

5th Workshop of the Pugwash Study Group on the Implementation of the Chemical and Biological Weapons Conventions

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Strengthening the Biological Weapons Convention

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This was the third of the current CBW workshop series to be hosted by the Swiss Pugwash Group. The meetings were held in premises of the Graduate Institute of International Studies, University of Geneva. Participating by invitation were 43 people from 17 countries (Australia, Brazil, Cuba, Ethiopia, Germany, Hungary, Israel, Italy, the Netherlands, New Zealand, Nigeria, Russia, South Africa, Sweden, Switzerland, the UK and the USA), all of them doing so in their private capacities. The present record is the responsibility solely of its three authors, who were asked by the meeting to prepare a joint report. It does not necessarily reflect a consensus of the workshop as a whole, or of the Study Group.

The focus of the workshop was the Fourth Review Conference of the Parties to the 1972 Biological Weapons Convention, scheduled to take place in Geneva from 25 November to 6 December 1996. The workshop had, among its background papers, the statement on the BWC which the Pugwash Council had just agreed (on 8 September) and which it intended to submit to the Fourth Review. Issues addressed in the Council statement, which had been drafted by some members of the Study Group, were taken up during the workshop.

The need to consider the BWC within the wider context of weapons of mass destruction was a recurrent theme in the discussions. Participants noted the recent positive developments concerning both nuclear and chemical weapons: the opening for signature of the nuclear-weapons Comprehensive Test Ban Treaty, the indefinite extension of the nuclear-weapons Non-Proliferation Treaty, the establishment of further Nuclear-Weapons-Free Zones, and the impending entry into force of the Chemical Weapons Convention (64 ratifications deposited at the time of the workshop, with the 65th that would trigger the 180 days countdown to entry into force clearly imminent). It was felt that features common to these regimes could build and reinforce each other. Negative linkages were, however, also noted, as in the notion that nuclear weapons should be valued as a deterrent against biological warfare and, conversely, that biological weapons would be sought as a counter to nuclear weapons.

The BWC was regarded by all participants that spoke on the subject as the weak link in the emergent international regime against weapons of mass destruction. Most of the workshop was therefore devoted to discussion of ways in which the Fourth Review might strengthen the Convention. It is in the Ad Hoc Group established by the 1994 Special Conference of BWC parties that measures to strengthen the treaty are currently being negotiated, but the group was not expected to have completed its work by the time of the Fourth Review. As it happened, the Ad Hoc Group was in session in Geneva at the time of the workshop, and several members of its delegations were among the workshop participants, as they had been during the previous workshop, in December 1995.

The workshop opened with reports on the work of international bodies that are active in implementation of the CBW conventions. The workshop heard first an authoritative account of what the Ad Hoc Group had been doing. Mandated in 1994 to consider what should be included in a "legally binding instrument"

for strengthening the BWC, the Ad Hoc Group had at the time of the workshop completed a total of seven weeks of substantive negotiation (the initial three weeks are reviewed in the January 1996 issue of Pugwash Newsletter, at page 192). The workshop heard that the group was not yet attempting to negotiate a draft but was instead debating the parameters of a possible verification regime. The progress being made was described in some detail, and the report was optimistic, suggesting that the group was now close to being able to consider actual language, even to start drafting a protocol to the Convention. During subsequent discussion, participants felt that there was indeed reason for optimism but also that it would be necessary to intensify the work of the group, possibly through more frequent sessions, especially if the 1998 target-date for completion just proposed in the UN General Assembly by President Clinton were to be achieved.

