

**20th Pugwash Workshop Study Group on the
Implementation of the CBW Conventions:
The BWC Intersessional Process towards the Sixth Review Conference and Beyond
Geneva, Switzerland, 8-9 November 2003**

**Consensus, commitment, completion:
A proposal for putting the 26 March 2005 anniversary to best use for the
BWC**

by Nicholas A. Sims
Reader in International Relations
London School of Economics and Political Science

ABSTRACT

Regaining the diplomatic mainstream at the Sixth Review Conference requires convergence of effort on a BWC agenda for recovery, to repair some of the damage the BWC suffered in 2001-02.? A first test for any emergent grouping of like-minded States Parties, together with ICRC and NGOs, could be to champion the completion by 26 March 2005 (thirtieth anniversary of entry into force) of effective action on particular BWC commitments, agreed by consensus and long outstanding.? This paper identifies commitments from 1980, 1986, 1991 and 1996 and calls for a weekend conference to mark their completion: consolidation before the next advance.

Introduction

26 March 2005 will be the thirtieth anniversary of the entry into force of the Biological Weapons Convention (BWC).? How can this occasion be best used to help the BWC recover from the reverses which it suffered in 2001-02 and to prepare the ground for a successful return to the mainstream diplomacy of biological disarmament at the Sixth Review Conference in 2006? -? now only three years away?

This paper brings together a specific proposal made to the first BWC Meeting of Experts under the new process (19 August 2003) [\[1\]](#) with the more wide-ranging analysis published in *Disarmament Diplomacy* 70 (April/May 2003) [\[2\]](#) and takes both of them forward.? The aim is to identify 26 March 2005 as a recognised target date as well as an anniversary, thereby giving it a central place in a coherent approach to the recovery of the Convention.

The proposal made on 19 August 2003, in the context of the first topic which the Meeting of Experts was addressing (?the adoption of necessary, national measures to implement the prohibitions set forth in the Convention, including the enactment of penal legislation?), was that BWC States Parties should complete their national implementing legislation by 26 March 2005.? This would be the thirtieth anniversary of entry into force; but it would also be almost exactly 25 years from the call for immediate action issued by the First Review Conference (21 March 1980) which, in the Article IV section of its Final Declaration,

"calls upon all States Parties which have not yet taken any necessary measures in accordance with their constitutional processes to do so immediately." [\[3\]](#)

The proposal now is to combine that proposal with the *Disarmament Diplomacy* 70 analysis and to extend the call for completion beyond national implementing legislation alone.

26 March 2005 should be recognised as a target date by which States Parties should have completed those actions on which they have agreed by *consensus*,? which they have long since collectively accepted as *commitments*, and for which the concept of *completion* makes sense.? (Evidently, there

are other very important actions, such as compliance with BWC obligations under Articles I and III, and arguably also Article X.2, which require continual vigilance rather than completion; and there are yet others, such as those under Article X.1, which require States Parties to remain continually alert to new opportunities for peaceful-uses cooperation.)

The concept of completion, as will be shown below, makes sense in the following cases of consensually agreed actions which are the subject of long-standing BWC commitments:

- a.? national implementing legislation (Article IV)
- b.? sharing of legislative and other relevant texts through the UN for purposes of consultation (Article IV)
- c.? for non-parties to the Geneva Protocol, ratification or accession to the Protocol (Article VIII)
- d.? for parties to the Geneva Protocol, withdrawal of reservations on retaliation (Articles I and VIII)
- e.?? CBMs (Articles V and X).

How the proposal fits into the overall analysis

This approach has the advantage of constituting follow-up to the Final Declarations of the first four Review Conferences (1980, 1986, 1991, 1996), which in itself reaffirms the value of those declarations. [\[4\]](#)? It rejects the idea that the new process has superseded an older and inferior review process which can now be consigned to history.? On the contrary, it upholds the centrality of the cumulative review process as the mainstream of BWC diplomacy, to which it is necessary to return in 2006.

But it does so in a way which cannot be misunderstood or misrepresented, even by those most suspicious of multilateral processes, as embarking on new negotiations or fashioning new agreements.? (It was suspicions of that kind, however far removed from reality, that constrained the Fifth Review Conference at its resumed session in November 2002 and shaped the restrictive mandate of the new process for 2003-2005.)

