



Nowhere

# The Biological Weapons Review Conference 2011 -

## Avoiding the Road to Nowhere

— BY JEREMY “JEZ” LITTLEWOOD

In December 2011, the Biological Weapons Convention (BWC) met in Geneva for the seventh review conference of the treaty. The BWC is now in middle age, having entered into force in 1975, and in the next few years will face some difficult issues. There is no immediate crisis on the horizon for the BWC in 2011. Rather, states parties must approach the review conference with three things in mind. First, how to manage their political differences about the future of the Convention: simply put this is the verification debate. Second, recognize that implementation of the Convention is now focused on the management of dual use technologies and knowledge, rather than preventing the proliferation of actual weapons. And, third, ensure implementation requirements permit the peaceful uses of science in all states: this is the disarmament-development dispute.

### POLITICAL BACKGROUND

The acrimonious divisions evident in 2001 to 2005 resulting from the United States' decision to abandon negotiations on the additional protocol have been replaced by a grudging acceptance that a multilaterally negotiated agreement that contains compliance and/or verification provisions is highly unlikely to emerge in the near future (i.e. before 2020). Review conferences of the BWC usually determine the next phase of development of the treaty. Incremental evolution has been standard practice to date simply because states parties cannot agree on more ambitious proposals. Thus, in 1980, consultation procedures were outlined; in 1986, the confidence-building measures were first agreed; 1991 initiated a series of decisions that led to a more ambitious effort to strengthen the BWC, namely expanded confidence-building measures

and a study on the question of verification. This in turn led to the decision to begin negotiations on the additional protocol in 1994. By the fourth review conference, in 1996, negotiations were ongoing, and the review conference marked time. By the fifth, in late 2001, the decision of the United States to scuttle the protocol negotiations and the attacks of September 11, 2001, as well as the anthrax letters in the United States, meant the tide had turned decisively against the multilateral approach embodied in the protocol. Indeed the fifth review conference in 2001 ended in an acrimonious dispute and had to be suspended until 2002.

A take it or leave it rescue plan in 2002 delivered the framework for the next decade: meetings of experts and meetings of states parties on specifically identified topics with the objective of developing

understanding of national practice in implementation and encouraging states parties to strengthen implementation of the BWC through decisions made nationally, rather than mechanisms agreed multilaterally. Simply put, meetings resembled “show and tell” sessions, but the substance, and benefits, existed not in the actual meetings, or topics themselves, but in the process of information sharing – and the national review of practices that sharing information required – and the continued regular contact among states parties. As a result, over time stalwart opponents of multilateral disarmament and arms control agreements in the United States recognized that the BWC was in fact useful and proponents of multilateral disarmament recognized the most fervid champions of verification after 2001 – Iran, Russia, Pakistan, Cuba, and Libya among others – were the very same states that had been lukewarm on compliance mechanisms in the 1990s and reluctant to demonstrate their compliance even in a non-adversarial meeting of experts post-2001.

Incremental gains were necessary, but left off the agenda in order to move gradually forward were substantive issues: compliance, transparency relating to biodefense and disarmament and development challenges. It will be increasingly necessary to tackle these over the next five years. How states parties face up to these big questions will set the tone for the next five years and determine how dual use technology is managed and peaceful uses of science is facilitated.

## THE ROAD TO WHO KNOWS WHERE?

In very simple terms states parties have before them three choices. The first choice is to return to the approach of strengthening the Convention via a multilateral agreement akin to the Protocol negotiations of the 1990s. Calls for the resumption of multilateral negotiations on a legally binding instrument to comprehensively strengthen the Convention,” which the Non-Aligned Movement claimed to favor at the Preparatory Committee meeting in April 2011, are increasingly rhetorical when in

fact since 2001 no state has yet published a plan on how that could be achieved. In addition, the United States has closed the door on any negotiations for a legally binding additional agreement to the BWC in its Strategy of 2009 and subsequent statements. This renders futile attempts to parse terminology or undertake semantic gymnastics. Any route taken in 2011 that is intended to lead back to multilateral negotiations is a road to nowhere.

The second choice is to continue as over the last decade; namely meetings of experts and meetings of states parties that are tightly controlled – no decision making or power to agree even to politically binding commitments outside the review conference – and focused on one topic at a time with no year-on-year cumulating process. This entails, to use the mandate of the intersessional process, discussion at the meetings of experts, promotion of practices at the meetings of states parties, and action whenever any individual state party so decides. While the intersessional process since 2003 has been useful it is now perceived as having served its purpose. The next work program needs to move beyond talking and towards action. If the decisions in 2011 result in another show and tell approach, the route taken can only be described as the road well travelled.

