

The Biological Weapons Convention New Process

As reported in *Bulletin 61* (September 2003) and *Bulletin 62* (December 2003), the States Parties to the Biological and Toxin Weapons Convention (BWC) had during 18-29 August and 10-14 November 2003 made a start on the new process agreed by decision of the resumed Fifth Review Conference in November 2002. In the report in *Bulletin 62*, it was noted that the Meeting of States Parties had barely managed to reach agreement on a short statement of substance and thus failed to fulfil the promise which had been apparent at the end of the Meeting of Experts in August 2003. The Final Report of the Meeting of Experts only just managed to avoid paralleling that of the Meeting of Experts which comprised a procedural report and an annexed, but unanalyzed, collation of all the presentations, statements and contributions. While there is significant value in maintaining a full record of the contributions made by States Parties, the lack of analysis and distillation, together with the short period of time, two months, between the Meeting of Experts and the Meeting of the States Parties contributed to the limited outcome of the Meeting of States Parties. It could not be said to have successfully promoted *common understanding and effective action* as required by the mandate for the new process. The report concluded that the States Parties had set a standard in their 2003 Meetings which was far too low. For the Meetings in 2004 under the chairmanship of South Africa, it was urged that the States Parties should demonstrate a more effective outcome through the promotion of *common understanding and effective action*.

The two topics to be considered in 2004 are, as agreed in the Final Document of the Fifth Review Conference (BWC/CONF.V/17) (This and other such official BWC documentation mentioned in this report is available at <http://www.opbw.org>):

- iii. *Enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological and toxin weapons or suspicious outbreaks of disease;*
- iv. *Strengthening and broadening national and international institutional efforts and existing mechanisms for the surveillance, detection, diagnosis and combating of infectious diseases affecting humans, animals and plants;*

The Meeting of Experts to consider these topics was held in Geneva from 19 to 30 July 2004.

Preparations for the Meeting of Experts, 2004

During the spring of 2004, Peter Goosen of South Africa as Chairman of the 2004 meetings wrote to the representatives of the States Parties to the BWC first on 10 March 2004 and then three months later on 1 June 2004. In his letter of 10

March 2004 he said that the approach which was being followed was for the Secretariat for the meetings to prepare:

- A background paper on current mechanisms being implemented for disease surveillance as well as investigations of, and assistance in cases of, outbreaks of disease by international intergovernmental organizations (World Health Organization (WHO), Food and Agricultural Organization (FAO), International Organization Epizootic (OIE))
- A background paper on current (significant) mechanisms being implemented for disease surveillance by non-governmental organizations.
- A background paper on the existing mechanisms available to States Parties to investigate alleged use of biological weapons and to provide assistance in such cases.

The letter went on to say that the approach would be for inter-governmental organizations and non-governmental organizations identified in the background papers to be invited to make presentations at the meeting of Experts and for relevant inter-governmental and non-governmental organizations to be identified to participate in the meeting (special meeting set aside) as well as on its fringes. Furthermore, an indicative programme was to be prepared which would allow for the effective coverage of both of the topics for 2004 (i.e. one topic morning, one topic afternoon – Monday to Thursday. Last Friday for agreeing any outcome.) The letter concluded by saying that it was the Chairman's belief that these arrangements would provide the States Parties with a framework for the successful consideration of their work during 2004 and that "by following such an approach, also in the preparations of States Parties, it is furthermore my hope that we will be placed in a position where States Parties can consider, and possibly agree on identified elements relating to discussing, and promoting common understanding and effective action" on the two topics for 2004.

In the later letter of 1 June 2004, Goosen advised the States Parties of further developments and planning for the Meeting of Experts. In this he proposed that the two topics should be considered sequentially during the two weeks rather than as initially proposed in parallel. Furthermore, he proposed a more logical approach, which would also be a reflection of the order in which States Parties would in fact be confronted by such outbreaks of disease, in which the topic "surveillance, detection, diagnosis and combating of infectious diseases affecting humans, animals and plants" would be addressed during the first week and then the topic dealing with "responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease" addressed in the second week. In a proposed programme of work, the opening day would be for general statements and then for briefings by the International

Governmental Organizations on the first afternoon as these briefings by the WHO, FAO and OIE would provide a useful background against which the States Parties could begin consideration of the issues related to the first topic. The Friday afternoon of the first week was set aside for an informal meeting for presentations by non-governmental organizations with the first presentation being made by the Program for Monitoring Emerging Diseases (ProMED) which is the NGO particularly active in the area of the first topic. The second week would then address the second topic with the Thursday afternoon and Friday set aside for general discussion and consideration of the factual report describing the work of the Meeting of Experts.

The letter concluded by Goosen encouraging “States Parties to *inter alia* focus their preparations for the meeting of experts on the particular mandate that was provided for the 2004 meetings. That is to say on proposals on the central question of **what the States Parties can agree to do** to (a) enhance 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, and to (b) strengthen and broaden national and international institutional efforts and existing mechanisms for the surveillance, detection, diagnosis and combating of infectious diseases affecting humans, animals and plants. It is understood that States Parties may want to address what they are doing nationally or in broader contexts on these issues, but it would be important for States Parties to utilise these experiences to address the particular focus of the abovementioned mandate.” [Emphasis in original]. The letter also said that the Secretariat was working on three background papers which would be distributed well before the meeting so as to be available as a resource for States Parties.

