

compounds, sampling and chemical analysis on-site, chemical analysis off-site, destruction of CW and its verification, chemistry education and outreach and the technical capabilities of the Secretariat. The SAB is due to reconvene during 4 and 5 February, during which it will finalise its report.

Future work

With the Conference now over and a difficult year for the OPCW drawing to a close, member states and the Secretariat are focussing efforts on the forthcoming Review

Conference, due to start on 28 April. While preparations are well underway, much work remains to be done. At the next session of the Council during 18–21 March 2003, a draft provisional agenda for the Review Conference will once again be discussed and, hopefully, agreed upon. The other issue on which attention will be focussed will be the status of the Gorny destruction facility and the Russian destruction programme in general, with a view to setting a date for destruction of one per cent of Russian CW stocks.

This review was written by Fiona Tregonning, the HSP researcher in The Hague.

Report from Geneva

Review no 18

The Biological and Toxin Weapons Convention Review Conference

As reported in *CBW Conventions Bulletin* no 54 (December 2001), the Fifth Review Conference of the Biological and Toxin Weapons Convention (BWC) opened in Geneva from 19 November to 7 December 2001. Despite being close to agreement of a Final Declaration on the final day it became clear that there was no alternative other than to adjourn the Review Conference for a year until 11 to 22 November 2002. As the President of the Conference, Ambassador Tóth, noted at his Press Conference following the adjournment, 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.

During the past twelve months there has been relatively little sign of action by the states parties to the BWC. Most notable were the publication by the European Union on 15 April (see News Chronology, 15 April) of a list of concrete measures adopted by Foreign Ministers, the launch by the United Kingdom Foreign Secretary on 29 April of a green paper on strengthening the BWC (see News Chronology, 29 April), the adoption of a political declaration at a summit meeting by the heads of state and government of the European Union and Latin American and Caribbean countries (see News Chronology, 17 May) in which 33 states other than the EU participated and the Lima Commitment agreed by the Andean Community in June (see News Chronology, 17 June). All of these commitments to and support for the strengthening of the BWC were countered by the continued indications from the United States of a continued failure to recognize the significant contributions that a strengthened BWC regime could make to countering the threat from biological weapons whether from states or from sub-state actors (see News Chronology, 6 May, 26 August and 2 September).

The scene for the resumption of the Fifth Review Conference of the BWC was set at the United Nations

General Assembly in the First Committee by the introduction by Ambassador Tibor Tóth on 17 October of the draft resolution A/C.1/57/L.22 requesting the Secretary-General to continue to render the necessary assistance to implement the decisions and recommendations of the Review Conferences, of the Special Conference of September 1994 and to support the resumed Fifth Review Conference. This resolution was adopted by the First Committee on 22 October and by the General Assembly on 22 November, both times without a vote.

Ambassador Tóth in his introduction to the resolution (available at <http://www.reachingcriticalwill.org>) pointed out that during the past year or so:

a new realism has been emerging about deliberate disease. ... The anthrax incidents, against the tragic background of 9/11, clearly demonstrated all the potential consequences for any society, if notwithstanding the norm, prevention or deterrence, the genie of misuse of biotechnology or bio-defence gets out of the bottle.

He went on to note that there is now a much wider public awareness of the threat:

1. The destructive potential of deliberate disease, as a weapon, or as a weapon of terror, is second to none: minuscule quantities of biological agents, used in an effective way, could cause massive destruction of life, widespread terror and critical disruption of basic societal activities.
2. How stealthy and treacherous biological agents are. Once prevention fails and these weapons are used, it is difficult to ascertain timely the exact scope of their use, to identify victims, to find the perpetrator, and to spot the place or the infrastructure where the substances were developed and produced.
3. The challenge is not just hype, existing merely in fiction. Deliberate disease is a real and present danger.

He then said that:

as a result of serious setbacks encountered in the last 18 months, there is a **new realism** emerging **about the BWC regime** as well: a less ambitious, but still meaningful role to be assigned to the regime. [emphasis in original]

Although this potential new role is different from building in a holistic way an all-encompassing compliance regime, he considered that it is becoming more and more evident that even in a more realistic role, the BWC regime:

can provide a unique framework for measures to benchmark and enhance implementation, and to decrease the likelihood of deliberate, accidental or naturally occurring diseases occurring and taking a high toll. It can be done through successive steps, through measures, which would not necessarily be legally binding, and through efforts undertaken both nationally and internationally. ... this is not a silver bullet function for the BWC regime, but a task to work together synergistically with other tools. But to reach the critical mass of decision for such a complementary role, some **basic question(s)** will have to be answered:

1. Beyond norm setting, is there any real-life, functional requirement for the BWC regime?
2. Could all the other containment and mitigation means, such as export-controls, non-proliferation, defence, civilian defence, preparedness, vaccination, disease control, individual or collectively, handle the whole spectrum of the threat without any margin of error, thus making complementary tools, like the BWC regime, redundant?
3. Is there a premium on preventive measures, such identifying and rectifying implementation deficiencies, compared to those measures, which are to mitigate the consequences of deliberate or accidental disease?"

