, an intensified non-proliferation dialogue, increased domestic preparedness and controls, enhanced biodefense and counter-bioterrorism capabilities, and innovative measures against disease outbreaks. Strict compliance by all Parties with the BWC is also critical. ... An essential element in our strategy is to find agreement in this body on measures that countries can undertake immediately to strengthen the BWC.

Specific proposals in the US statement included the following:

- Parties agree to enact national criminal legislation to enhance their bilateral extradition agreements with respect to BW offences and to make it a criminal offence for any person to engage in activities prohibited by the BWC.
- Parties should have strict standards for the security of pathogenic microorganisms and: (a) adopt and implement strict regulations for access to particularly dangerous micro-organisms, including regulations governing domestic and international transfers; and (b) report internationally any releases or adverse events that could affect other countries.
- Sensitizing scientists to the risks of genetic engineering, and exploring national oversight of high-risk experiments, is critical and timely, as is a professional code of conduct for scientists working with pathogenic micro-organisms.
- Establish a mechanism for international investigations of suspicious disease outbreaks and/or alleged BW incidents.
- Setting up a voluntary cooperative mechanism for clarifying and resolving compliance concerns by mutual consent, to include exchanges of information, voluntary visits, or other procedures to clarify and resolve doubts about compliance.
- Parties adopt and implement strict biosafety procedures, based on WHO or equivalent national guidelines.
- Enhance support of WHO’s global disease surveillance and response capabilities.
- Parties could agree to provide rapid emergency medical and investigative assistance, if requested, in the event of a serious outbreak of infectious disease, and to indicate in advance what types of assistance they would be prepared to provide.
- Restricting access and enhancing safety procedures for use of dangerous pathogens.

Throughout the statement, the draft Protocol was criticized no less than twelve times with an assertion that

none of the proposed measures, apart from the one providing the assurance of help in the event of a serious disease outbreak, was contemplated in the Protocol. In fact, all, apart from the proposed professional code of conduct, were included in the Chairman's composite text.

Following the statement by the United States, the representatives of Iran, Iraq and Libya requested the right to reply under Rule 19 of the Rules of Procedure under which:

the President may accord the right of reply to a representative of any State participating in the Conference. Such statements shall be as brief as possible and shall, as a general rule, be delivered at the end of the last meeting of the day.

Peter Goosen, Chief Director, Peace and Security of the Department of Foreign Affairs, South Africa said: "the Fifth Review Conference ... comes at a particularly important — if not critical — juncture in the Convention's history." He noted that the 24th session of the Ad Hoc Group had not only been unable to reach agreement on the draft Protocol, it had not even been able to reach an agreement on its report to the states parties. He went on to say:

On 11 September 2001, the world was confronted by the horrendous terrorist attacks in the United States, which have subsequently been followed by the most widespread use of biological weapons as an instrument of terror in recent history. The use of disease — in this case anthrax — as a weapon of terror should not only be condemned in the strongest possible terms, but should also have been instrumental in underlining the importance of the work that had been undertaken to negotiate a legally binding protocol to strengthen the implementation of the Convention. These attacks made a clear statement to the entire international community, and particularly to the BWC States Parties. The threat of disease as a weapon of war and terror — the threat of biological weapons — is not speculative, it is a threat that is a "clear and present danger", which makes the Ad Hoc Group's failure all the more regrettable.

... if our opposition to biological weapons is to be sustained in the long term, it is necessary that the members of the international community — as a whole — take action and commit themselves to strengthening the norm against the development, production, stockpiling and use of these reprehensible weapons. South Africa continues to see the strengthening of the implementation of the BWC as a core element of the international security architecture.

He said that failure to agree the Protocol was "extremely unfortunate, and in our view sent the incorrect message out into the world" and concluded:

The necessity at this Review Conference is therefore for all States Parties to approach our work in a constructive way and to co-operate so as to accomplish our common goal and for us to satisfy the aspiration of the international community — as a whole — to do all in our power to prevent the use of disease as weapons of war and terror.

Toshio Sano of Japan, noting the events of 11 September and the subsequent anthrax attacks, said:

These incidents have vividly demonstrated that the threat of biological weapons is real and imminent in our current world. ... First and foremost, we should note that it is against this backdrop that this 5th Review Conference is being held today. The international community is more than ever attentive to this Review Conference and to how the States Parties to the BWC will eventually manifest ways to respond

to the threat of biological weapons. In response, we should be clear about demonstrating to the international community our full and united political will to fight against the threat of biological weapons.

Japan regretted the failure of the Ad Hoc Group to complete its negotiations and considers that:

a multilateral legally-binding instrument which involves all the States Parties to the Convention is necessary for international efforts to strengthen the Convention."

He concluded:

Finally, in the light of the growing concerns of the international community about the threat of biological weapons and the increasing need for the strengthening of the Convention, the States Parties need to meet frequently during the intersessional period for close cooperation and taking further actions. Therefore, Japan supports the idea of setting up a strong follow-up mechanism after this Review Conference by meeting in whatever format including a preparatory meeting for the next Review Conference or an annual meeting of the States Parties."