The three background papers on current mechanisms for disease surveillance (46 pages) (BWC/MSP/2004/MX/INF.1), current mechanisms for response to outbreaks of disease (18 pages) (BWC/MSP/2004/MX/INF.2) and existing mechanisms to investigate the alleged use of biological or toxin weapons and to provide assistance in such cases (17 pages) (BWC/MSP/2004/MX/INF.3) were issued on 1 July 2004 with summaries of the first two documents issued on 18 June 2004 and the third on 23 June 2004.

Meeting of Experts, 19 to 30 July 2004: Opening Plenary Session

The Meeting of Experts began on Monday 19 July 2004 in a plenary session where Peter Goosen welcomed the representatives and experts from the States Parties. 87 States Parties participated in the Meeting of Experts – four more than in the corresponding 2003 Meeting of Experts – as twelve (Belarus, Bolivia, Congo, Costa Rica, El Salvador, Iraq, Mauritius, Nicaragua, Portugal, Singapore, Sudan, and Togo) participated whilst eight (Afghanistan, Benin, Bhutan, Cyprus, Ghana, Jordan, Mongolia, and Yemen) did not. Four signatory States also participated: Egypt, Madagascar, Myanmar and United Arab Emirates. Two States, Israel and Kazakhstan, participated as observers. The Food and Agriculture Organization (FAO), the World Health Organization (WHO) and the World Organization for Animal Health (OIE) made presentations and also participated throughout the meeting as

they had participated through the invitation of the Chairman. This was a distinct step forward over the arrangements at the corresponding 2003 Meeting of Experts when several Intergovernmental Organizations (IGOs) were invited to make presentations which were outside the normal times of the Meeting and the IGO representatives were unable to be in the room.

Four Signatory States participated: Egypt, Madagascar, Myanmar and United Arab Emirates. Two States not Party, Israel and Kazakhstan were granted Observer status. The Convention now has 151 States Parties and 16 Signatory States (BWC/MSP.2004/MX/INF.4 dated 15 July 2004) as Sudan had recently acceded. It has subsequently become known that Azerbaijan has also acceded but this has not yet been reflected in an official BWC List of States Parties. Representatives from four Intergovernmental Organizations (FAO, ICRC, WHO and OIE) participated as observers, as did UNIDIR and 11 NGOs (BWPP, CACNP, CSIS, CBACI, HSP, INES, ProMED, SIPRI, University of Bradford, University of Sussex and VERTIC). Over 450 individuals participated which was more than at the Fifth Review Conference and included over 200 scientific and other experts from capitals.

The plenary session then adopted the provisional agenda (MX/1) and the revised provisional programme of work (MX/2/Rev.1). The provisional programme of work included a session on the afternoon of Friday 23 July 2004 for informal consultations. This had been arranged to enable ProMED and a number of NGOs to make short statements, as had been done at both the Fourth and Fifth Review Conferences and at the 2003 Meetings, by setting aside some time to suspend the formal sessions to allow such statements to be made in informal session.

A number of States Parties (Germany, Libya, Japan, Venezuela, Russia, Iran, Cuba, China, Republic of Korea, India, Canada, UK, Pakistan, US, Malaysia, Peru (on behalf of the Andean Community), Hungary, Nigeria and the Netherlands (on behalf of the EU) then made statements before the end of the plenary session.

Germany noted that following the failure in 2001 to achieve a legally binding instrument to verify compliance with the Convention, the States Parties took a pragmatic decision at the Fifth Review Conference to launch a new process to strengthen the Convention. The statement went on to say that “the many productive results of the 2003 meeting of Experts demonstrated that States parties from all Groups – Non-aligned Movement, Eastern Group and Western Group – had seized the opportunity to contribute valuable expertise on the full range of topics scheduled for 2003.” And Germany was very keen to continue this constructive multilateral process. Insofar as investigations are concerned, Germany believed that there was “no need to re-invent the wheel”. However, given recent technological developments, Germany considered that we certainly do need to consider whether the available guidelines and procedures set out in UN document A/44/561 should be updated. The statement concluded by saying that “it would be a most beneficial result of this new process if States Parties could report to the 6th Review Conference that they have taken action to remedy any shortcomings identified at the 2003 to 2005 meetings or to improve their national strategies for addressing such issues.”

Japan said that strengthening of the BWC has become essential in the face of the growing threat of bioterrorism. It was noted that the importance of the BWC has also been highlighted in the recently adopted Security Council Resolution 1540 (2004) and the G8 Action Plan on Nonproliferation. Japan encouraged States Parties to make every effort to promote the BWC process in the lead-up to the 2006 Review Conference, based on the programme of work, and to demonstrate to the international community the progress which is being made in its implementation. In regard to the 2003 meeting, Japan noted that a wealth of information and experiences were shared, greatly contributing to the success of the Meeting of States Parties held in November 2003. Japan said that “it is our hope that, during this meeting, common understandings will be developed between States Parties ... to identify effective measures to address the topics of ‘disease surveillance’ and ‘preparedness and response’, notwithstanding different national legal systems among States Parties.” Japan also noted that the “strengthening of the BWC process is of particular importance in the Asian region, where the potential for countries to become suppliers of dual-use materials and technologies, which could be used to develop BW, is increasing in light of its rapid economic growth and expansion of industrial infrastructure.”