He emphasised that if there was the slightest doubt that notwithstanding all the resolve, efforts and investments in the other mitigation means, there still might be:

a future margin of error, [then] writing off the BWC regime or declaring it redundant is an unaffordable luxury. ... compared to other means, the potential contribution of the BWC regime is relatively **cost effective**, both politically and in terms of resources. Politically, it could be cost effective because it can provide timely warning about implementation deficiencies early enough thus problems could be rectified or addressed in a preventive way, insider or outside the BWC regime. As for the resource allocation these measures are cost effective as well, because they have a combined price tag, which is several orders of magnitude lower than the cost and resource implications of other ... means, like those, which are to mitigate the consequences of deliberate or accidental disease.

He therefore urged that the present challenges should be turned into an opportunity and that the Fifth Review Conference to be reconvened on 11 November, would provide a chance to unfold in a realistic and incremental manner the unused potentials of the BWC regime. Since the summer round of his negotiations, he said there had been

a widening support for focusing in the resumed review conference specifically on the follow-up and wrap up its work swiftly. The **follow-up** mechanism would enable States Parties to meet annually and consider measures to strengthen the BWC. Such annual meetings could be supplemented by experts meetings for enhancing the effectiveness of the measures forwarded by consensus. Both the annual meetings of States Parties and the expert meetings will have to concentrate on a relatively limited number of issues to ensure that a focused and result-oriented work is taking place in the limited time available annually for those meetings. ... compared to all

previous review conferences such a follow-up mechanism would represent a qualitatively new product: an agreement on both the **ways and the means** of enhancing the implementation of measures to strengthen the BWC.... The emerging new realism about the threat and the BWC regime's role should be based on what is a **shared aspiration** for all of us: joining efforts in countering deliberate disease. Once that goal is taken seriously, we cannot afford being bogged down on the methodological differences of how to attain that goal. Let us concentrate on what we can agree now, let us do it, and as a result of measurable progress, let us create new ground for further joint action."

The Press Release issued by the United Nations on 6 November noted that:

The Review Conferences are especially important in the context of rapid progress being made in the bio-sciences, progress which as well as delivering important benefits also makes it potentially easier to develop biological weapons.

The Press Release recalled that at the opening session of the Review Conference from 22 November to 7 December 2001, the difficult atmosphere following the collapse of the Protocol negotiations in August 2001 was further intensified by the (still unsolved) anthrax incidents in the United States in September 2001, and accusations that some states parties were not complying with their obligations under the Convention. After considerable debate, delegations had focused their attention in the opening session on three main issues:

(1) The Ad Hoc Group and the completion of its work. There were serious disagreements among delegations on whether the Ad Hoc Group should attempt to continue with its work on a protocol, and whether to retain or terminate the mandate of the Group.

(2) The issue of compliance with the Convention, and cases of alleged non-compliance, and how the Conference should deal with these.

(3) What kind of follow-up work might be undertaken to strengthen the Convention after the conclusion of the Review Conference, in the absence of a protocol.

However, by 7 December 2001, states parties had not been able to overcome their differences on these issues and no agreement on a Final Declaration was achieved. Consequently it was decided to adjourn the session and resume it one year later. The Press Release went on to say that over the past year, delegations had been working on possible solutions that would allow them to reach an agreement concerning future work to strengthen the Convention. Under the continuing presidency of Ambassador Tóth, the resumed session of the Conference was likely to focus primarily on the specific question of follow-up work, although the other main issues remain to be formally resolved. It was noted that:

The question of follow-up is crucial, as without agreement on this it is likely that nothing will be done by States Parties collectively to strengthen or even maintain the Convention until at least the next Review Conference, due in 2006.

Opening Plenary Session, 11 November

The Fifth Review Conference resumed in Geneva on 11 November with Ambassador Tibor Tóth of Hungary continuing as President. 94 states parties participated — three

more than at the initial session in 2001 (Bosnia-Herzegovina, Georgia, Ghana, Holy See, Morocco, Qatar, the Former Yugoslav Republic of Macedonia, and Uruguay participated in November 2002 whilst Armenia, Dominican Republic, Liechtenstein, Luxembourg and Singapore did not). One fewer signatory state participated than at the initial session (Madagascar participated whilst the United Arab Emirates did not and Morocco participated as a state party). Israel, which is neither a state party nor a signatory again participated as an observer.