Abdul Basit, Acting Permanent Representative of Pakistan noted that the September 11 events in the US, followed by the continuing anthrax scare, are "a grim reminder of our vulnerabilities". He went on to say that:

ever more vigorous and concerted efforts are required today in order to counter the old and new threats comprehensively and effectively. In our view, the multilateral approach, with full participation of all concerned States, offers the best hope for attaining genuine security at all levels.

... [Pakistan] could not agree to an interpretation of Article III that is in any manner at variance with the provisions of Article X. ... This Conference must consider the subject of technical and scientific cooperation thoroughly, reaffirming the importance of full implementation of Article X. In this regard, the Chinese proposals, contained in document BWC/Ad Hoc Group/WP.453, dated May 8, 2001, provide a solid basis for evolving suitable recommendations.

He called for resumption of the work of the Ad Hoc Group, with an organisational meeting as soon as possible, and said that "the States Parties have come a long way from the 'Rolling Text' to the Chairman's Composite Text" and hoped that this Review Conference "would take the right decision with regard to the Ad Hoc group, enabling it to wrap up its work on a positive note to the satisfaction of all the States Parties." He concluded by:

underlining once again that it would be enormously disappointing if this Conference ended without moving the BWC process forward. A simple review ... cannot suffice. This Conference must come up with concrete recommendations for strengthening the BWC. New proposals should be welcomed and reflected upon thoroughly. But at the same time, we should not hasten to discard old ones, which remain relevant and need to be materialised.

Ambassador **Sha Zujang** of China contrasted his statement to the Fourth Review Conference in which he had surveyed the substantive progress made in arms control and disarmament and the current situation in which the question of "How to maintain and promote disarmament process has become a matter of concern to all countries". He noted:

considerable progress had been achieved in the negotiations for a protocol for the purpose of the strengthening of the

Convention. Still, we were let down eventually. Why did it happen? What can we do about it? These are the questions that must be answered at this Review Conference. In the wake of the September 11 event and a series of anthrax contaminations, at a time when the real threat of bioterrorism looms large, the last thing we should do is to evade these questions. In this sense, the results of this Review Conference will undoubtedly have long-term impact on the effectiveness of the Convention.

In considering the implementation of the Convention, China had noticed that

in fulfilling the obligations under and enhancing the effectiveness of the Convention, a few States Parties are more often than not, either wittingly or unwittingly, pose themselves as lecturers. They are always suspicious of the normal scientific research and production activities under the Convention carried out by other States Parties in the area of biology, while frequently lecturing others. They remain silent about their own relevant activities and facilities.

It was important to follow a single standard — the provisions of the Convention. The statement went on to address unilateralism vs. multilateralism, noting that

a certain country, relying on the strength of its enormous economic and military capabilities, often takes a utilitarian and unilateral approach towards efforts in the implementation of obligations and the enhancement of the effectiveness of the Convention. History has proved and will continue to prove that in an interdependent world, the complete prohibition of all biological weapons, the elimination of the threat of biological warfare and the prevention of related proliferation require the participation and efforts of all members of the international community. Unilateralism will never succeed, on the contrary, it will aggravate the problems.

... With bioterrorism already becoming a real threat, one of the most effective ways to combat it is to work within the multilateral framework and conclude through negotiations a reasonable, feasible and effective protocol on the basis of the existing mandate to strengthen the effectiveness of the Convention and enhance international cooperation.

The general debate continued that afternoon with statements by a further eight states parties — Cuba, New Zealand, Brazil, Croatia, Canada, Iran, Russian Federation and Libya followed by right to reply statements by Iran, Iraq and Libya. Further statements were made the following morning, Tuesday 20 November, by nine states parties — Ukraine, India, Mexico, Norway, Republic of Korea, United Kingdom, Bangladesh, Poland and Argentina. The general debate concluded that afternoon with statements by 11 states parties — Australia, Iraq, Indonesia, Switzerland, Malaysia, Belarus, Chile, Thailand, Algeria, Czech Republic and Turkey followed by Egypt, a signatory state, and the International Committee of the Red Cross, which had observer status. (Key points from these statements are available in “Report from Geneva — Friday 23 November 2001” available at <http://www.brad.ac.uk/acad/sbtwc>).

NGO Statements to the Review Conference On Wednesday 21 November, the formal afternoon session was suspended although the President remained in the chair in order to provide an opportunity for NGOs to make statements to the Review Conference. This followed the same procedure as had been adopted at the Fourth Review

Conference in 1996 with copies of the statements being distributed to delegations as the statements were made. Eleven NGOs made statements: Bradford University (Dr Graham S. Pearson); Federation of American Scientists (Dr Barbara Hatch Rosenberg); Friends World Committee for Consultations (David Atwood); Institute of Biology, UK (Prof Malcolm R. Dando); International Network of Engineers and Scientists for Global Responsibility (Prof Kathryn Nixdorff); Michigan University/Princeton University (Hazel Tamano); SIPRI (Dr Jean Pascal Zanders); Sunshine Project (Edward Hammond); VERTIC (Oliver Meier); Women’s International League for Peace and Freedom (Azania Kaduma); and 20/20 Vision (James K. Wyerman).

Although presenting a range of views, all emphasized the importance of a multilateral legally binding instrument to strengthen the Convention.