The Russian Federation said that “our forum is the principal platform of today for continuation of collective search for concrete ways to strengthen the BWC regime taking into account new challenges and threats. The need and urgency of this work has been confirmed by UN Security Council resolution 1540 which, to promote international stability, calls upon all the states to confirm by practical deeds their commitment to multilateral cooperation in nonproliferation, to adopt relevant effective national rules and regulations aimed *inter alia* at preventing the proliferation of biological weapons.” Russia drew attention to the G-8 Sea Island documents which showed that the BWC is a “critical foundation against biological and toxin weapons’ proliferation, including to terrorists.” At the same time, Russia said that they “are still convinced of the need to renew negotiations on the control mechanism for the Convention. The time has only confirmed that such a mechanism will seriously enhance our potential to prevent proliferation of biological weapons.” The statement went on to say that “We would like to recall here of the fact that for a long time the mechanism to investigate an alleged use of biological weapons has been the subject for negotiations on the development of a control mechanism under the Convention. We consider it necessary to use the results achieved during these negotiations and being supported by a majority of States Parties to the BWC, including on types of investigation and volumes of information provided on the spot. I would like to underscore the following: the consideration of this issue at our meeting cannot be an adequate replacement for elaboration of the BWC control mechanism. This is only an intermediate stage.” In regard to the agenda item on combating infectious diseases, Russia said that “we think it necessary to separate clearly the spheres of competence and responsibility of the said organizations [WHO, OIE and FAO] and the BWC ...”.

Iran said that “after failure and suspension of seven years

negotiations on the Protocol to the Convention, the world has faced rapid development of biotechnology and escalation of bioterrorism threats thus it has become more imperative and important to discuss, within a multilateral legally binding frameworks, the concrete measures to strengthen the effectiveness of the Convention. The preference of a certain country for unilateral actions to combat weapons of mass destruction including biological weapons cannot obliterate the primacy of the principles and rules of multilateralism on this matter. The lack of multilateral coordination will result in the failure of the regime established by the BWC. Legitimate action in the area of international security must be founded on multilateral agreements.” In regard to the surveillance of infectious disease, the statement went on to say that “although the BWC lacks a verification mechanism, we do believe that assigning security and politically oriented responsibilities, such as investigation of suspicious cases of use of biological weapons, to certain international organizations such as WHO, puts the humanitarian and fundamental objectives and mandate of these organizations in jeopardy.” In regard to the issue of alleged use of biological or toxin weapons, Iran noted that “even though according to the Geneva Protocol of 1925, the ‘Use’ is prohibited, but [...] regrettably some States Parties have still kept their reservations to that effect, that is keeping the right of retaliation for any case of use against them.”

China said that “as an important component of international arms control treaty system and global collective security framework centered on the United Nations, the Biological Weapons Convention has all along played a critical role in the cause of complete prohibition, through destruction and non-proliferation of biological weapons. The Meeting of Experts serves as an important forum for States Parties to explore measures of strengthening the effectiveness of the Convention within multilateral framework. This endeavor helps States Parties to formulate and improve national implementation systems based on distinct national situation, and hence contributes to the comprehensive and effective implementation of the Convention.” China noted with pleasure that the States Parties benefited in 2003 from exchanging experiences among themselves and the meetings achieved tangible progress. The statement concluded by noting that “the practical and potential threats posed by bioterrorism make peace-loving people realize that strengthening the effectiveness of the Convention has great significance in preventing biological weapons falling into wrong hands. It is the common task for all States Parties to ensure the effectiveness and promote the implementation of the Convention.”

The Republic of Korea said that recognizing that the goal of the Convention and the States Parties’ implementation of this goal have become increasingly important under the new security circumstances of the present time, they again welcomed the new process that started last year as a valuable opportunity to strengthen the implementation of the Convention. The two issues being considered “are of vital importance for the implementation of the Convention in the sense that enhanced capabilities ... will greatly contribute to the more comprehensive implementation of the Convention.” The statement went on to say that the Meeting of Experts has two basic functions in regard to the implementation of the

Convention. One is information sharing of implementation measures and experiences and the other is the subsequent discussion of best practices and lessons both at national and international levels. Korea added that they did not object, in principle, to the idea of the Chairman of attaching a list of proposals to the factual report of the Meeting. In addition, Korea noted that “the new process we started last year is qualitatively different from the Review Conferences that had preceded it; therefore, the outcome that we achieve will set the stage for subsequent work leading to the 6th Review Conference.”