Ambassador Tóth made some opening remarks in which he welcomed the delegations back to Geneva for the continuation and conclusion of the Review Conference. He particularly welcomed the delegations of the two new states parties, Morocco and the Holy See, who have brought the total number of states parties to 146.

Ambassador Tóth reminded delegations that this was a somewhat unusual situation, as the Review Conference had been suspended in difficult circumstances almost a year ago, and was now resuming to complete its work. He then clarified the stage that had been reached before outlining the way in which he proposed that they should proceed to complete the Review Conference. In doing this, he reminded delegations that this was still the same Review Conference, and that the agenda, which had been adopted the previous November, remained valid. During the initial three week session, most of this agenda had been addressed. He went on to say that unless the Conference determined otherwise, he did not intend to return to the completed agenda items. Consequently, this left agenda items 15 (Report of the Drafting Committee) and 16 (Preparation and adoption of the final document(s)) still to be completed and he went on to outline his suggestions for a programme of work to deal with these items.

He said that he proposed to deal with these items in the plenary, and to focus first on agenda item 16, as this related to the consolidation of the final product of the Conference, which was what he believed was of most concern to all delegations. Insofar as the programme itself was concerned, he proposed that because of the unusual and uncertain situation, maximum flexibility should be retained. He would therefore outline suggestions for the opening day's programme with the subsequent meeting schedule to be determined later, according to need.

Ambassador Tóth then presented his proposal for the final product of this Conference which was circulated as document BWC/CONF.V/CRP.3. He said that this was the result of his sustained efforts over the past year to bridge the formidable differences among delegations on the outcome of the Conference. He had consulted widely, in three sets of consultations held in Geneva in the spring, summer and autumn respectively, and again during the week prior to the resumed Review Conference. He had met delegations bilaterally, and in group settings. He said that all the possible options for securing a successful outcome to the Conference had been explored.

The proposal in CRP.3, which was in the form of a draft decision establishing follow-up meetings over the next three years, reflected the conclusion that he had reached that this was the only outcome which could realistically hope to be achieved that would ensure a continued multilateral approach to the implementation and strengthening of the

Convention in a way that involved all states parties. The draft decision called for a one-week annual meeting of states parties each year until 2006, with each such meeting to be preceded by a two-week meeting of experts. Five topics were set out for consideration by these meetings, with a timetable for which topic would be considered in which year. The five topics in CRP.3 are:

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

Items i and ii would be addressed in 2003, iii and iv in 2004 and v in 2005. The structure of the framework was therefore clear, although considerable flexibility had been left to states parties to decide how the topics would be developed. In addition, flexibility would also be maintained by the consensus rule, which would protect the interests of all, and by the fact that the whole process will be reviewed in 2006. Ambassador Tóth said that he believed that the proposal struck the right balance between certainty and flexibility. No state party would be forced into anything it did not expect or does not want by this process; similarly the process would ensure that a forum exists for states parties to continue to explore many and varied ways of addressing the growing challenges facing the Convention.

Ambassador Tóth asked delegations when considering this proposal to remember that they should not pretend that the political differences between delegations are not serious. It was necessary to acknowledge this fact, and work with it to make what progress was possible. The alternative would be to let these differences dictate the fact that there would be no work or attention given to the Convention, in a multilateral context, collectively by states parties, until at least 2006. Such a result, in his judgment, would be

a betrayal of the legitimate expectations of the world community that we will fight together against the threat of biological weapons, and work collectively and multilaterally to ensure that the threat is diminished.

Ambassador Tóth pointed out that his proposal was not a traditional Review Conference product. Rather, it was a qualitatively different step into the future, dealing only with what was strictly necessary for states parties to be able move forward with protecting, maintaining and enhancing the Convention. He was also aware that the proposal was not likely to fully satisfy many, or even any, delegation. He was sure that everyone would be able to think of things that could or should be added. However, he recognised that given the situation, there was no other way forward. It was necessary to reach an agreement, and work together to strengthen the Convention.

He said that he did not intend to have any debate on the proposal now. Rather, he asked delegations to take it away, consider it, discuss it with capitals, with regional groups, with other colleagues. He proposed that unless advised otherwise, the General Committee would meet on Tuesday afternoon to determine the next steps then. The plenary meeting accordingly was closed at 10.22 am.

Subsequent developments

Ambassador Tóth in a press conference at 12 noon on 11 November noted that in December 2001 there had been an extremely significant division of ideas that had forced suspension of the Fifth Review Conference. Since then, a series of efforts had been made during consultations in spring, summer and autumn to try to bridge the gaps in negotiations on various issues. There had been setbacks as well and at the opening plenary he had initiated a “rescue operation” — as the Conference would not focus on reaching agreement on a Final Declaration, as had occurred at previous Review Conferences, but would instead use the limited time available to attempt to achieve consensus on the proposals in CRP. 3 that would allow ongoing work on a series of topics — such as biosecurity and assistance to countries responding to man-made diseases — leading up to the Sixth Review Conference in 2006.