Committee of the Whole The Committee of the Whole commenced its work to consider in detail the substantive issues relevant to the Convention on Wednesday 21 November. It reviewed the provisions of the Convention, Article by Article, followed by consideration of the Protocol. It also considered agenda items: “11. Consideration of issues identified in the review of Article XII contained in the Final Declaration of the Fourth Review Conference, and possible follow-up action”, “12. Work done to strengthen the Convention in accordance with the decision of the Special Conference”, and “13. Other matters, including the question of future review of the Convention”. Its report included in an Annex proposals for language for the Final Declaration put before the Committee of the Whole. The Annex utilises a tabular form with two columns. The first is somewhat confusingly headed “Potential Common Ground Texts based on Previously Agreed Formulations” (with a footnote stating “Text in **bold** indicates that the same text has been proposed before the Committee of the Whole”) which actually has text in bold if it comes from the Final Declaration of the Fourth Review Conference. The second column is headed “Proposal before the Committee of the Whole” and has text in bold if the proposed language was identical to text accepted in the Final Declaration of the Fourth Review Conference, in italic if a minor change from text accepted at the Fourth Review Conference and in normal if it is a new proposal.

There were 31 working papers submitted by individual states parties or by groups of states parties to the Committee of the Whole containing proposals for one or more elements of the Final Declaration in contrast to the 8 working papers submitted at the Fourth Review Conference. An analysis of the numbers of proposals by Article is shown below:

Article	Proposals	
	5th Rev Con	4th Rev Con
Solemn Declaration	3	2
Preamble	2	1
Article I - basic prohibition	9	6
Article II - destruction	1	3
Article III - non-transfer	8	3
Article IV - legislation	6	1
Article V - consultation	6	2

Article VI - complaints	4	3
Article VII - assistance	4	2
Article VIII - Geneva Protocol	5	3
Article IX - chemical weapons	5	2
Article X - technical cooperation	8	4
Article XI - amendments	1	1
Article XII - reviews	2	1
Article XIII - withdrawal	—	—
Article XIV - accession	2	1
Article XV - languages	2	1
Total	71	38

A further analysis of the 71 proposals made by 22 individual states parties or by groups of two or more states parties showing the numbers of proposals submitted by an individual state party or a group of states parties is shown below. 12 proposals were submitted at the Fifth Review Conference by the USA, 11 by Iran, 10 by the EU, 8 by Mexico, 5 by Libya, 4 by China and 4 by the NAM and Other States, 3 by Brazil and 3 by China and six other states — a quite different distribution from the submissions at the Fourth Review Conference when 6 were by Iran, 5 by the USA, 5 by the Non-Aligned Countries, 4 by the United Kingdom and 3 by South Africa.

State Party/Group	Proposals	
	5th Rev Con	4th Rev Con
United States	12	5
Islamic Republic of Iran	11	6
European Union	10	—
Mexico	7	—
Libya	5	—
China	4	—
Non-Aligned ¹	4	5
Brazil	3	—
China plus other states ²	3	1
South Africa	1	3
United Kingdom	—	4

Notes:

1. For complete accuracy, this should read “NAM plus Other States” for 2001 and “Non-Aligned Countries” for 1996.

2. This was “China plus six States” for 2001 and “China plus four States” for 1996

Just over two weeks prior to the Review Conference, President George W. Bush announced seven measures to strengthen the Biological Weapons Convention which the US urged all states parties to take. These were reiterated in the statement made by John Bolton on the opening day of the Review Conference and, as might be expected, these seven measures were all reflected in the language proposed by the United States. It is interesting that the essence of one or more of these proposals were also submitted by individual states parties or by groups of states parties. Some of these are long-standing and their proposal by other states parties will have been by coincidence but others such as those proposed by the EU and by Mexico will have been to show a willingness to consider the US proposals alongside other proposals made to the Review Conference and the ideas developed during the Ad Hoc Group negotiations.

US Proposal	Article under which the US submitted its proposal	Articles under which other states submitted analogous proposals
Criminal legislation	IV	III (EU, Mexico) IV (Canada/Switzerland, EU, Japan, Mexico)
Investigation of suspicious outbreaks	V	VI (EU) VII (Mexico)
Procedures for BWC compliance concerns	V	V (EU) VII (Mexico)
International disease control	VII X (?)	VII (Brazil, EU) X (Australia/France/Italy, Japan, Mexico, China +, EU, NAM)
National oversight for security and genetic engineering	IV	Preamble (Iran) IV (EU) VII (Mexico)
Code of conduct	I IV	I (Chile, EU) IV (Canada, Switzerland) VII (Mexico)
Responsible conduct in study, use, shipment		IV (Mexico/Peru, EU) VI (Mexico) VII (Mexico) X (Mexico, EU)

It should, however, be noted that the US proposals are not elaborated in detail leading to possible differences of interpretation of what is intended by them. This is in contrast to the careful elaboration in the proposals for Article V submitted by South Africa for extending CBMs A and G and adding a new CBM H. The experience with the submissions made under the CBMs and the US statement on 25 July 2001 regarding the composite Protocol text make the absence of detail in the US proposals to strengthen the Convention surprising as such detail is necessary so as to ensure consistency in interpretation and implementation.