India said that in their assessment, the Meetings in 2003 were productive. India went on to say that “we are all acutely conscious of the circumstances that led to evolution of the present process, which seeks to strengthen implementation of the BWC provisions by States Parties.” It was noted that the 5th Review Conference had clearly spelt out the mandate and that “it was left to the sixth Review Conference in 2006 to consider the work of these meetings and decide on further action required. It is pertinent to note that the purpose of the present process is to promote common understanding and effective action and not to reach a common understanding, as sometimes extrapolated. Reaching a common understanding includes an element of negotiation amongst the States Parties, which is not the purpose of the present process.” The statement went on to note that adoption of resolution 1540 by the Security Council in April 2004 has provided an impetus and to hope that the 2004 meetings will achieve similar positive results to those achieved in 2003. In regard to investigations of alleged use, the statement noted that the UN Secretary-General’s report A/44/561 contains guidelines and procedures and that the background paper (MX/INF.3) specifically notes that the list of experts and facilities available to the Secretary-General has not been updated since 1990. Consequently, “it may be useful to update and revise this list and to make it more broad-based to benefit from state-of-the-art technologies and expertise available in different parts of the world.” In regard to disease surveillance, India noted recent development by the WHO and added that “WHO has been guided, in its efforts, by the World Health Assembly, of which all the States Parties to the BWC are members. We expect that the States Parties to the BWC, through WHO’s World health Assembly, will continue to recommend further steps to enhance the role and effectiveness of the WHO in strengthening and broadening national and international institutional efforts and existing mechanisms.”

Canada said that “we have been very encouraged by the success of the intersessional proceedings thus far.” The statement went on to note that Canada had provided a CD-ROM Guide to completing the BWC Confidence Building measures, which has been distributed to all States Parties, and observed that Measure B of the CBMs calls on States Parties to report suspicious or unusual outbreaks of disease that may occur within their territories. The statement went on to say “I therefore reiterate Canada’s request that all States parties make every effort to complete their annual submission in a thorough and timely way. We stand ready to provide further assistance as appropriate.” The statement added that one of our main purposes here is to find ways that States

Parties can work together and that Canada would be presenting two papers on this type of cooperation.

The UK statement outlined the organizational structure for disease control with the UK and then outlined the presentations that would be made during the Meeting of Experts.

Pakistan said that it placed the utmost importance on the protection of humans, animals and plants from all kinds of diseases including infectious diseases and went on to say that “Pakistan strongly believes that concrete and effective measures should be taken to strengthen biosafety and biosecurity, but at the same time these measures should not hamper the scientific development in biotechnology and genetic engineering.” The statement concluded by saying that “we envisage a very fruitful two weeks of deliberations by the experts and look forward to their recommendations which will hopefully form the ‘best practices’ to be followed by States Parties on voluntary basis, taking into consideration their particular state of development, technical and financial resources available to them.”

The US said that after some reflection on the 2003 Meeting of Experts, “my Government – and we understand others from all regional groups – considered the 2003 Work Program on pathogen security and national implementation measures to be very successful.” It went on to say that “Regional groupings of States Parties have also made political commitments and taken initiatives to combat the threat posed by biological weapons by adopting many of the measures discussed throughout last year’s Work Program. We are hopeful that all States Parties will be able to report in 2006 that they have fully implemented the Convention.” The statement concluded by saying that “it is important that we would take this occasion to reiterate the importance we attach to the BWC and these efforts to strengthen the international community’s ability to detect, diagnose and communicate about disease outbreaks. We continue to work towards universality and to monitor and encourage compliance. Indeed, implementation of national measures, whether they be of a legal nature or involving surveillance of disease outbreaks, is a central component of compliance, which serves, to stem the BW threat.”

Malaysia said “globalization has contributed to rapid industrialization, movement of populations of people, livestock and goods across the regions. Air travel now makes it possible for a disease to arrive in countries even before symptoms of the outbreak have been recognized at the country of origin. This may well be one of the side effects of modernization.” In regard to preparedness for threats, Malaysia noted that in the case of chemical weapons, the OPCW can always be approached for technical training. “However, in the case of biological weapon such organization does not exist. It is left to countries’ own charm and ingenuity to approach other countries and intergovernmental organizations for trainings to improve their national capacity building.”

Peru in its statement on behalf of the Andean Community noted that on 12 July 2004 the Presidents of the five countries

(Bolivia, Colombia, Ecuador, Peru and Venezuela) had agreed to establish a peace area in the Andean Community “as a nuclear, chemical and biological weapons-free area, in which the necessary conditions will be developed to enable a peaceful and agreeable solution of conflicts of any nature whatsoever, as well as the causes thereof.”

Nigeria in its statement outlined the action being taken nationally to implement the BWC. This included the drawing up of “an Action Plan to monitor the use of biological materials within the country”, “a code of conduct for scientists/users of biological materials” and undertaking a “census of laboratory facilities in the country with a view to monitoring and regulating their activities.”

The Netherlands on behalf of the EU welcomed the Chairman and said that the EU would not be making a statement.

The Meeting of Experts then moved on to have presentations from the three IGOs – the WHO, FAO and OIE. However, before these were made, representatives from non-governmental organizations were asked to leave, as one State Party (the United States) had objected to the Chairman about their presence.