Next, the workshop heard how the meeting of the Preparatory Committee for the Fourth BWC Review Conference had gone. All the agreements sought had been achieved: on officers of the conference (Michael Weston of the United Kingdom is the recommended president), its duration (two weeks instead of the three weeks originally contemplated), its rules of procedure, its agenda, and its background documentation; particulars are recorded in the committee's own report (document bwc/conf.iv/pc/2). Although the Ad Hoc Group had not been created by the previous BWC review conference but by a subsequent special conference, the committee nevertheless agreed a provisional agenda that included an item on the work of the Ad Hoc Group, which would therefore be preparing a report for the review conference. The workshop learnt that the recommended rules of procedure were those which the Third Review had used, meaning that plenary sessions of the conference would be held in public unless otherwise decided, and that non-governmental organizations attending plenary meetings would be entitled to documents of the conference. Those rules would not, however, allow representatives of NGOs to address the conference; whether they should do so, as had recently been proposed, was now a decision which only the conference itself could take.

The workshop then received a report on the biological- weapons work of the UN Special Commission on Iraq. The subsequent discussion focused on lessons that could be drawn for the BWC. Differences between the UNSCOM system and possible BWC verification systems were noted, in particular the fact that the former was ad hoc, whereas the latter would necessarily be a predetermined system, multilaterally operated and therefore multilaterally constrained; the deeply intrusive and adaptable character of UNSCOM could never be matched by the BWC. Some participants laid stress on the fact that a complete and convincing account of the Iraqi BW programme had still not emerged from what UNSCOM had been doing since it began operations in mid-1991. Other participants, however, laid stress on the success of UNSCOM in identifying serious grounds for concern about the accuracy of Iraq's initial declarations even before the minute on-site inspections of Iraqi biological facilities that later ensued. An important lesson here seemed to be that, although acquisition of full and complete information about a clandestine biological-weapons programme might be beyond the reach of a feasible BWC verification system, the same was not necessarily true for acquisition of sufficient information to demonstrate noncompliance, or at least strongly to suggest it.

The workshop received no special report on the work of the Preparatory Commission for the Organization for the Prohibition of Chemical Weapons (OPCW) as this would be dominating the Study Group's attention during its next workshop, at Noordwijk, in three weeks' time.

The workshop then moved into its main agenda item, reviewing current issues relating to the BWC on an article-by-article basis. The main features of the discussion, somewhat reordered, were as follows.

Preamble. Universality and the question of individual responsibility were key themes here. It was

suggested that, if enough states join a treaty, the United Nations Security Council could hold it to be universally valid. Participants considered that, for those states which join a treaty and then breach its provisions, such a breach should be regarded as particularly egregious.

Article I (the main obligations). There seemed to be general agreement that, despite the omission in this article of a ban on use of biological or toxin weapons, such a prohibition was nevertheless incorporated in the treaty. Several arguments were put forward. First, the language of the Preamble -- for example, "Convinced that such use would be repugnant to the conscience of mankind and that no effort should be spared to minimize this risk" -- demonstrates the intention to preclude use. Second, Article I specifically prohibits the development, production, stockpiling or acquisition of biological weapons, meaning that any use of such weapons would be *prima facie* evidence of a breach of Article I prohibitions. The negotiating history supports these arguments. Further, the fact that the Ad Hoc Group has expressly included provisions for investigating alleged use within its work would seem to indicate a prevailing view among states parties that use is prohibited not only by the 1925 Geneva Protocol but also by the Convention.

Scientific and technological developments since the Third Review have, it was generally agreed, brought about salient changes which must now be assessed. There was general agreement, also, that the Convention is drafted in such a way as to accommodate changing technology within the scope of the weapons that it prohibits. Genetically modified organisms and novel biotechnological-process products, for example, would all be captured by the 'general purpose criterion'. This has been reaffirmed by the previous review conferences, in 1980, 1986 and 1991. Participants considered that it should be enunciated yet again: the Fourth Review Conference should reaffirm that the scope of the BWC extends to all microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes.

There was also discussion of the positive aspects of technological change and how it can support the Convention, as by strengthening protective measures against biological-weapons attack and therefore reducing any attractions of clandestine BW armament, or by rendering large-scale production capacity involving microbes less justifiable for peaceful purposes and therefore more conspicuous if maintained for clandestine biological-weapons purposes.