Although not part of the new process, this approach converges with it on the need for "effective action". [\[5\]](#)? It does not cut across the five topics allocated to that process by the Fifth Review Conference or interfere with the corresponding Meetings of Experts and of States Parties.? These meetings can remain completely self-contained, if that is how the States Parties continue to interpret them, and subject to all the other restrictions of their November 2002 mandate. [\[6\]](#)

Yet implicit in this approach is the preference for a return in 2006 to the review process proper, with its accumulation of extended understandings, procedures and commitments, as the main vehicle (in the continued absence of a legally-binding instrument to strengthen the Convention such as the Ad Hoc Group was working towards from 1995 to 2001) for steering the constructive evolution of the BWC as a working multilateral treaty.

Why completion matters

Completion of the actions specified below by 26 March 2005 would have a positive psychological effect.? It would provide a common platform from which States Parties could move forward over the following 18 or 20 months to make a success of the Sixth Review Conference, with greater confidence than in the past decade (or even longer) that most of them are taking the BWC seriously.? Admittedly it would not tackle the gravest concerns over non-compliance with Article I.? But only a few States Parties (and we should be thankful that it is only a few) give rise to such concerns.? A much larger number fall short in terms of their attentiveness to those actions which remain the subject of politically-binding commitments.

At a time when BWC States Parties are prevented by external pressures from collectively

addressing the gravest concerns of non-compliance with Article I, let alone reinforcing the BWC with stronger compliance measures as a functional substitute for verification, some other index of serious commitment to the BWC is required.? Completion could be the index of commitment, particularly valuable in this era of regrettably limited expectations.? It would help stop the BWC going backwards and would get States Parties collectively into better shape for the next move forwards when external conditions allow that to happen.

Identifying agreed actions in need of completion

The 19 August 2003 proposal was to make 26 March 2005 the target date for completion of one particular agreed action: national implementing legislation.? This is something to which States Parties have long been collectively committed, and moreover to a certain standard of scope and effectiveness, as defined in Article IV and through the cumulative text of successive Final Declarations up to 1996.? These latter constitute an extended, and authoritatively stated, understanding of the implications of Article IV. [\[7\]](#) ? Much has been done (albeit not with the immediacy prescribed, by consensus, in 1980); but it needs completion.

The same can be said of the sharing of legislative and other relevant texts through the United Nations for purposes of consultation (Article IV), and of the call to non-parties to the Geneva Protocol to ratify or accede to that treaty (Article VIII).? They may have been expressed marginally less strongly in the language of Final Declarations than the insistence on immediate action just noted, but they were nevertheless agreed by consensus as actions which states deemed appropriate to exhort themselves to take as parties to the BWC.? These commitments, too, date from 1980 and still await completion. [\[8\]](#)

To these can be added the collective commitment to withdrawal of the remaining Geneva Protocol reservations on retaliation (Article VIII).? This is an extended understanding, authoritatively stated in 1991 and even more plainly and insistently in 1996, of the implications of Article VIII when combined with the irresistible logic of Article I.? Again, much has been done, but it needs completion, in this case by some of the major military powers as well as some less powerful states which have still not taken the necessary legal action to withdraw their reservations or even modify them for consistency with their BWC obligations. [\[9\]](#)

Confidence-building measures (CBMs)

CBMs have been awaiting completion since 1986 and, as enhanced and expanded, since 1991.? The great day was to have dawned on 15 April 1992.? That was the date by which every State Party should have communicated to the United Nations its initial declaration under each CBM of the 1991 set.? (Only eleven States Parties ? fewer than 10% - did so. [\[10\]](#)) Thereafter they were to be updated or reaffirmed ('no change') annually.

Here the 2005 target would be a 100% response rate on each CBM.? Admittedly, the CBMs vary in continuing importance and a 100% response rate is in itself no guarantee of quality: the information supplied may be so wide of the mark or full of gaps or lacking in precision (or even credibility)? that it engenders little confidence.?? But a 100% response rate is still something worth aiming for, as a common commitment to be fulfilled.? There is also a case for multilateral scrutiny of CBM returns to be properly organised among those States Parties which fulfil their CBM commitments, through a dedicated mechanism for such scrutiny, on an annual basis, as proposed at the Toronto Workshop on CBW (and other disarmament) Treaty Compliance Mechanisms in 1995. [\[11\]](#)

CBMs have been a politically-binding commitment agreed by the States Parties ever since 1986, and remain much the most-publicised of all their politically-binding BWC commitments.? So response rates are symbolically important, as the most readily available quantitative indicator of the seriousness with which States Parties take the BWC.

Moreover, given that nil returns and 'no change' answers are acceptable, there is little room for most States Parties to complain that CBM declarations are too onerous to make in the first place or too difficult to keep up to date having made their initial declaration under each CBM.