Intergovernmental Organization Presentations

The IGOs – WHO, FAO and OIE – made the following presentations giving an overview of the relevant activities of these organizations:

- WHO “Epidemic Alert and Response”.
- FAO “Emergency Prevention System for Trans-boundary Animal and Plant Pests and Diseases (EMPRES)”
- FAO “Current Mechanisms for Pest Surveillance, Monitoring and Outbreak Response under the IPPC”
- OIE “The Challenge of International Biosecurity; The OIE Standards and FAO/OIE Actions”

These presentations are available at <http://www.opbw.org>

NGO Activities

As already noted, the opening plenary session agreed that non-governmental organizations (NGOs) could make short statements in informal session on the afternoon of Friday 23 July 2004. A presentation was first made by Lawrence Madoff outlining the activities of ProMED and this was then followed by short 6 to 8 minute statements made by the following NGOs:

- Angela Woodward, Verification Research, Training and Information Centre (VERTIC)
- David Atwood, Quaker United Nations Office on behalf of Malcolm R. Dando and Graham S. Pearson, Department of Peace Studies, University of Bradford
- Kathryn Nixdorff, International Network of Engineers and Scientists for Global Responsibility (INES)
- Jean Pascal Zanders, BioWeapons Prevention Project (BWPP)
- Richard Guthrie, Stockholm International Peace Research Institute
- Michael Moodie, The Chemical and Biological Arms Control Institute (CBACI)/The International Institute for Strategic Studies – US (IISS-US)

As at the Fourth and Fifth Review Conferences and at

the 2003 Meetings, the NGO speakers spoke from seats in the room whilst their statements were distributed to all those present. There were over 200 people present in the room during the NGO statements which with simultaneous translation into the six official UN languages enabled the NGOs to communicate their views to all present.

A lunchtime seminar entitled ‘Civil Society Thoughts on Dealing with Natural and Deliberate Outbreaks of Disease’ organized by the BWPP was held on Tuesday 20 July 2004. Presentations were given by Jean Pascal Zanders (Generic Policy Measures to prevent and Counter the Effects of Disease Outbreaks), Chandré Gould (Civil Society: Contribution to Strengthening the Norm against BW: The BWPP One Year On) and Barbara Hatch Rosenberg (BW Investigations and the United Nations).

Outcome of the Meeting of Experts

The Meeting of Experts met in private working sessions during the period from 19 July to 30 July 2004. In accordance with the programme of work (BWC/MSP.2003/MX/2/Rev.1), the first week of 19 to 23 July 2004 was devoted to the consideration of strengthening and broadening national and international institutional efforts and existing mechanisms for the surveillance, detection, diagnosis and combating of infectious diseases affecting humans, animals and plants, and the second week of 26 to 30 July was devoted to the consideration of enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological and toxin weapons or suspicious outbreaks of disease.

During the first week, the Meeting of Experts heard 15 statements, presentations and interventions from States Parties on general surveillance of infectious diseases, 47 statements, presentations and interventions on human diseases, 28 statements, presentations and interventions on animal diseases and 9 statements, presentations and interventions on plant diseases. During the second week, the Meeting of Experts heard 57 statements, presentations and interventions on outbreak response in/for humans, 16 statements, presentations and interventions on outbreak response in/for animals, 5 statements, presentations and interventions on outbreak response in/for plants and 36 statements, presentations and interventions on investigations.

By the end of the Meeting of Experts, 83 Working Papers had been submitted by States Parties (some 17 more than the 66 Working Papers submitted to the corresponding 2003 Meeting of Experts). These were submitted by Australia (10), Canada (8), China (2), Cuba (2), France (3), Germany (10), Hungary (1.5), India (2), Iran (4), Italy (5), Japan (2), Netherlands (6), Norway (1.5), Poland (1), Russian Federation (3), South Africa (5), Spain (1), Sweden (2), Thailand (1), Ukraine (4) and United Kingdom (9). In addition, two MISC papers were circulated: Misc.2 comprising the presentations made by the United States and Misc.3 comprising information submitted by Argentina on national and regional institutions and mechanisms for disease surveillance.

It is also evident that some general statements were made by some of the States Parties during the private sessions of the Meeting of Experts. One such statement by the US (available on the State Department website) addressed the topics to be considered during the second week. In this the US noted that “although not explicitly prohibited by the BWC,

States Parties at the Fourth Review Conference recognized that use is ‘*effectively prohibited*’. As any predicate act by a State Party resulting in the use of a biological weapons is prohibited by the Convention, it is not legally permissible to use biological weapons for hostile purposes or in armed conflict without in some respect violating the prohibitions of Article I.’ [Emphasis in original]. The statement goes on to note that the BWC itself provides means under Article V and Article VI for pursuing any concerns a state may have that an attack has occurred. It notes also that outside of the context of the BWC is the UN Secretary-General’s authority to investigate allegations of use. It points out that this “mechanism exists outside the auspices of the BWC and it would, therefore, not be the place of the BWC States Parties to revise it. States Parties could make a national contribution to the existing mechanism, however, by updating their contributions to the list of qualified experts and laboratories which, to our knowledge, has not been updated since 1988. For our part, we will provide in the near future an updated list of experts and laboratories to the World Health Organization and to the Secretary-General. It would be useful, in our view, if other States Parties in a position to do so would also provide their own national updates.” The US statement concludes by noting that “the expert discussions this week serve to underscore and promote understandings of the international processes available for addressing allegations of BW use and suspicious outbreaks of disease: resorting to the UN Security Council under Article VI, convening a formal consultative meeting under procedures developed to implement Article V, and conducting international investigations authorized by the UN Secretary-General. The United States believes that all three of these mechanisms remain viable and that revisions to their scope or procedures are neither necessary nor appropriate.”