At the same Press Conference, the Under-Secretary-General for Disarmament Affairs, Jayantha Dhanapala, in a brief statement, said the proposal before the Conference represented a modest achievement and proved that the Biological Weapons Convention was a viable treaty that could be further developed. The proposal would set an agenda for future work, and he believed the paper would be adopted by consensus. Mr. Dhanapala noted that the Secretary-General had stated a year ago that implementation of the Biological Weapons Convention needed greater priority from the international community and states parties, especially considering recent developments related to terrorism. Consequently, Mr. Dhanapala urged states parties to the Convention to adopt the proposal.

In subsequent discussion at the Press Conference, Ambassador Tóth noted that it was true that the new proposal did not include some measures of importance to developing countries related to cooperation in implementation of the Convention included nor did it include measures of importance to developed countries such as those related to compliance. Consequently, the approach made in the proposals in CRP.3 was “selective” in that it only focused on the five stated items. It was a “dilemma” of the Review Conference that it could not take action at the moment on compliance measures related to the Convention, and yet it needed to face the question of whether it should attempt to make progress in this area, despite lack of an overall agreement on the matter. Some delegations held the view that some work could be done now while others maintained that nothing could be done until consensus was reached and an agreement on a compliance regime was in place.

He went on to note that even if there was no Final Declaration from the Conference, a programme for significant ongoing work as proposed in CRP.3 would still be valuable. If this proposal was agreed by the Conference it would be important that the United States and other

countries be engaged in a “pro-active way”. Ambassador Tóth stressed that the new “product” on the table would require a new approach. Thus far, there had not been any opposition from national delegations to this proposed approach. This was positive, and the US, for its part, had not indicated to him that it could not go along with this proposal. However, it was also clear that without proactive involvement of national capitals in the new process, the process could become an “empty shell”.

The General Committee planned for the afternoon of 12 November was cancelled to allow for further group discussions of the proposals. The General Committee eventually met on the afternoon of 14 November and in a later plenary session that day, the Review Conference agreed the proposals as set out in CRP.3 and the draft final report. In this plenary session, Slovakia speaking on behalf of the Eastern Group proposed Ambassador Tibor Tóth as Chairman for the meeting of the states parties in 2003 which was agreed. The Fifth Review Conference formally concluded with a short plenary session on the morning of 15 November which agreed the financial estimates for the meetings in 2003 to 2005 and also agreed some further tidying up amendments to the final report.

Final Outcome

The Fifth Review Conference concluded with the adoption of a final report setting out a fresh approach to combat the deliberate use of disease as a weapon. Under this, the states parties are to meet annually in the lead-up to the next Review Conference in 2006. In preparation for each annual meeting, it was agreed to hold a two-week meeting of experts.

These meetings of states parties will discuss and promote common understanding and effective action on a range of issues pertinent to strengthening the Convention. Each meeting will focus on specific elements to strengthen the Convention. In 2003, there will be consultations on national measures to implement the prohibitions of the Convention, and on national measures to ensure the security of pathogenic micro-organisms and toxins. In 2004, the focus of the process will shift to enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological weapons or suspicious outbreaks of disease, and to strengthening national and international efforts against infectious diseases. The 2005 meetings will address codes of conduct for scientists.

The Press Release by Ambassador Tóth on 15 November described this new process as being part of a multi-pronged approach by the international community to deal with the threat posed by biological weapons. It went on to note that international resolve to deal with the immediate threat has been demonstrated by the recent unanimous decision of the United Nations Security Council. The process adopted by the Review Conference to strengthen the Biological Weapons Convention demonstrates the continued commitment of states parties to combating the threat of biological weapons over the longer term.

Following the agreement on the proposals in CRP.3 in the plenary meeting late on Thursday 14 November, the Group of the Non-Aligned Movement and Other States in a statement (BWC/CONF.V/15) said that they had been

deeply disappointed at the inability that has been demonstrated in the endeavours of the states parties to successfully undertake initiatives to strengthen the implementation of the Convention. While standing at the verge of success, the draft Protocol that was negotiated over so many years was snatched away from us. While standing at the verge of success, we were prevented from achieving a successful conclusion of the BWC Review Conference at our meeting in 2001. The NAM and Other States are disappointed at the limited nature of the decision that we have just taken. We are disappointed that we have again foregone the opportunity to strengthen the Convention and that limited work, which at best only has the potential of enhancing the implementation of the Convention, is all that could be achieved despite our best endeavours. The Group noted that the language of the decision included ambiguities and that only a practical approach from states parties would ensure that the required work was done. The Group went on to note that states parties were sovereign and that at any time they could together decide upon any further work that may be required. It was the Group's understanding that the time set aside to reach a decision over the final report had been extremely limited and that during the next Review Conference in 2006 discussions over further action would take place. Furthermore, the Group believed that the Biological Weapons Convention represented a composite whole, and while it was possible to address related issues separately, it was necessary for all of the interlinked elements to be dealt with.