A pause for thought

Just think how much better shape the BWC would be in if, by 26 March 2005, every State Party had completed its national implementing legislation and shared the relevant texts through the UN,¹² had made returns up to date under each CBM, and had joined the Geneva Protocol; and if no State Party had any Geneva Protocol reservations on retaliation, intentionally or simply by default, still left in place.

How much else should be added?

So far five commitments of long standing (counting the CBMs as one commitment) have been identified.¹³ How much else should be added?? In particular, which actions already agreed under the Article III and Article X sections of the Final Declarations up to 1996 would provide the most reassurance to States Parties, or the best evidence that they are taking the BWC seriously, and would be manageable as lending themselves to completion in the time available?? As always in BWC diplomacy, any references to Article III and Article X would have to be carefully balanced with one another.

How much priority, if any, should be given to the unfinished business of 21 March 1980?? (25 years from which takes us almost exactly to 26 March 2005)? over the unfinished business of? 26 September 1986, 27 September 1991 and 6 December 1996?

For example, one commitment already identified from 1980 is contained in the second part of the following sentence from the Article VIII section of the Final Declaration, concerning the Geneva Protocol:

"The Conference calls on those States Parties to the Convention which are Parties to the Protocol to comply strictly with its provisions and those States not yet Parties to the said Protocol to ratify or accede to it at the earliest possible date."

This sentence illustrates well the difference between continuing actions of indefinite duration, on the one hand, and those which permit completion, on the other.¹⁴ To comply strictly with the provisions of the Geneva Protocol requires continual vigilance, especially the obligation "to exert every effort to induce other States to accede to the present Protocol", an obligation to which the BWC contains no equivalent.¹⁵ (Let us assume that for most Geneva Protocol parties it is easier, although of course even more important, to comply strictly with the obligation to refrain from the use of chemical or bacteriological methods of warfare.)

But for all States Parties to the BWC to ratify or accede to the Protocol is an action which can and should be completed.¹⁶ In 1980, when this commitment was agreed, there were 15 States Parties to the BWC (out of 87) which were not concurrently parties to the Protocol. ^[12] In 2003 there are 31 (out of 150). ^[13] (See Annex.)¹⁷ It would be reasonable to expect them all to have acceded to the Protocol? -? or, in the case of El Salvador, to have ratified its 1925 signature -? by 26 March 2005. So it has been included among the five commitments of long standing which await completion, as specified earlier in this paper.

However, a similarly politically-binding commitment to joining the Chemical Weapons Convention (CWC) is contained in the 1996 Final Declaration (paragraph 4 of the Article IX section), where

"The Conference calls upon all States that have not yet done so to sign and/or ratify the Convention without delay." ^[14]

This suggests a further item for the list of commitments which ought to be specified for completion by 26 March 2005, unless it is thought preferable to restrict it to those which have been outstanding the longest despite exhortations of immediacy (or "at the earliest possible date") as in the 1980 declaration.

On the one hand a long list of desired actions for completion is less likely to be fulfilled. On the other, a list of actions for completion which is itself incomplete may be open to criticism. It would, to continue with this example, be difficult to justify including the commitment to joining the Geneva Protocol but excluding the commitment to joining the CWC, just because (by 2005) the first of these commitments would be 25 years' old and the second only 8 years' old. Moreover, the commitment to joining the CWC is also related to the withdrawal of all Geneva Protocol reservations pertaining to retaliation, where (as in almost every case) such reservations make no distinction between BW and CW. There is a relationship of mutual reinforcement between the commitments to joining the Protocol and joining the CWC, and likewise between the commitments to joining the CWC and withdrawing reservations to the Protocol.

Convergence on a new agenda for recovery

The next section of this paper considers how this proposal might be taken forward. In terms of the analysis offered in *Disarmament Diplomacy* 70, the effort to make a reality of the 26 March 2005 target date would be a first test of any emergent grouping of like-minded states working together with the International Committee of the Red Cross (ICRC) and with non-governmental organisations (NGOs) as 'friends of the Convention' to promote its recovery.

Such a convergence of governmental, ICRC and NGO elements working on a new agenda for recovery was seen in *Disarmament Diplomacy* 70 as the best hope for extricating the BWC from the precarious state to which it was reduced by the successive blows it sustained in 2001 and 2002:

"The way out of the doldrums in which BWC diplomacy has got stuck will almost certainly involve a convergence of two new developments.

"One, which is already discernible but has not yet fully taken shape, is a civil society movement built around the BioWeapons Prevention Project (BWPP), which was launched in 2002. Some key civil society players are already active in the BWPP...Most importantly, potential partners include the medical and scientific communities and their professional associations, which could complement the Biotechnology, Weapons and Humanity initiative of the ICRC, with its distinctive emphasis on the humanitarian tradition in its repudiation of biological warfare.