In addition to the above proposals submitted by the United States, there were a number of novel ideas proposed in the language submitted to the Committee of the Whole including the following:

- Language that non-adherence and non-ratification by non-States Parties pose a threat to international peace and security (Solemn Declaration — NAM)
- Scientific Advisory Panel (Art I — EU)
- Pests and vectors (Art I — Iran)
- Ethnic weapons (Art I — Iran)
- Crop elimination (Art I - Mexico)
- Termination of offensive programmes (Art I — USA)
- Common principles for export controls (Art III — EU)
- Global overview of transfers (Art III — EU)
- No transfers to non-States Parties (Art III — Iran)
- Biosafety Protocol and Advance Informed Agreement (Art III — Mexico/Peru)
- Covert operations (Art IV — Iran)
- Report accidental releases (Art IV — USA)
- Strengthened CBMs/mandatory/procedure (Art V — EU)
- Extended and new CBMs (Art V — South Africa)
- Abusive allegations (Art V — Iran)

- Integrated approach BWC/Biosafety Protocol (Art VI— Mexico)
- BTWC/CWC — no legal gaps between general purpose criteria (Art IX — Mexico)
- Coordinate Review Conference work of BWC and of CWC (Art IX — Mexico)
- Updating of Article IX (Art IX — Pakistan)
- Cooperation Committee (Art X — China plus seven States Parties)
- Good Laboratory Practice audit trails of transfers (Art X — EU)
- No transfers even for peaceful purposes (Art X — USA)
- WHO logical association with BWC goals (Art X — USA)
- Meetings between 5th and 6th Review Conference to consider measures agreed at 5th Review Conference (Art X — USA)

The Committee of the Whole submitted its report to the Fifth Review Conference on Wednesday 30 November.

Drafting Committee The Drafting Committee commenced its work on 30 November and held 13 meetings between then and 7 December. Following a suggestion to the Review Conference by the President, the Chairman of the Committee of the Whole and the Chairman of the Drafting Committee, the Chairman of the Drafting Committee was assisted in his work by Facilitators in the following areas:

- Solemn Declaration — Ambassador David Broucher (United Kingdom)
- Use — Minister Counsellor Alfredo Labbé (Chile)
- Legislation/Criminalization — Ambassador Gustavo Albin (Mexico)
- Safety — Ambassador Volker Heinsberg (Germany)
- Investigations — Ambassador Rakesh Sood (India)
- Assistance — Ambassador Chris Westdal (Canada)
- Disease Surveillance — Ambassador Ali Ashgar Soltanieh (Islamic Republic of Iran)
- Confidence Building Measures — Ambassador Hubert de la Fortelle (France)
- Cooperation (other than on disease & surveillance) — Minister Counsellor F. S. Duque Estrada Meyer (Brazil)
- Follow-up/Ad Hoc Group — President of the Conference

By the middle of the final week, several of the Facilitators were reported to have made good progress in developing text that would attract consensus. By the morning of the final day, 7 December, Ambassador Tóth was reporting 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.

Late in the afternoon of the final day, agreement had been reached on the language in the Final Declaration relating to the first 11 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.

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

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.

Ambassador Tóth subsequently noted 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”. He 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. He went on to conclude that:

the draft final declaration can in the meantime be an orientation for delegations to undertake ... and even to start implementation of some of these ideas. All the consolidated elements will not all fade away.

Analysis

In this analysis, article by article, of the latest draft Final Declaration issued on the morning of Friday 7 December, mention is first made of what was attracting consensus which was novel compared to Final Declarations of previous Review Conferences before examining the language that still remained to be agreed. It should be noted that some of the language that remained to be agreed may have been agreed during the negotiations on that day — there is, however, no later version of the draft Final Declaration.

Solemn Declaration This had been agreed with 12 subparagraphs and contains several new subclauses from the nine subparagraphs of the Fourth Review Conference including the following:

- The determination of States Parties to accomplish total elimination of all weapons of mass destruction;
- Their dissatisfaction at the fact that, after a quarter of a century since the entry into force of the Convention, universality has not yet been achieved;
- Their conviction that terrorism in all its forms and manifestations and whatever its motivation, is abhorrent and unacceptable to the international community and that terrorists must be prevented from acquiring agents, toxins, biological weapons or associated knowledge;
- Their recognition of the particular importance of responding to the threat posed by biological weapons by strengthening the Convention including through binding measures agreed by all States Parties.

One notable omission is the subparagraph that appeared at the Fourth Review Conference:

- Their recognition that effective verification could reinforce the Convention;

Preamble This had been agreed and was essentially the same as at the Fourth Review Conference.

Article I Much of this had been agreed using language essentially the same as at the Fourth Review Conference. Interestingly, one reaffirmation had an agreed extension to include “transmission by means of vectors of biological origin” so that this now read:

The Conference reaffirms the undertaking in Article I never in any circumstances to develop, produce, stockpile or otherwise acquire or retain weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict, including by transmission by means of vectors of biological origin, in order to exclude completely and forever the possibility of their use. [Underlining indicates new language from that agreed at 4th Rev Con]

Three paragraphs are not yet agreed:

The Conference reaffirms that the use by the States Parties, in any way and under any circumstances, including within

their own territory, of microbial or other biological agents or toxins, as well as of weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict, that is not consistent with prophylactic, protective or other peaceful purposes, is effectively a violation of Article I of the Convention. [Underlining indicates new language from that agreed at 4th Rev Con]

The Conference notes that experimentation involving open-air release of pathogens or toxins harmful to humans is inconsistent with the undertakings contained in Article I; experimentation involving open-air release of pathogens or toxins harmful to animals or plants that has no justification for prophylactic, protective or other peaceful purposes is inconsistent with the undertakings contained in Article I.