All the Working Papers, except for one, address one or other of the two topics for Meeting of Experts; the exception is WP.83 submitted by Hungary entitled ‘Challenges of the Second Year of the Follow-up Process.’ This says that “the Fifth Review Conference created through the follow-up process an opportunity for a fresh start for the BWC regime. The existence of the new process in itself is a major achievement. Such an achievement should be assessed against the earlier critical challenges to the prohibition regime:

- the major disagreement between States Parties which surfaced in summer-autumn 2001 on the usefulness of multilaterally codified, legally binding implementation norms;
- the autumn 2001 anthrax attacks coupled with the impact of 9/11 significantly changed threat perceptions and damaged the deliberate disease taboo;
- Fifth Review Conference – close to collapse, had to be suspended;
- during the most critical stage: December 2001 – September 2002 there was a danger of a complete shut-down of the multilateral prohibition regime until 2006.’

WP.83 goes on to say that ‘the overall expectation is to build on the firm basis of the follow-up process achieved so far. Therefore the:

- deliberations should be focused, substantial, relevant vis-à-vis the challenges;
- participation again expected to be higher than technical level, more representative than at review conferences;

- an increased awareness of the norm against BW should be promoted;
- links between States Parties and between relevant IGOs and States Parties should be created again this year.’

After noting that the 2004 topics are extremely topical, WP.83 concludes by saying that ‘the meeting should and will contribute to the further steps needed in the new BWC process:

- to consolidate and further develop the achievements of the new BWC process;
- assist in further national implementation effort;
- raise awareness about on-going activities outside the BWC framework and further needs;
- promote implementation related assistance between interested countries;
- prepare the ground on carrying forward the process towards of further strengthening the BWC regime.”

In a significant step forward compared to the 2003 meeting of Experts, after the informal session on the Friday July 23 afternoon at the end of the first week, the Secretariat made available to delegations a chronological listing of considerations, lessons, recommendations, conclusions and proposals that had emerged from the considerations during the first week of the topic on surveillance of disease.

During the second week, on Thursday 29 July, the Secretariat again made available to delegations a chronological listing of considerations, lessons, recommendations, conclusions and proposals that had emerged from the considerations during the second week on the topic of outbreak response and investigation of alleged use of biological or toxin weapons.

Consideration was given to the draft report on Thursday 29 July and again on Friday 30 July. Although there was, as is usual, some tension between delegations as to the form of the factual report of the meeting, with some States Parties being unenthusiastic over producing any more than the undigested collation that had been attached as an untranslated Annex to the report of the Meeting of Experts in 2003, and other States Parties expressing concern about the precise words which had been used by the Secretariat to identify the considerations, lessons, recommendations, conclusions and proposals that had emerged, agreement was reached that the factual report should include an Annex II containing the “considerations, lessons, recommendations, conclusions and proposals drawn from the presentations, statements, working papers and interventions made by Delegations on the topics under discussion at the Meeting.” This Annex would be translated and issued in the six official UN languages. The items listed under Agenda item 5 (surveillance of disease) and Agenda item 6 (investigation of alleged use) in Annex II were clustered and thus developed from the initial chronological listings provided to delegations by the Secretariat. There was also much discussion about the precise language to appear in the body of the factual report. The first proposal on 29 July 2004 was for three paragraphs:

18. Many of these statements, presentations and interventions were descriptive in nature, primarily focusing on the current functioning of existing efforts, mechanisms and capabilities. Views were expressed that greater

attention should be paid to the need, in accordance with the decision of the Fifth Review Conference, to “discuss, and promote common understanding and effective action on” these topics at the Meeting of States Parties in December 2004.

19. The Chairman prepared a document listing the considerations, lessons, recommendations, conclusions, and proposals made by delegations on the topics under discussion. The Meeting of Experts noted that this document had no particular status; that it had not been discussed; that it could not be considered as being complete; and that the appearance of any consideration, lesson, recommendation, conclusion or proposal on the list did not in any way indicate or imply that States Parties agreed with it. The Meeting of Experts noted that the Chairman had provided the document to assist delegations in their preparations for the Meeting of States Parties in December 2004 and in their consideration of how best to “discuss, and promote common understanding and effective action on” the two topics in accordance with the decision of the Fifth Review Conference.

20. The document prepared by the Chairman listing the considerations, lessons, recommendations, conclusions and proposals made by delegations on the topics under discussion is attached as Annex II to this Report.

This was then revised in a second version issued on 30 July 2004 with the modifications highlighted in the version reproduced below:

(old para 18 deleted)

19. The Chairman, *under his own responsibility and initiative*, prepared a *paper* listing the considerations, lessons, *perspectives*, recommendations, conclusions, and proposals *drawn from the presentations, statements, working papers and interventions* made by delegations on the topics under discussion *at the Meeting*. The Meeting of Experts noted that this *paper* had no particular status; that it had not been discussed; that it could not be considered as being complete; and that the appearance of any consideration, lesson, *perspective*, recommendation, conclusion or proposal *in the paper* did not in any way indicate or imply that States Parties agreed with it. The Meeting of Experts noted that *it was the Chairman’s view that the paper could* assist delegations in their preparations for the Meeting of States Parties in December 2004 and in *its* consideration of how best to “discuss, and promote common understanding and effective action on” the two topics in accordance with the decision of the Fifth Review Conference.