"The other necessary development has not even started yet. A group of key, like-minded, states parties is needed, to take the lead in defining and promoting among governments a new agenda for the recovery of the BWC treaty regime. At the technical level this group could provide the core of a draft Final Declaration for 2006; at the political level it could encourage ever widening circles of states parties to set their sights for the Sixth Review Conference much higher than they did for the Fifth.

"This new like-minded group would need to span Groups (Eastern, Western, NAM) and regions of the world in order to be sufficiently broad-based and to attain global credibility and wide political acceptability...The group could begin to coalesce in the margins of the first Meeting of States Parties (10-14 November 2003). By that time the ICRC and BWPP initiatives will be a year old, and everyone will have had time to leave behind the prolonged crisis of the Fifth Review Conference, to complete their reflections on what went wrong in 2001-02, and to gather their thoughts for the future. The Geneva Forum and the Pugwash CBW Study Group, among others, could continue their valuable work in providing acceptable auspices under which to bring governmental and non-governmental people together in informal discussions where, as for some years past, ideas can be pooled and proposals refined which may steer the process of recovery." [\[15\]](#)

Since that article was written, the new process has seen its first Meeting of Experts (18-29 August 2003) spend a week apiece on topics (i) and (ii), and the corresponding Meeting of States Parties is imminent.? The BWPP and ICRC were active in the margins during the largely-closed Meeting of Experts (although most regrettably the ICRC was not accorded speaking rights as an international organisation at the opening plenary session when, on BWC Review Conference precedents [16], it was rightly expecting to be heard) and six NGOs [17] in addition to the BWPP were allowed to make statements in the conference room as they had requested.? However, nothing resembling a like-minded group seems to have emerged among the delegations of States Parties.? Whether one will emerge during the first Meeting of States Parties (10-14 November 2003) remains to be seen.? Some updating may therefore be needed, but the analysis and prescription offered in April/May 2003 remain (it is suggested) generally valid.

Conclusion

To conclude, then, it is proposed that the convergence of a like-minded group of governments with the ICRC and NGOs on a new agenda for recovery for the BWC still offers the best hope for 2006.? Setting 26 March 2005 as a target date for the completion of actions on an identifiable set of BWC commitments already agreed by consensus is not, in itself, part of a new agenda.? It has a deliberately more modest ambition: to consolidate, rather than to advance.? It should be politically uncontroversial, even welcome, in a climate where all States Parties find themselves invited repeatedly to demonstrate how seriously they take their allegiance to the BWC.? But it could well constitute a first test of the effectiveness of these convergent elements, occupying as it does? a central point in the three years' build-up from now to the Sixth Review Conference; and it could provide a common platform from which to move forward.

26 March 2005 falls on a Saturday.? A weekend conference, for which UNIDIR and a representative group of NGOs might (as for the 25th anniversary in 2000) provide acceptable auspices, could perhaps be held in Geneva or within easy reach of Geneva to attract the delegations of States Parties.

But it would be even better if the Secretary-General of the United Nations, or the BWC Depositaries, or another group of States Parties, felt able to take the initiative.? Such an opportunity deserves to be whole-heartedly embraced by governments.? It would be a great pity if they were to feel themselves to be precluded from marking this occasion by too narrow an interpretation of the limit to three weeks in each of the years 2003, 2004 and 2005 imposed in 2002.? The meetings which the Fifth Review Conference decided to limit by the 3 weeks x 3 years formula were by no stretch of the imagination celebratory in character.

This weekend conference on 26 and 27 March 2005 could fittingly celebrate thirty years of the BWC in force and at the same time recognise with satisfaction the completion of actions to which the States Parties committed themselves long ago.

.....
Address for correspondence:?????????? ????????????

Department of International Relations
London School of Economics and Political Science
Houghton Street
London WC2A 2AE
UNITED KINGDOM
e-mail: n.sims@lse.ac.uk

ANNEX

BWC States Parties which are not parties to the Geneva Protocol

One which has signed the Protocol (on 17 June 1925):?