The Conference emphasizes, once more, the vital importance of full implementation by all States Parties of all the provisions of the Convention, especially Article I. The Conference calls upon all States Parties and Signatories to comply fully with their obligations on the basis of the conviction that any non-compliance with its provisions could undermine confidence in, and achieving the basic provisions of, the Convention. [Underlining indicates new language from that agreed at 4th Rev Con]

Article II Two paragraphs had been agreed and were identical to first and last of the four paragraphs agreed at the Fourth Review Conference.

Article III Seven paragraphs had been agreed — compared to four at the Fourth Review Conference — which included the following new paragraphs:

The Conference urges States Parties to take appropriate measures to prevent and respond to any violation, including by individuals or sub-national groups, of transfer regulations or legislation, including the qualification of such a violation as a punishable offence, consistent with the provisions of the Convention.

The Conference stresses that any recipient, including a State not party, must be prevented from acquiring biological agents or toxins of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; weapons, equipment or means of delivery, and information that would assist the development, production, stockpiling and means of delivery of biological and toxin weapons.

The Conference emphasizes that terrorists and terrorist groups should be prohibited from receiving materials and capabilities relevant to the Convention.

Two paragraphs are not yet agreed:

The Conference encourages States Parties to consider, within the framework of the Convention, ways to enhance the implementation of this Article, including elaboration of a set of common principles and guidelines in the field of export controls.

The Conference takes note with interest of the provisions of the Cartagena Protocol on Biosafety which addresses, inter alia, transboundary movements of living genetically modified organisms.

Article IV 12 paragraphs had been agreed — compared to seven at the Fourth Review Conference — which included the following new paragraphs:

The Conference encourages States Parties to adopt promptly, in accordance with their constitutional processes, measures to prevent terrorists from acquiring biological agents or toxins, dual-use equipment and information on the 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. The Conference calls upon States to make all possible efforts to prevent all terrorist acts including bio-terrorist acts in all their forms and manifestations.

The Conference calls upon each State party to consider to adopt and implement national regulations to establish and maintain the protection of biological agents and toxins considered to be dangerous and relevant to the objectives of the Convention, including regulations on who may possess or acquire them and where or how they may be handled as well as regulations governing domestic and international transfers, and to enforce all such regulations by legislative or administrative measures, including penal measures, as appropriate.

The Conference encourages each State Party to consider adopting and implementing, if this is not yet the case, national guidelines for genetic engineering work consistent with the objectives and purposes of the Convention.

The Conference urges each State Party to provide appropriate legal assistance, in accordance with their national legislation and international agreements, in connection with criminal investigations or criminal proceedings relating to the development, production, acquisition, stockpiling or use by natural persons or legal entities of the agents, toxins, weapons, equipment or means of delivery specified in Article I of the Convention.

The Conference calls on each State Party to enhance its ability to prosecute or, where appropriate, extradite individuals for biological weapons offenses, in accordance with their national law and bilateral extradition arrangements.

A new subparagraph had been added to the previous language regarding the importance of legislative measures designed to enhance domestic compliance, legislation regarding the physical protection of laboratories and facilities and the inclusion in textbooks that reads as follows:

- Efforts by industry and scientific community to develop codes of conduct and/or ethical standards for work relevant to the prohibitions of the Convention, without prejudice to the primary responsibility of States parties to adopt legislative, administrative and other measures to implement the provisions of the Convention. Such codes could include, inter alia, a statement that scientists will use their knowledge and skills for the advancement of human welfare and will not conduct any activities directed toward use of microorganisms or toxins or other biological agents for hostile purposes or in armed conflict.

Two paragraphs are not yet agreed:

The Conference invites States parties to consider, as appropriate, the negotiation of legal agreements to prevent and eliminate crimes involving biological and toxin weapons.

The Conference notes also that some States Parties have provided proposals and suggestions of further strengthening international law and relevant national legislation, and

believe those proposals and suggestions are worthy of further exploration and consideration. The Conference also welcomes and encourages other States parties to provide relevant comments, suggestions and proposals in this regard.

Article V Seven paragraphs had been agreed which were essentially the same as at the Fourth Review Conference. One of these paragraphs relating to the confidence-building measures had been made stronger so that it reads as follows:

The Conference recognizes that participation with confidence building measures since last Review Conference has not been satisfactory nor universal and not all responses have been prompt or complete. In this regard, the Conference urges all States Parties to complete full and timely declarations in the future, noting the value of nil returns. The Conference further reminds all States Parties of the importance of submitting their CBMs to the United Nations by the 15 April each year. In this regard, the Conference also recognizes the technical difficulties experienced by some States Parties with respect to preparing CBM responses. [Underlining indicates new language from that agreed at 4th Rev Con]

A new paragraph has been agreed that reads as follows:

The Conference invites States Parties to consider setting up or designating a national entity responsible for the national implementation of the CBMs.