The theme of individual responsibility was taken up also in the context of Article I. Proper strengthening of the Convention, which would certainly require the active support of scientists, might also be advanced by direct appeal to professional scientific associations.

The workshop was reminded that, since the time of the Third Review, instances of noncompliance with the main prohibitions of the Convention had been acknowledged, as when Russia, in its returns of information under the expanded BWC confidence-building measures in 1992, stated that it had had an offensive biological research and development programme that had been active during the period 1946 to March 1992. There was also the discovery by UNSCOM of the ambitious biological-weapons programme of Iraq, a country which had signed the BWC (albeit ratifying it only in 1991, as a ceasefire condition). Participants therefore spoke of the need for a strong statement on non-compliance by the Fourth Review Conference.

Article IV (national implementation measures). This article obliges states parties to institute "necessary measures" within their own jurisdictions in order to give effect, in the territories they control, to the prohibitions laid down by Article I. The workshop discussion accordingly concentrated on ways to criminalize biological-weapons activities, seeking lessons in this regard from the Chemical Weapons Convention, Article VII of which requires the "necessary measures" to include enactment of penal

legislation and establishment of national authorities charged with fulfilling obligations assumed under the treaty.

The matter of individual responsibility was once more raised, the Nuremberg, Former Yugoslavia and Rwanda tribunals being cited to remind participants that the idea of individual culpability was not a new concept in international law; also cited here were specific international treaties that assign individual responsibility, particularly in the area of human rights and international crimes, such as aircraft hijacking. Workshop participants recognised that non-state actors, no less than states, could be held responsible for particular obligations established by international treaty. Discussed in this connection was a novel proposal from the Harvard Sussex Program for international consideration of a treaty that would make it a crime under international law for any individual knowingly to participate in the development, production, acquisition, transfer or use of biological (or chemical) weapons. The proposed treaty would oblige states parties either to prosecute or to extradite offenders found on their territory, regardless of where the offences were committed, and regardless of the citizenship of the offender.

Participants also observed that strong national implementation measures would strengthen the defences available against acts of biological terrorism. This same connection had been made in the plan for combatting terrorism which had been adopted at the July 1996 ministerial meeting of Russia and the G7 countries in Paris. The plan, so one participant reminded the workshop, recommended that the Fourth BWC Review Conference should confirm the commitment of states parties to adopting the necessary measures required under Article IV "in order, inter alia, to exclude the use of [biological] weapons for terrorist purposes".

Article V (consultation and co-operation). Here the workshop discussion began with the use of confidence-building measures in implementation of Article V. Participants recalled that earlier review conferences had all paid attention to the role of CBMs as a means of strengthening the regime. The Second Review (1986) had agreed to four measures: the exchange of data on research centres and laboratories having high-containment facilities; the exchange of information on outbreaks of disease and similar occurrences caused by toxins; the active promotion of scientific contacts; and the encouragement of publication of results of research. The Third Review (1991) extended the first three and added three more: declaration of implementing legislation, regulations and other national measures; declaration of past activities in offensive and/or defensive biological research and development programmes; and declaration of vaccine production facilities. The workshop seemed to be in agreement that the Fourth Review should re-emphasize the importance of the existing CBMs and, where appropriate, seek to strengthen them; but new CBMs should not at this stage be added, since the Ad Hoc Group is currently working on which CBMs are and are not appropriate for incorporation into the projected legally binding instrument.

In addition to the still-voluntary CBMs, the workshop also considered current work by the Ad Hoc Group on the verification measures ("compliance measures") that had been identified by VEREX during 1992-93. The general feeling of the workshop was that the Fourth Review Conference should simply endorse the work thus far of the Ad Hoc Group towards a legally binding instrument that would provide for declarations, on-site measures and investigations of alleged use. Participants spoke in favour of the conference setting a date of mid-1998 as the deadline by which the Ad Hoc Group should complete the draft instrument. Also, the conference might usefully urge states parties to conduct, as some already had, trials of on-site measures that might be incorporated in the instrument, especially trials conducted on a bilateral or trilateral basis.