The Group of Non-Aligned Movement and Other States also indicated that the Review Conference had succeeded in preserving multilateralism as the only sustainable vehicle for preventing the use of disease as instruments of terror and war. The Group called upon all states parties to work in a constructive fashion and concluded by saying that the time for division should now be past and states parties should unite around the Convention.

The Western Group in its statement (BWC/CONF.V/16) late on Thursday welcomed the adoption of this decision and noted that it provided for a qualitatively different outcome to that found in the final products of previous Review Conferences. In addition, the Western Group felt that the decision carefully balanced the views of all states parties; was clear and self-explanatory; and strengthened the effective implementation of the BWC by establishing a framework for an ongoing multilateral process in the lead-up to the Sixth Review Conference.

A short statement was then made by the Republic of Korea, who took the opportunity to announce that on 8 October 2002 they had withdrawn their reservation to the 1925 Geneva Protocol.

At the final plenary meeting on the morning of 15 November, Ambassador Tóth in his concluding remarks noted that a process had been agreed that allows the BWC to continue to be strengthened. This proposal had resulted from sustained efforts over the past year to bridge the formidable differences among delegations on the outcome of the Conference. He went on to say that although this result was not everything delegations hoped for, he did not want to dwell on the past. He pointed out that the agreement on follow-up meetings over the next three years did allow for a continued multilateral approach to the implementation

and strengthening of the Convention that involves all states parties. It offered a future; it offered hope for renewed efforts to build this vital barrier against a type of weapon which the Convention itself so aptly describes as "repugnant to the conscience of mankind". He continued by saying that it was now time to look forward. He believed that with some innovative thinking and diplomatic skill there was a real opportunity to make this new process work. Although States Parties should not raise their expectations too high for these meetings, since ultimately it is the decision of the Sixth Review Conference in 2006 to determine how to proceed with the strengthening of the Convention, he urged all states parties not to set their sights too low.

He then went on to say that states parties simply have to seize the opportunity and make some realistic and concrete proposals for moving the Convention forward. It was now the responsibility of each and every state party to make these meetings work and to identify ways to strengthen the Convention. Five topics have been identified for consideration by the annual meetings and a timetable has been agreed for when each topic will be considered. The framework for our future work was therefore clear. While there remained considerable flexibility to decide how the topics would be developed, there could be no excuse for not being prepared for the expert or annual meetings. He noted that there was only a modest amount of time available: consequently, it was necessary to make every minute count. Preparation for those meetings should begin now. He suspected that many non-governmental organizations would not only make their own proposals available for consideration, but would also be watching closely what the states parties discuss and decide. He encouraged all delegations to be open to the ideas that others may have, and to draw on all available resources in pursuing our common goal.

He concluded by saying that as Chairman of the 2003 meetings, he would be pushing hard to ensure that this process achieves concrete benefits, and genuinely contributes to strengthening the Convention in a practical way. He then thanked all delegations for showing the flexibility and vision that has allowed us to conclude our work with this modest measure of success.

Other Activities

There were three non-governmental activities during the resumed Review Conference. The first, on 11 November was the launch at 1300 of the Bioweapons Prevention Project (BWPP). Chandré Gould chaired the launch and launched the project, which had been established by eight NGOs (BASIC, Centre for Conflict Resolution, Bradford Department of Peace Studies, FAS, Geneva Forum, Harvard Sussex Program, INES and VERTIC) to reinforce the norm against using disease as a weapon. It aims to achieve this by monitoring government's implementation of their legal and political obligations and other developments relating to biological weapons. It will track policies and activities related to the core obligations of the BWC as well as reporting on relevant developments in the biotechnology industry and advances in science and technology. BWPP will publish its findings to increase openness and transparency in the *Bioweapons Monitor* and on its website at <http://www.bwpp.org>. BWPP will build a global network

of civil society organizations concerned with the threat of biological weapons to assist BWPP in its monitoring activities and to raise the general awareness of biological weapons issues around the world. Chandré Gould added that the BWPP was not an advocacy NGO and would not make political statements.