Two paragraphs are not yet agreed:

The Conference stresses the need for all States Parties to deal effectively and promptly with compliance issues. In this connection, States Parties reconfirm their agreement to provide specific, timely responses to solving any problems which may arise in the application of any provisions of the Convention. Such responses should be submitted, if appropriate, 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. 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. [Underlining indicates new language from that agreed at 4th Rev Con]

The Conference takes note of proposals to expand the scope of existing confidence building measures, to improve existing measures and to create new measures, in order to provide a broader range of relevant information, consistent with the approach agreed upon in 1991. Therefore, the Conference invites States Parties to further discuss modifications of CBMs.

Article VI Six paragraphs had been agreed which were essentially the same as at the Fourth Review Conference. One new paragraph which had not been agreed read as follows:

The Conference invites States Parties to consider the development by all States parties of a compliance mechanism within the framework of the Convention to conduct investigations regarding alleged breaches of the Convention.

There is an associated clause which has also not been agreed in a paragraph that is otherwise identical to that adopted by

the Fourth Review Conference and had been agreed by the Fifth Review Conference:

The Conference recalls, in this context, United Nations Security Council resolution 620 (1988), which at the time encouraged the United Nations Secretary-General to carry out prompt investigations, in response to allegations brought to its attention by any Member State concerning the possible use of chemical and bacteriological (biological) or toxin weapons that could entail a violation of the 1925 Geneva Protocol or of any other applicable rule of international treaty or customary law. The Conference also recalls the technical guidelines and procedures contained in Annex I of United Nations document A/44/561 to guide the United Nations Secretary-General on the timely and efficient investigation of reports of the possible use of such weapons. The States Parties reaffirm their agreement to consult, at the request of any State Party, regarding allegations of use or threat of use of bacteriological (biological) or toxin weapons and to cooperate fully with the United Nations Secretary-General in carrying out such investigations. Pending the agreement of the mechanism described in the paragraph above, the Conference stresses that in the case of alleged use the United Nations is called upon to take appropriate measures expeditiously, which could include a request to the Security Council to consider action in accordance with the Charter. [Underlining indicates new language, not yet agreed, from that agreed at 4th Rev Con]

Article VII The language for this Article had been agreed. It comprises six paragraphs which have been developed and strengthened from that in the Final Declaration of the Fourth Review Conference. For example, the paragraph referring to the possible coordinating role of the World Health Organization (WHO) has been extended to include the Office International des Epizooties (OIE) and the Food and Agriculture Organization (FAO). There are two new paragraphs which elaborate on possible types of assistance:

The Conference invites each State Party in a position to do so to identify possible types of medical, veterinary, or other assistance that might be made available. The Conference urges States Parties to commit, to the extent that they are able, to provide, or contribute to, the training and operation of national and/or international rapid response teams for emergency medical assistance, as well as necessary materials and equipment, especially for detection.

The Conference expresses concern at the possibility of biological weapons use or threat of use. The Conference underlines the value of promoting, as appropriate, access to medicines, medical prophylaxis and treatment as a crucial condition in the combat of outbreaks of disease resulting from a violation of the Convention.

Article VIII The language for this Article had been agreed. It comprises seven paragraphs which are closely similar to those in the Final Declaration of the Fourth Review Conference.

Article IX Three paragraphs had been agreed. The first paragraph is identical to the corresponding paragraph in the Final Declaration of the Fourth Review Conference. Two new paragraphs have been agreed — one dealing with universality of the Chemical Weapons Convention:

The Conference also welcomes the fact that 143 States parties have become States parties to the Convention and

some others have declared their intention to adhere to the Convention. It strongly urges all those that have not yet ratified or acceded to do so, in order to achieve the early universalization of the Convention and a world free of chemical weapons. In this connection, the Conference urges all States Parties to persuade non-Parties to the Chemical Weapons Convention to ratify or accede to the Convention to realise its universality.

The other taking note of the forthcoming Review Conference of the CWC:

The Conference takes note that the First Review Conference of the Chemical Weapons Convention will take place in 2003, and affirms the complementarity between the objectives of the two Conventions.

One paragraph had not been agreed:

The Conference also underlines the importance of effective and full implementation of the Convention in all its aspects.

Article X 20 paragraphs have been agreed. Several are essentially the same as those in the 17 paragraph Final Declaration of the Fourth Review Conference whilst several are new, frequently with several subparagraphs, which have largely been taken from language in Article 14 of the Chairman's composite text. These include:

The Conference notes that, since the Fourth Review Conference, States Parties — both bilaterally and multilaterally, including through specialized International Organizations such as WHO, UNDP, FAO, OIE and ICGEB and other relevant organizations — have increased their contributions to facilitate international cooperation in the field of biotechnology, which focused on, *inter alia*:

- (a) Research activities aimed at improving the capabilities of States parties to monitor emerging and re-emerging diseases and to treat them;
- (b) International cooperation on disease outbreaks;
- (c) International cooperation on vaccine research and production and on global vaccination programs;
- (d) Technology transfers;
- (e) Training of national experts from developing countries on microbiology, molecular biology, immunology and pathology, plant biology, protein structure and function, virology, industrial biotechnology;
- (f) Research activities on genome dynamics;
- (g) Establishment of biological data bases;
- (h) Publication, exchange and dissemination of relevant information.