20. The *paper* prepared by the Chairman is attached as Annex II to this Report.

The final version that appeared in the Report (MX/3) of the Meeting with further modifications highlighted in bold in the version reproduced below:

19. The Chairman, under his own responsibility and

Table: *Analysis of contributions by States Parties as itemized in Annex II of the Meeting Report*

	Agendum 5 Disease Surveillance	Agendum 6 Investigation of alleged use	Total
State Party	No. of Items	No. of Items	No. of items
Australia	17	13	30
Brazil	--	5	5
Canada	8	11	19
China	16	20	36
Cuba	--	2	2
Czech Republic	1	--	1
France	--	18	18
Germany	8	13	21
India	9	2	11
Iran	23	13	36
Japan	1	2	3
Nigeria	9	3	12
Nether- lands	3	16	19
New Zealand	3	--	3
Norway	--	4	4
Pakistan	5	--	5
Romania	--	2	2
Russian Federation	1	6	7
South Africa	19	25	44
Sweden	1	13	14
Thailand	1	1	2
UK	16	17	33
USA	31	36	67
FAO/OIE	7	--	7
WHO	3	--	3
Total	182	222	404
(Number of SPs)	18	20	23

initiative, prepared a paper listing the considerations, lessons, perspectives, recommendations, conclusions, and proposals drawn from the presentations, statements, working papers and interventions made by delegations on the topics under discussion at the Meeting. The Meeting of Experts noted that this paper had no status; that it had not been discussed; that it could not be considered as being complete; and that the appearance of any consideration, lesson, perspective, recommendation, conclusion or proposal *on the list* did not in any way indicate or imply that States Parties agreed with it; *and that it should not necessarily form a basis for future deliberations*. The Meeting of Experts noted that it was the Chairman's view that the paper could assist delegations in their preparations for the Meeting of States Parties in December 2004 and in its consideration of how best to "discuss, and promote common understanding and effective action on" the two topics in accordance with the decision of the Fifth Review Conference.

20. The paper prepared by the Chairman is attached as Annex II to this Report.

In an interesting intervention, the Netherlands on behalf of the EU said that they could accept the earlier 30 July 2004 version of these paragraphs. Although the wording in the report about the list of considerations, recommendations and proposals is heavily caveated to make it clear that the list was produced by the Chairman at his initiative, the fact remains that there will be a far better starting point for the Meeting of States Parties in December 2004.

An analysis of the States Parties who had put forward items listed in the drafts of Annex II is shown in the Table.

This shows that some 23 States Parties out of the 87 participating in the Meeting of Experts put forward items listed in the Annex. 13 States Parties put forward 10 or more items: United States (67), South Africa (44), China (36), Iran (36), UK (33), Australia (30), Germany (21), Canada (19), Netherlands (19), France (18), Sweden (14), Nigeria (12) and India (11).

Peter Goosen pointed out in his closing remarks on 30 July 2004, that much that had been presented during the Meeting of Experts was descriptive. He therefore urged all States Parties "to focus on what we have agreed to do and on what the Review Conference mandated us to do" namely *to discuss, and promote common understanding and effective action*. It is evident that the list of items in Annex II will form a basis for the States Parties to prepare for the December meeting by considering in advance what language might be used at the one-week Meeting of States Parties to express the common understandings and effective action that could be taken by the States Parties.

A further welcome innovation was the inclusion for the first time, as Annex III of the factual report, of a draft agenda and indicative schedule for the Meeting of States Parties to be held in Geneva on 6 to 10 December 2004. The schedule shows a General Debate on Monday 6 December followed by an informal session on the morning of Tuesday 7 December for statements by NGOs. Whilst the agenda and the programme of work will be formally adopted at the opening of the Meeting of States Parties, the indicative schedule provides a valuable opportunity to plan for participation at the

Meeting of States Parties in December 2004.

Finally, in the closing session, the United States, on behalf of the Depositaries, announced that the dates for the 2005 Meeting of Experts would be 13 to 24 June 2005 and the Meeting of States Parties would be 5 to 9 December 2005.

Reflections

It was noted that in the opening statements a number of States Parties made reference to the success of the 2003 meetings. Whilst a lot of information was exchanged at the 2003 meetings, as already noted in the introduction above, the Meeting of States Parties in 2003 had barely managed to reach agreement on a short statement of substance and thus failed to fulfill the promise which had been apparent at the end of the Meeting of Experts in August 2003. The 2003 meetings when examined against the mandate from the Fifth Review Conference can hardly have been said to have been a great success.

It was also evident from the opening statements by some States Parties (such as Germany, Russia and Iran) that the failure in 2001 of the negotiations of a legally-binding instrument to strengthen the effectiveness of the Convention and improve its implementation is still prominent in the minds of some States Parties. It is clear that some resolution will need to be found prior to the Sixth Review Conference in 2006 to prevent a recurrence of the difficulties encountered at the Fifth Review Conference.

As might be expected, there was considerable attention given during the first week to the ways in which national and international institutional efforts and existing mechanisms for the surveillance, detection, diagnosis and combating of infectious diseases affecting humans, animals and plants might be strengthened and broadened. Equal time was given to disease surveillance of humans, animals and plants which was sound, given the tendency all too often to focus almost exclusively on human disease surveillance, with far less attention being given to animal and plant surveillance. The point was rightly made by a number of States Parties that the role of the Intergovernmental Organizations such as the WHO, FAO and OIE was to protect health, and that such IGOs should not become involved in security issues and questions relating to possible violations of the BTWC.