The opening address at the launch was given by Jayantha Dhanapala, the United Nations Under Secretary-General for Disarmament Affairs who was followed by two talks showing from different perspectives, one from South Africa and one from the United States, why the BWPP is required to promote openness and transparency. Finally, a presentation was made by Angela Woodward of an ongoing VERTIC project on national implementing legislation for the BWC. In his opening address (available at <http://disarmament.un.org/speech/11Nov2002.htm>), Jayantha Dhanapala said that the BWPP is a very timely and significant initiative. He went on to say that:

despite political changes and the fast-paced scientific and technological advancements in the field of biotechnology since the Convention entered into force, efforts to rectify such a shortfall have not met with the support of all States Parties to the Convention. Last year, the international community witnessed (with frustration) lost opportunities to strengthen the BWC. ... The lack of a mechanism to monitor the implementation of the BWC provisions other than the possibility to review the Convention at five-year intervals, is a lacuna that today more than ever must be addressed. The launching of the BioWeapons Prevention Project could make a significant contribution towards that end since, achieving the objectives of the BWC — the prohibition of the development, production and stockpiling of bacteriological (biological) weapons and their elimination — cannot be done solely by the actions of Governments, as indispensably it requires the committed participation of civil society.

He concluded by saying that it was therefore very timely that the BioWeapons Prevention Project had been launched on the first day of the resumed session of the Fifth Review Conference of the BWC. He noted that:

States Parties participating in the resumed session have a challenge before them of showing their commitment to strengthening the Convention by producing a positive outcome. NGOs, such as the BioWeapons Prevention Project, have a stake in this outcome and, even more so, in the follow-up to the Review Conference.

In the final presentation of the launch, Angela Woodward outlined the ongoing VERTIC project to survey national implementation measures for the BWC and provided copies of the questionnaire (also available at <http://www.vertic.org>) that have been sent to the states parties seeking information on these national measures. Preliminary findings presented at the BWPP launch were that so far information had been collected on national laws prohibiting biological weapons in 65 states parties. Thus far eleven states parties (Belgium, Bulgaria, Canada, Germany, Ireland, Italy, Japan, Peru, Russian Federation, Switzerland and the United Kingdom) had responded to the VERTIC questionnaire. Analysis of the information from 65 states parties shows that some 16 states parties have adopted comprehensive legislation to enforce the BWC, 28 states parties have criminal code prohibitions prohibiting

some or all activities listed in Article I and 26 states parties have adopted legislation on health, terrorism, or war material that prohibits activities listed in Article I. The final report of this project will be published in February 2003.

The second NGO activity was on 12 November at 1400 when at a Department of Peace Studies of the University of Bradford seminar, Nicholas Sims of the London School of Economics and Graham Pearson of the University of Bradford presented Review Conference Papers No. 8 “Return to Geneva: Uncertainties and Options” and No. 9 “The Resumed BTWC Fifth Review Conference: Maximizing the Benefits from the Final Declaration.” (available at <http://www.brad.ac.uk/acad/sbtwc>). In introducing these, Nicholas Sims noted that at the time that they were prepared, it seemed likely that the United States would resist a consensus on any outcome other than simply fixing the date for the Sixth Review Conference. It was thought likely too, that if US policy were to change at all it would continue to become tougher as it had done during 2001 and 2002; and that states parties well-disposed towards the BWC would therefore need to organize themselves to get round the obstacle presented by this US intransigence. Consequently, he said that it had been decided to bring into the public domain some of the questioning and thinking which was informing the unofficial debate about what to do if US intransigence prevailed right up to 11 November 2002. In addition, it was decided to make this analysis widely available by posting it on the Bradford website and sending copies directly to the Ambassadors in Geneva of the states parties. In the light of the developments on 11 November and the tabling of CRP.3, the Bradford briefing would not as usual introduce the papers in detail but would instead address the position of 12 November.

Review Conference Paper No. 8 set out the recent commitments of many states parties in various forums, the Madrid commitment and others, to strengthening the Convention. It argued that it was reasonable to examine how far states parties have lived up to these commitments. CRP.3 fell far short of the strengthening to which States Parties seemed to have committed themselves during the past year. The proponents of CRP.3 would call it **realism**: some would call it **resignation** — resigned to a very modest outcome as better than none at all. Review Conference Paper No. 8 goes on to analyse the question of **voting**. It was predictable that, with the tradition of consensus so long established and as firmly embedded, there would be great reluctance to have recourse to voting. And so it has turned out. But at least no one could claim that the option wasn't there. States parties have chosen not to use it.

Review Conference Paper No. 9 was offered in the belief that for the Review Conference **not** to adopt a Final Declaration would send the wrong messages, the wrong signals, about the seriousness with which States Parties regard the threat of biological and toxin weapons, or at least about their ability to agree on how to counter the threat. The failure to pursue the completion of a Final Declaration was greatly regretted. It was disappointing that so much detailed work done by this Review Conference in November and December 2001 had been left unfinished.