Another paragraph lifts language from the General provisions of Article 14 addressing technical cooperation in the Chairman's composite text of the Protocol with a slightly modified chapeau stating that:

The Conference urges States Parties to continue to implement specific measures designed to enhance compliance with and ensure effective and full implementation of Article X of the Convention among States Parties. The implementation of such measures shall, inter alia, be aimed at: [underlined language is identical to that in paragraph 1 of Article 14 of the Chairman's composite text]

This is then followed by three subparagraphs that are essentially identical to the three subparagraphs of paragraph 1 of Article 14 of the Chairman's composite text.

A further paragraph lifts language from paragraph 4 of Article 14 of the Chairman's composite text of the Protocol with a different chapeau stating that:

The Conference urges States Parties to undertake or continue to promote and support the following activities, in furtherance of any current endeavors relevant to and in accordance with the Convention, where appropriate, individually, jointly, through arrangements with relevant international organizations including, but not limited to, the Food and agriculture Organization, International Center for Genetic Engineering and Biotechnology, International Vaccine Institute, Office International des Epizooties, Organization for the Prohibition of Chemical Weapons, United Nations Environment Program, United Nations Industrial Development Organization or World Health Organization and the Secretariat of the Convention on Biological Diversity: [underlined language is identical to that in paragraph 4 of Article 14 of the Chairman's composite text]

This is then followed by subparagraphs (a) to (n) which largely reflect the subparagraphs (a) to (k) of paragraph 4 of Article 14 of the Chairman's composite text as well as include new subparagraphs.

Three paragraphs are not yet agreed. Two paragraphs are alternatives dealing with references to the Convention on Biological Diversity with the second alternative including an additional sentence making reference to the Cartagena Protocol on Biosafety:

5. The Conference underlines the importance, in the context of Article X implementation, of the Convention on Biological Diversity and of the Rio Declaration and the Agenda 21 adopted by the United Nations Conference on Environment and Development held in Rio de Janeiro, Brazil, 1992.

5 bis The Conference underlines the importance, in the context of Article X implementation, of the Convention on Biological Diversity and of the Rio Declaration and the Agenda 21 adopted by the United Nations Conference on Environment and Development held in Rio de Janeiro, Brazil, 1992. The Conference welcomes the adoption of the Protocol on Biosafety to the Convention on Biological Diversity in 2001 and looks forward to further steps being taken during the World Summit on Sustainable Development, to be held in Johannesburg, in 2002.

It is surprising that the first alternative is not shown as agreed language as it is a rephrased version and substantively identical to the paragraph in the Final Declaration of the Fourth Review Conference which read as follows:

9. The Conference takes note of the significant steps forward in promoting cooperation in the biological field taken by the United Nations Conference on Environment and Development held in Rio de Janeiro, Brazil, in 1992, including the adoption of Agenda 21 and the Rio Declaration, and by the Convention on Biological Diversity, and underlines their importance in the context of Article X implementation.

The other paragraph which is not yet agreed relates to the establishment of a forum for the consultation on cooperation — essentially a Cooperation Committee similar to that in the Chairman's composite text — on which the proposed language is clearly taken, without even amendment to remove the inappropriate reference to the Protocol, from paragraph 2 of the Chairman's composite text and reads as follows:

The Conference calls for the establishment of a forum for consultation and creation of opportunities for cooperation on matters related to the promotion of scientific and technological exchange in the field of peaceful, bacteriological (biological) and toxin activities, and review of the implementation of Article X of the Convention among the States Parties to the Protocol. [underlined language is identical to that in paragraph 2 of Article 14 of the Chairman's composite text]

Article XI A single paragraph has been agreed that is closely similar to the final fourth paragraph of the Final Declaration of the Fourth Review Conference.

Article XII One paragraph had been agreed that is closely similar to the first paragraph of the Final Declaration of the Fourth Review Conference:

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

Two paragraphs have not been agreed which read as follows:

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.

This language is identical to that in the Final Declaration of the Fourth Review Conference and is clearly at a draft stage as it has not been appropriately updated — for example, the third tirst should refer to the degree of universality attained at the **Sixth** Review Conference and the fifth tirst should refer more generally to the relevant decisions of **previous** Review Conferences rather than just to the Fourth.

Article XIII A single paragraph has been agreed that is closely similar to the first part of the single paragraph of the Final Declaration of the Fourth Review Conference although the words in the Final Declaration of the Fourth Review Conference expressing “satisfaction that no State party to the Convention has exercised its right to withdraw from the Convention.” are omitted.

Article XIV Two paragraphs have been agreed in contrast to the five adopted in the Final Declaration of the Fourth Review Conference. These two paragraphs essentially are the same as the first three paragraphs of the Fourth Review Conference. The omitted fourth and fifth paragraphs are

those welcoming regional initiatives leading to wider accession and the appeal to those states parties who have not taken part in the Conference to participate in the implementation of provisions contained in the Final Declaration.

Article XV A single paragraph has been agreed which is similar to that in the Final Declaration of the Fourth Review Conference, although without any reference to the work of the Ad Hoc Group and with an emphasis on Arabic as being an official language of the United Nations system.