Between negotiations on a legally binding agreement and discussion only is a new intersessional process that continues the best elements of the previous work programs and empowers states parties to determine their own fate and activities between review conferences. This is a road to who knows where because it holds both promise and peril for the Convention. The promise lies in freeing states parties to make decisions at the annual meetings of states parties without obligating them to do so. The latitude of such decisions is left

up to the states parties, but might involve agreeing on new confidence-building measures, developing new methods of work to address discrete problems such as how to provide assistance and protection measures in the event of use, or simply altering the topics earmarked for discussion each year. The peril lies in the linkage issue and that freedom to make small-scale management decisions will always be held hostage to outrageous demands of other parties.



In substance a successful outcome to the 2011 review conference will result in activity across a number of areas. One aspect is the management of the Convention and its day-to-day implementation among states parties. This, to use the terminology of the former United States Ambassador to the Conference on Disarmament Charles Flowerree’s, is about tending the Convention where the focus is not on extraordinary events but on day-to-day implementation and the challenges posed by technological developments, implementation requirements, fulfilment of legal and politically binding agreements, and providing a formal means of implementation of the BWC internationally. In short, staff in both national and international settings live with the obligations of the Convention full-time, all of the time.<sup>2</sup> In basic terms this is the current three-person Implementation Support Unit (ISU)

based in Geneva and the national points of contact within a state party. The second area of activity relates to strengthening the Convention. In particular, agreeing upon and encouraging action on procedures and mechanisms that bolster the existing provisions of the BWC.

The focus here is likely to be on four issues: (1) assistance and cooperation provisions, (2) the implications of increasing convergence in the chemical and biological weapons spectrum; (3) providing for provisions for international cooperation and assistance; and (4) demonstrating compliance with the Convention's obligations. Activities in these areas need to be recognizable to states parties: thus, it should entail meetings of experts, or working groups, involving facilitated discussions that are purposefully not seeking binding arrangements on all parties. The aim is to develop existing practices and expand the latent possibilities within the Convention and its undertakings.

The third area of activity that should come out of 2011 is the most perilous but may be the deal-maker for the whole package: this would be the initiation of a discussion that maps out a strategy for the future. The second, third, and fourth issues above – science and technology, cooperation and assistance, and

compliance – are the substantive challenges. Beyond day-to-day management and beyond enhancing implementation procedures, states parties must be forced to face the looming challenges on the horizon: what does compliance with the BWC actually require; how can confidence in compliance and national implementation be enhanced; how can information on compliance be shared in order to demonstrate compliance; how can potential risks of dual use materials and knowledge be managed without impeding legitimate peaceful uses internationally; and, what are states parties actually going to do if biological or toxin weapons are used in the future?

None of these questions are new to the BWC, but under the protocol negotiations there was room to discuss them in abstract and in concrete terms. The ensuing methods of work since 2002 have purposefully emasculated such discussions, but it is now counter-productive to try and keep substantive issues off the agenda and out of the Geneva meetings. The Convention and its next work program would benefit from some time being allocated to developing competing visions for the future and providing a forum where states, and perhaps non-state and non-governmental

actors are forced to put serious proposals on the table.

In summary, the review conference should develop a program of activities that allow its states parties and the ISU to manage the Convention on a day-to-day basis, that continues to enhance understanding about the challenges of implementation and develop procedures and mechanisms to address those issues, and permit competing visions about the future of the Convention and the most invidious issues – compliance, the relationship between disarmament and development, and scientific developments and their impact – to be aired, tested and refined by a community of experts who understand the realities of biological weapons and the requirements of biological disarmament. ■

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Negotiations for the protocol to the BWC began in 1995, based on the decision made in 1994 to strengthen the Convention. What "strengthen" meant was open to interpretation, but a legally binding protocol was envisaged that would contain definitions of terms, confidence-building measures, compliance measures, peaceful cooperation provisions, and an organization to implement the new arrangements. Analogous examples would be the International Atomic Energy Agency (IAEA) and its safeguards regime or the Organisation for the Prohibition of Chemical Weapons (OCPW) and the implementation of the Chemical Weapons Convention. Verification was a term deliberately avoided in the mandate of the Ad Hoc Group charged with negotiations, however most commentators and diplomats referred to the envisaged agreement as a verification protocol.