Nicholas Sims went on to say that the explicit statement by the President of the Conference in his press conference on 11 November that the new approach left the Final

Declarations of 1980, 1986, 1991 and 1996 in place and intact was an important confirmation. This should be taken as an encouragement to think ahead and plan ahead to a resumption of the review process proper in 2006, when once again the **operation** of the Convention, in the language of Article XII, can be reviewed in the round, in relation to the **purposes** of the Convention. And at that point it is to be hoped that the cumulative process of steering the overall evolution and the detailed, extended understanding of the treaty regime flowing from the Convention will be resumed and expressed in the carefully crafted text of the Final Declaration, building systematically upon the foundations laid by the earlier Review Conferences.

The contribution to be made by the annual meetings of experts and of states parties is acknowledged and welcomed in the five areas listed in CRP.3 if they do indeed “promote common understanding and effective action” as is intended. The potential value of the work of 2003, 2004 and 2005 is not under-estimated but at best it covers only certain, limited aspects of the treaty regime. The Sixth Review Conference will have a wider, more comprehensive purview, as governed by Article XII. **It** cannot be limited, as the meetings are to be.

Nicholas Sims recalled that in his press conference of 11 November 2002, Ambassador Tibor Tóth also said that states parties “need to regain confidence that they can do things together” and he spoke of the new approach as productive of “concrete actions with results” if the meetings of 2003–05 are well prepared — and even of more action than the past Final Declarations have produced. However, it should be noted that the inadequacy of follow-up has not been a fault inherent in the cumulative process of successive Final Declarations. It has far more to do with the chronic institutional deficit from which the Convention suffers. And now, so far from **remedying** that deficit, the Fifth Review Conference looks like **adding**, to the BWC’s lack of a systematic supporting organisation, the lack of a declaration recording the politically-binding commitments adopted by the states parties.

It was, therefore, disappointing that, this time, states parties have chosen to set their sights so low. The review process needs to get back on course. Then 2001–2002 can come to be seen as a low point, from which the Convention had recovered by 2006. An **agenda for recovery** is urgently needed if that goal is to be achieved. The new approach alone may not be enough. It is claimed that the new approach is focussed where the old approach was wide-spectrum. There is a danger that instead of more sharply focused treatment of issues there may be fragmentation, unless states parties **also** prepare comprehensively for the Sixth Review Conference in 2006. Even more work will be required to get the Convention back on track over the coming years.

In considering the five topics in CRP.3 it was noted that each of these brought benefits for both compliance and cooperation — or for security and development. Many of the topics had received widespread support in the original statements and papers from states parties made to the November–December 2001 session of the Review Conference as had been noted in Review Conference Paper No. 7 *Return to Geneva: A Comprehensive List of Measures*. In looking to the new process, Bradford said that it would

initiate a new, Second Series, of Briefing Papers to assist the states parties in preparing for the annual expert and states parties meetings. It was also noted that work was continuing to improve the <http://www.opbw.org> website by the addition of as much official documentation relating to the Convention in as many languages as possible.

The third activity took place on Wednesday 13 November when the International Committee of the Red Cross (ICRC) held a seminar on their international appeal “Biotechnology, Weapons and Humanity”. This appeal had been launched on 25 September and read:

Alarmed by the potential hostile uses of biotechnology, the International Committee of the Red Cross (ICRC) appeals to:

- all political and military authorities to strengthen their commitment to the international humanitarian law norms which prohibit the hostile uses of biological agents, and to work together to subject potentially dangerous biotechnology to effective controls.
- the scientific and medical communities, industry and civil society in general to ensure that potentially dangerous biological knowledge and agents be subject to effective controls.

It goes on appeal in particular to all political and military authorities:

- To become parties to the 1925 Geneva Protocol and the 1972 Biological Weapons Convention, if they have not already done so, to encourage States which are not parties to become parties, and to lift reservations on use to the 1925 Geneva Protocol,
- To resume with determination efforts to ensure faithful implementation of these treaties and develop appropriate mechanisms to maintain their relevance in the face of scientific developments,
- To adopt stringent national legislation, where it does not yet exist, for implementation of the 1925 Geneva Protocol and the 1972 Biological Weapons Convention, and to enact effective controls on biological agents with potential for abuse,
- To ensure that any person who commits acts prohibited by the above instruments is prosecuted,
- To undertake actions to ensure that the legal norms prohibiting biological warfare are known and respected by members of armed forces,
- To encourage the development of effective codes of conduct by scientific and medical associations and by industry to govern activities and biological agents with potential for abuse, and
- To enhance international cooperation, including through the development of greater international capacity to monitor and respond to outbreaks of infectious disease.