Reflections

The failure of the Fifth Review Conference to agree a Final Declaration during its three week meeting from 19 November to 7 December is to be regretted especially as it occurred at a time when, following the anthrax attacks in the United States, more attention world-wide was being focused on how to counter the danger of biological weapons than ever before. Consequently, there was more political and public expectation that the states parties at the Fifth Review Conference would explore every avenue and go the extra mile in order to arrive at a consensus Final Declaration which would further extend the understandings amongst the states parties and thereby strengthen the regime totally prohibiting biological weapons. The decision to adjourn until 11 to 22 November 2002 was better than a complete failure — but still fell far short of international expectations.

The analysis above shows that the Review Conference was well on its way to agreement of a Final Declaration which, whilst not being as strong as would have been desirable, would at least have demonstrated a determined international political will totally to prevent any development, production, acquisition, use or threat of use of biological weapons. None of the paragraphs yet to be agreed on the final day of the Review Conference appeared insoluble — given a will to find a solution.

In considering the reasons for the failure of the Review Conference to agree its Final Declaration on 7 December, the onus has to be placed squarely upon the United States. Although its statement to the Review Conference attracted much attention because of its naming of states parties and states that the United States suspected of not being 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, the United States and the United Kingdom naming the former Soviet Union and Iraq as states parties considered not to be in compliance with the BWC. 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 contrast was underlined by 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:

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.

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 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 the 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. 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.

In looking ahead to the adjourned Review Conference, there is 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 consult together to agree on how to proceed in November 2002 should the United States still not recognise 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:

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 go on to add:

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.

This review was written by Graham S Pearson, HSP Advisory Board

Proceedings in South Africa

Quarterly Review no 7

The Continuing Trial of Wouter Basson

Monday 24 September was a public holiday in South Africa so proceedings resumed the following day. Cross examination of Basson on the fraud charges continued on the 25 and 26.

Prosecutor Anton Ackermann began by putting it to Basson that the only control exercised over foreign payments made on behalf of Project Coast by Military Intelligence, was verification that they fell within the project budget and that the necessary Reserve Bank authorisation had been obtained. No physical verification of the receipt of goods was ever carried out and auditor Petro Theron relied heavily on the documentation provided by Military Intelligence for audit purposes. Basson strongly denied that this was the case, and claimed that due diligence was exercised at all times.

Basson said that the Surgeon-general, Niel Knobel, and other members of the Co-ordinating Management Committee, were not apprised of the detail of every single payment made from the Coast budget and that Gen Knobel was not informed about every trip he undertook.

Basson answered questions relating to the specific acquisition of equipment which he claimed was intended for the laboratory at the Special Forces Headquarters. The State is disputing that some of the equipment Basson claims was purchased from Roger Buffham was indeed bought.

Basson said he had “no memory” of any documents having been in his possession which related to the true nature of his dealings with Bernard Zimmer, David Chu, David Webster or Roger Buffham on behalf of the Principals. He said that these people would have kept records which they have obviously destroyed, leaving only the false documents and those specially created as cover stories, for investigators to find. He said it was not his job to keep a central record of his dealings with, or on behalf of the Principals, and that if he had any documents pertaining to their relationship, he might have shredded them.

Ackermann stated that no documents mentioning Abdul Razak, Dieter Dreier or Simon Puerra, or any that would support Basson’s version of his relationship with these people, was found in the blue steel trunks found at the time of his arrest in 1997. Basson said that he had no mandate

from the Chief of the South African Defence Force to inform the Chief of Staff Intelligence about the covert operations.

Asked to comment on certain claims made in a document authored by the Director of Military Counter Intelligence about Project Jota, Basson said that Project Jota was not, as has generally been assumed, simply a new name allocated to Project Coast. He claimed that from 1992, Jota was the name of the defensive component of the CBW project, while Coast continued to be the name of the offensive arm. He said that Col Ben Steyn was fully informed about Jota, but was told nothing about Coast when he took over as Project Officer from Basson.

Basson said that Jota’s task was limited to the manufacture of NBC suits and other protective/defensive equipment manufactured in South Africa. He said that Steyn had “no idea” what Coast entailed, particularly in regard to the offensive weaponisation of chemical substances which was why Steyn was not involved in the destruction of the drugs in January 1993.

Ackermann pointed out that this was the first time, during the trial or in any other forum, that a clear distinction has been drawn between projects Coast and Jota.

During a brief re-examination of Basson by defence advocate Jaap Cilliers it was placed on the record that even after Basson was dismissed from the Defence Force in 1992 he was paid in cash by the Defence Force. Cilliers informed the court that the defence closed its case. The Judge had no further questions for the witness.

The court adjourned on 26 September until Monday 8 October when senior prosecutor Anton Ackermann brought a surprise application for the court to subpoena three foreign witnesses — former Swiss Military Intelligence chief General Peter Regli and two of Basson’s alleged “financial principals”, Dieter Dreier and Yusuf Murgham — to testify before legal argument begins.

The next morning, Judge Willie Hartszenberg formally dismissed the State application. He did not consider the three suggested witnesses to be essential, and expressed doubt that they would admit to having participated in sanctions-busting or sharing classified information with South Africa. Their