The workshop gave careful attention to one further aspect of international co-operation, namely the

development of ProMED- mail which the Federation of American Scientists had set up on the Internet in 1994. ProMED-mail provides reports on new outbreaks of disease in human beings, animals and plants from around the globe, the reports being screened by scientists before posting. One can subscribe to this (free) service by sending the e-mail message "subscribe promed" to . Participants stressed the need for ProMED to collaborate closely with World Health Organization services for the reporting of unusual outbreaks of infectious disease and for investigation into their causes.

Article VI (complaints). Here the workshop considered investigations of alleged use of biological weapons, and also the issue of sanctions against violators of the treaty. It was agreed that procedures for responding to reports of use would be an important part of any BWC compliance regime, even though Article I of the Convention did not itself prohibit use. Many practical and political problems would confront such investigation. One to which the workshop paid particular attention was the problem of differentiating unusual outbreaks of disease from suspicious outbreaks; the latter might become prima facie evidence of BW use, but an investigation of what initially appeared to be an unusual natural event could transform itself only with difficulty, and possibly at severe political cost to the investigating body, into an investigation of BW use. The dangers inherent both in false positives and in false negatives would mean, participants felt, that the procedures should be made as transparent as possible.

On sanctions, the workshop heard a proposal that there should be agreement ahead of time to impose penalties upon a state party found to have been using biological weapons. The general view seemed to be that, however desirable such a scheme might be in theory for deterring would-be violators, it would in practice be impossible for states to agree upon its details in advance. Sanctions were also discussed in the context of false allegations of use.

Article VIII (Geneva Protocol). Here the workshop considered the problems posed by the reservation of a right to retaliate in kind against CBW attack which some BWC states- parties had entered when joining the 1925 Geneva Protocol. The workshop heard how some of these reservations had now been withdrawn and how others had been modified so as to exclude BW retaliation; the latest example of the latter type of modification had been that announced by Russia in January 1992. The general feeling was that the Fourth Review Conference should build upon the efforts of the Third to encourage withdrawal of the still-existing BW retaliatory-use reservations.

Article III (non-transfer) and Article X (economic and technological development). These articles were discussed together because of the political linkages that have been drawn between them. Some participants urged de-linkage, however, seeing the issues of non-transfer and technological co"peration as separate and quite difficult enough even when taken on their own. Participants saw the underlying problem as a conflict between two views that are not easy to reconcile: one view which sees export controls as a necessary measure for compliance with the obligations of Article III, and another view which regards export controls as a breach of Article X. Subsequent discussion focused on ways in which Article X could be implemented, pragmatic approaches being favoured. The point was made that measures taken to implement Article X should in any event be connected to the purposes of the Convention and should complement or enhance measures to strengthen compliance with the Convention. Whatever organization might eventually be set up to implement the projected legally binding instrument should also, it was suggested, be given responsibilities for promoting the international co"peration and assistance envisaged in Article X.

The final session of the workshop included consideration of what the Study Group might usefully do in the future. In the discussion of how the Study Group might work most effectively in support of a strengthened BWC, it was not only other treaty regimes that were identified as important context for such

work. Parallels were drawn with recent efforts to extend the reach of international humanitarian law in the field of land-mines and blinding laser weapons, where concerted attempts to mobilize public opinion in support had been so influential. Recalling this, participants spoke of the advantages of considering and presenting biological weapons as a health issue. Participants also spoke, again, of the potential value of seeking development of international criminal law in the field of CBW.

Participants learnt that, besides the imminent Noordwijk workshop on The CWC in its North-South Context, two further workshops were currently being planned. One would again be hosted, it was hoped, by the Netherlands Pugwash Group, taking place after (or possibly during) the first session of the Conference of the States Parties to the Chemical Weapons Convention. The other, to be devoted primarily to BWC implementation in the light of the Fourth Review and progress in the Ad Hoc Group, would again be held in Geneva. □