El Salvador

Thirty which have neither signed nor ratified/acceded to the Protocol (in alphabetical order):

Armenia
Bahamas
Belize
Bosnia and Herzegovina
Botswana
Brunei Darussalam
Colombia
Congo
Costa Rica
Croatia
Democratic Republic of Congo
Dominica
Georgia
Honduras
Macedonia, Former Yugoslav Republic of
Mali
Oman
Palau
San Marino
Sao Tome and Principe
Seychelles
Singapore
Slovenia
Suriname
Timor-Leste
Turkmenistan
Ukraine
Uzbekistan
Vanuatu
Zimbabwe

For interest there are 14 States Parties to the Geneva Protocol which are not parties to the BWC.? Nine of these are signatory-only (Central African Republic, Cote d'Ivoire, Egypt, Liberia, Madagascar, Malawi, Nepal, Syria, Tanzania) and the remaining five have neither signed nor ratified/acceded to the BWC (Angola, Cameroon, Israel, Sudan, Trinidad and Tobago).

[1] London School of Economics and Political Science, Statement by Nicholas A. Sims, available on the Bradford website:

<http://www.brad.ac.uk/acad/sbtwc>

[2] Nicholas A. Sims, 'Biological disarmament in the doldrums: reflections after the BWC Fifth Review Conference?', *Disarmament Diplomacy* 70 (April/May 2003), pp. 11-18.

[3] BWC/CONF.1/10 (21 March 1980).

[4] Final Declarations of BWC Review Conferences:

BWC/CONF.1/10 (21 March 1980).

BWC/CONF.II/13/II (26 September 1986).

BWC/CONF.III/23 (Geneva 1992).? The Final Declaration had been adopted as BWC/CONF.III/22/Add.2 on 27 September 1991.

BWC/CONF.IV/9, 6 December 1996.

[5] BWC/CONF.V/CRP.3 (6 November 2002).

- [6] CRP.3 was adopted on 14 November 2002 as the Decision of the Fifth Review Conference and forms part of the Final Document, BWC/CONF.V/17. (There was no Final Declaration.)
- [7] Graham S. Pearson and Nicholas A. Sims, 'Maximizing the benefits of the inter-review process: 1. national implementing legislation?', in Graham S. Pearson and Malcolm R. Dando (eds.), Strengthening the Biological Weapons Convention, Briefing Paper (Second Series) No.6, July 2003: available on the Bradford website (see note 1 above).
- [8] For detailed commentary on the First Review Conference and the origins of these commitments, see Nicholas A. Sims, The Diplomacy of Biological Disarmament: Vicissitudes of a Treaty in Force, 1975-85 (London: Macmillan; New York: St Martin's Press, 1988), especially pp. 136-139.
- [9] Nicholas A. Sims, The Evolution of Biological Disarmament (Oxford: Oxford University Press for SIPRI, 2001) pp. 152-162.
- [10] Included in UN Doc. DDA/4-92/BWIII (30 April 1992).? See Sims (2001), pp. 73-74.
- [11] [Toronto Workshop 1995] Nicholas A. Sims, 'Strengthening compliance systems for disarmament treaties: the Biological and Chemical Weapons Conventions?', in Canadian Council on International Law and The Markland Group (eds.), Treaty Compliance: Some Concerns and Remedies (London, The Hague & Boston: Kluwer Law International, 1998) p.136.
- [12] Sims (1988) p. 139.
- [13] SIPRI Yearbook 2003 (Oxford: Oxford University Press, 2003), list of States Parties to the Geneva Protocol on p.766 and to the BWC on p.775.
- [14] Accession ? which would now for most states be the appropriate action ? was not included at this stage because the CWC did not enter into force until 29 April 1997, although by the time of the declaration the 65th instrument of ratification had been deposited (triggering entry into force after 180 days) so the date of the CWC's imminent entry into force was known with certainty.
- [15] The quotation is from pp. 16-17 of the Disarmament Diplomacy 70 article (see note 2 above).
- [16] The precedent of an ICRC statement delivered at the opening plenary session had been set on 16 November 1996 by the BWC Fourth Review Conference and followed (with a statement later in the General Debate) by the Fifth Review Conference on 20 November 2001.? But there had recently been an indefensible denial of speaking rights to the ICRC throughout the General Debate (28 April ? 1 May 2003) in plenary session of the Chemical Weapons Convention First Review Conference at The Hague.
- [17] The other six NGOs which addressed the Meeting of Experts on 19 August 2003 comprised the Federation of American Scientists, the Stockholm International Peace Research Institute, the Verification Research, Training and Information Centre (VERTIC), and three universities: Bradford (Department of Peace Studies), London School of Economics and Political Science (Department of International Relations) and Maryland (Center for International Security Studies Maryland: CISSM).? For a full listing of IGO and NGO activities at the August 2003 Meeting of Experts, see Graham S. Pearson, 'The Biological Weapons Convention new process?',? CBW Conventions Bulletin, No. 61 (September 2003), pp. 8-14, at pp. 11-12.