

Tuesday 17th January 2023

The Final Document of the Review Conference and some reflections

The Final Document of the Ninth Review Conference for the 1972 Biological and Toxin Weapons Convention (BWC/BTWC) was adopted on the last day of the Conference – Friday 16 December 2022. The closing stages of the Conference are discussed in report 16 of this series.

Unlike comparable outcome documents from recent BWC Review Conferences, this one only has two parts. On the last day the President, Ambassador Leonardo Bencini (Italy), announced that the Solemn Declaration and article-by-article review which would normally form part II of the Final Document had been dropped as there had been no consensus on the contents. An advance copy of the Final Document is on the Review Conference website at <https://meetings.unoda.org/bwc-revcon/biological-weapons-convention-ninth-review-conference-2022>.

Part I – Organization of the Conference

Part I of the Final Document is often referred to as the procedural report as it primarily factual. This does not mean it is not without divergence of views. However, given the desire to reach consensus on the substantive parts, some aspects were not revisited, such as the list of participating delegations and whether at least one delegation might have wanted to publicly register that it did not recognise all BWC members as states. Another is the announcement that Russia was going to form a regional group of one state – the procedural report simply ‘notes’ the Russian announcement without comment.

Part II – Decisions and recommendations

The main aspects of this part of the document are annual Meetings of States Parties (MSPs), the creation of a ‘Working Group on the strengthening of the Convention’ (WG) and the enhancement of the BWC Implementation Support Unit (ISU)

The three-day MSP would oversee the activities of the WG each year and be responsible for managing the inter-sessional programme. The 2023 meeting is to be chaired by a member of the non-aligned group.

The aim of the WG is ‘to identify, examine and develop specific and effective measures, including possible legally-binding measures, and to make recommendations to strengthen and institutionalise the Convention in all its aspects, to be submitted to States Parties for consideration and any further action. These measures should be formulated and designed in a manner that their implementation supports international cooperation, scientific research and economic and technological development, avoiding any negative impacts.’ The WG has been allocated 15 days of meeting time each year from 2023 to 2026, but is encouraged to complete its work before the end of 2025. There are provisions for a Special Conference to be called to decide on further actions if needed. The issue areas to be covered are specified as international cooperation and assistance under Article X; scientific and technological (S&T) developments relevant to the Convention; confidence-building and transparency; compliance and verification; national implementation of the Convention; assistance, response and preparedness under Article VII; organizational, institutional and financial arrangements.

The ISU mandate is renewed until 2027 and an additional staff member can be appointed for this duration although the document is not specific about the tasks to be allocated to the new staff member.

The scheduled dates for BWC meetings during 2023 are: WG organizational meeting – 15-16 March; WG substantive meetings – 7-18 August and 4-8 December; and MSP – 11-13 December.

Proposed elements that are missing from the Final Document

As well as what would normally be part II of the Final Document, noted above, there were a number of other elements missing. Perhaps the most significant is any substance on the processes that will be established for the review of S&T developments and the promotion of international cooperation under Article X. Other aspects which have had broad support ended up being removed in an attempt to reach consensus included creation of an Article VII database, endorsement of the Tianjin Guidelines, and any reference to gender issues.

Reflections on the Final Document and future activities

In line with the chapeau given in report 16 of this series, the following are some personal reflections that do not necessarily represent anyone's views other than the author's own.

The loss of the Solemn Declaration as the overarching political statement from the Review Conference is perhaps more important than the loss of the article-by-article review. The articles were reviewed at both the substantive PrepCom as well as at the Review Conference, although there was little public discussion at the Conference on Articles V and VI which were the focus of much divergence of perspectives following the Russian allegations about US-funded laboratories in Ukraine. It was hard to see where common ground on a statement on Article VI could have been found, particularly as beyond Russia's closest political allies there were no expressions of support for the substance of that country's allegations.

The establishment of the WG is a significant step forward, but may come with the basic problem that kicking key decisions down the road usually has – will the difficulties in reaching consensus at the Review Conference be replicated in the WG? This will be particularly important now the WG is tasked with fleshing out the structures and functions of the S&T review and Article X processes – both of which will be time consuming and are areas where consensus could not be achieved at the Conference.

Nevertheless, having the WG primed to discuss possible compliance activities that could be agreed for the BWC is perhaps the most significant step forward. There will be many (this author included) who believe that the optimum outcome from any process started by the WG would be a legal instrument containing enforceable compliance measures, based on effective verification activities, that run alongside measures to strengthen the Convention in all of its aspects. This will raise questions about whether it is worth returning to either of the draft texts for a Protocol that were in use by the Ad Hoc Group (AHG) during 2001 – the 'rolling text' BWC/AD HOC GROUP/56-I and the 'composite text' BWC/AD HOC GROUP/CRP.8. By rejecting the work of the AHG, the USA implicitly rejected both of these texts. The process for putting together the composite text had been rejected by a number of non-aligned states parties in their statement in BWC/AD HOC GROUP/WP.451. Both of the AHG texts embodied compromises made at the time in efforts to move towards consensus, but the logic of some of these compromises would not be replicated in current circumstances. On the other hand, there are many working papers from the AHG which have retain their relevance; for example, the papers by South Africa, written as a Friend of the Chair, on the subject of distinguishing deliberate events from naturally occurring disease outbreaks contain useful material pertinent to any future negotiations on compliance measures.

This is the seventeenth (and final) report from the Ninth BWC Review Conference (28 November-16 December 2022). These have been produced for all BWC meetings with NGO registration since the Sixth Review Conference (2006) by the BioWeapons Prevention Project (BWPP). They are available from <<https://www.bwpp.org/reports.html>> and <<https://www.cbw-events.org.uk/bwc-rep.html>>. A subscription link is available on each webpage. Financial support for these reports has been gratefully received from Global Affairs Canada. The reports are written by Richard Guthrie, CBW Events, who is solely responsible for their contents <richard@cbw-events.org.uk>.