In regard to the topics for the second week of enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological and toxin weapons or suspicious outbreaks of disease, several States Parties considered that the existing guidelines and procedures set out for the Secretary-General's investigations of alleged use set out in A 44/561 should be reviewed and revised since, for example, the list of experts and facilities available to the Secretary-General have not been updated since 1989. Moreover, the Secretary-General procedures predate the agreement of the Chemical Weapons Convention which includes procedures for the investigation of the alleged use of chemical weapons, including *toxin* weapons. There appeared to be a curious unwillingness by the Meeting of Experts to recognize that the Chemical Weapons Convention includes agreed procedures for the investigation of the alleged use of toxin weapons; this was not mentioned in the background paper on investigations (MX/INF.3) nor is it mentioned in the lists of items in Annex II to the Report.

Whilst it can be pointed out that the list of the States Parties to the BTWC are not identical to the list of States Parties to the CWC, a similar difference applies between the lists of States Parties to the BTWC and the lists of the Member States of the WHO, FAO and OIE. It would seem probable that if there were to be an alleged use involving a toxin, then if the State wishing to request an investigation was a State Party to the CWC as well as to the BTWC, such a request would be made to the OPCW. In any event, it would probably be unknown at the time of the alleged use whether it had been caused by a toxin or by a chemical.

It was also somewhat surprising that the United States in its opening remarks for the second week concluded by noting the international processes available for addressing allegations of BW use and suspicious outbreaks of disease were threefold: "resorting to the Security Council under Article VI, convening a formal consultative meeting under procedures developed to implement Article V, and conducting international investigations authorized by the UN Secretary-General", and then saying that "The United States believes that all three of these mechanisms remain viable and that *revisions to their scope or procedures are neither necessary nor appropriate.*" [Emphasis added].

The experience gained since 1990 from the implementation of the Chemical Weapons Convention and from the work of UNSCOM and UNMOVIC have demonstrated the *vital* importance, if results are to be obtained that will stand up to international scrutiny, of using trained qualified experts who have worked together in exercises under trained and designated chief inspectors as well as of an elaborated sampling and analysis procedure involving a chain of custody from the point of sampling to sample analysis, using validated techniques in accredited and proven international laboratories. The existing Secretary-General procedure of 1989, in which States are invited to simply nominate experts and facilities is

outmoded in the world of today. It also has to be recalled that investigations of alleged use can only take place within a State that has invited the UN Secretary-General to mount such an investigation.

In regard to Article V and Article VI of the BTWC, the procedures elaborated for Article V were invoked by Cuba in 1997. Because of the failure of the Fifth Review Conference in 2001/2002 to agree a Final Declaration, there has been no consideration by the States Parties of the adequacy or otherwise of the procedures followed under Article V in 1997. It could be argued that it would indeed be timely for the States Parties to review the adequacy of these procedures to implement Article V, in the light of the experience gained in 1997. Article VI has never been used and there are no procedures that have been elaborated by the States Parties. As was suggested by at least one State Party during the Meeting of Experts, there could be advantages in consideration being given to what procedures might be appropriate for the implementation of Article VI.

In summary, the Meeting of Experts in July 2004 made significant progress, especially through its decision to annex to its report the list of "considerations, lessons, recommendations, conclusions and proposals" prepared by the Chairman. This provides the States Parties with an excellent starting point from which to develop language to meet the requirement of the mandate for the Meeting of State Parties in December 2004 to '*discuss, and promote common understandings and effective action*'. It will be interesting to see whether the outcome of the December 2004 Meeting of States Parties lives up to the expectation that common understandings and effective action will be identified.

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

Forthcoming Events

7 October

The Royal Society, London, UK
Meeting with The Wellcome Trust: *Do No Harm: Reducing the Potential for the Misuse of Life Science Research*

12-13 October

Lillestrøm, Norway
Norwegian International Defence Seminar, NIDS-II, *Defence Against WMD - International Co-operation and National Preparedness*
Contact: Ellen Foss on nids@ffi.no

19-20 October

Dublin, Ireland
Jane's Less-Lethal Weapons 2004 Conference,
Details: www.conference.janes.com

10-11 November

Moscow, Russia
6th National Dialogue Forum: *Russian Implementation of the CWC - Status and Perspectives as of Year End 2004*
Details: www.gci.ch/Communication/

16-19 November

OPCW headquarters, The Hague
Annual Meeting of the Protection Network

4-5 December

Geneva, Switzerland
21st Workshop of the Pugwash CBW Study Group: *The BWC New Process and the 6th Review Conference*

6-10 December

Singapore
4th International Symposium on Protection against Toxic Substances
Registration: www.dso.org.sg/sispat/

17-20 January 2005

Wiston House, UK
Wilton Park Conference 772: *NATO: What Place for the Enlarged Alliance in Dealing With New Threats*
Details: www.wiltonpark.org.uk

28 February-1 March 2005

Lyon, France
Preventing Bioterrorism: 1st Interpol Global Conference to Strengthen Law Enforcement Preparedness and Develop Effective Police Training
Contact: bioterrorism@interpol.int