The appeal concludes by urging:

States to adopt at a high political level an international declaration on “Biotechnology, Weapons and Humanity” containing a renewed commitment to existing norms and specific commitments to future preventive action.

The ICRC seminar outlined the increased threat from biological weapons proliferation and from the potential that technological advances might be misused such as the mousepox experiments and the synthesis of polio virus as well as the potential for novel biological agents. It then went on to address the appeal — and who this is addressed to: all

political and military authorities, and to the scientific and medical communities and to the biotechnology and pharmaceutical industries — as well as the desirability of the adoption at a high political level of an international Declaration. Further information is available at <http://www.icrc.org>.

Further statements

Following the agreement at the resumed Fifth Review Conference of the decision in CRP.3, there were various press releases in support from the United Nations Secretary-General and from the three BWC depositary states — the United Kingdom, the United States and the Russian Federation.

The UN Secretary-General in a statement on 15 November welcomed the positive outcome of the resumed session of the Fifth Review Conference and said that:

These agreed steps constitute an encouraging development in the process of strengthening the Biological Weapons Convention.

The United Kingdom Foreign Secretary, Jack Straw, in a statement on 14 November said:

I warmly welcome the successful outcome of the 5th Review Conference. ... With the positive outcome to the Review Conference, and a detailed programme of work in prospect, we are at a new beginning.

The United States Assistant Secretary of State for Arms Control, Stephen Rademaker, who had led the US delegation at the resumed Review Conference, in a statement in Geneva on 14 November said that:

The United States is very pleased by the outcome here today. We believe that the decision that has just been adopted unanimously by the conference represents a constructive and realistic work program for the States Parties to the [BWC] over the next three years.

The Ministry of Foreign Affairs of the Russian Federation in a statement on 19 November said that the compromise decision was backed by the Russian Federation and that they intend to actively participate in the work of these forums. It goes on to say that:

In so doing together with like-minded partners we will try to achieve the resumption of multilateral negotiations to work out legally binding measures for the verification of the observance of the Convention.

The Second Week

Following the formal completion of the Fifth Review Conference on Friday 15 November 2002, the opportunity was taken to hold informal consultations about the new approach during the week of 18 to 22 November which ended in an informal meeting on 22 November followed by a Press Conference by Ambassador Tibor Tóth. During the week, Ambassador Tóth had held about 36 meetings with delegations and had addressed organizational and procedural issues relating to the future annual expert and states parties meetings. The indications emerging were that

the expert meeting should be separate from the meeting of the states parties — and not back to back. The depositaries had been exploring options for dates but had encountered problems because of the commitments already of the facilities to other meetings. Some consideration had been given to dates for the expert meeting in March, but this appeared to be too soon for adequate preparation and a later date of perhaps the last week in August and the first week in September appeared to be acceptable. As for the meeting of the states parties, there appeared to be a consensus building around the week of 10 to 14 November 2003. On other procedural issues, consideration is being given to adoption of the rules of procedure of the Fifth Review Conference, *mutatis mutandis*, as this would take care of such details as participation, NGO involvement and so on. Insofar as the consideration of the two topics are concerned in the expert groups, the feeling appeared to be that flexibility was desirable and both topics should be considered in parallel rather than sequentially as this could make best use of the limited time available. It was clear that Ambassador Tóth as the Chairman of the meetings in 2003 would continue to liaise with the states parties in order to enable the process to move ahead in the early part of 2003.

Reflections

The decision agreed by the resumed Fifth Review Conference represents a modest step forward which found consensus support by **all** states parties — and, as such, was better than the indications (outlined in Bradford Review Conference Paper No. 8) earlier in the year which suggested that agreement might not be forthcoming even on annual meetings prior to the Sixth Review Conference in 2006. It is regrettable that the opportunity was missed to adopt a Final Declaration as the reaffirmations and extended understandings provided by such Final Declarations do significantly contribute to the strengthening of the norm and regime totally prohibiting biological weapons. Certainly the international situation regarding the Biological and Toxin Weapons Convention was not one in which there was no urgency to strengthen the norm and regime and thereby send a clear message to states parties and to sub-state actors that these weapons are totally prohibited. Care needs to be taken, as Robert Gates, former Director of the Central Intelligence Agency has written about arms control, that sight is not lost of the forest — the effective strengthening of the BWC regime — and that tiny shrubs are not mistaken for trees.

As Ambassador Tóth made clear in Geneva in November 2002, the success of the new approach depends on the States Parties regaining “confidence that they can do things together” and that if the meetings of 2003–05 are well prepared then the new approach can produce “concrete actions with results”. Otherwise, the new approach could be “an empty shell”. The onus is thus clearly on all states parties to be proactive and to prepare effectively for the annual meetings of experts and of states parties.

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