

The Biological Weapons Convention

D. Feakes

Biological Weapons Convention Implementation Support Unit, United Nations Office for Disarmament Affairs, Geneva Branch, Palais des Nations, 1211 Geneva 10, Switzerland
E-mail: dfeakes@unog.ch
The views expressed herein are those of the author and do not necessarily reflect the views of the United Nations

Summary

The Biological Weapons Convention (BWC) was the first international treaty to effectively prohibit an entire category of weapons of mass destruction. In its Preamble, the BWC clearly affirms the norm against the use of biology as a weapon by stating that such use would be 'repugnant to the conscience of mankind'. Few would dispute the strength of the norm against biological weapons, but the BWC itself, as the legal and widely accepted embodiment of this norm, requires continuous support and attention. Even after 40 years, it is not yet universal and its implementation is less than satisfactory. However, the treaty, and particularly the annual meetings of its States Parties in Geneva, have served as a venue in which all relevant stakeholders can come together to share information, experience and expertise and develop common understandings at the global level. In recent years, these meetings have been attended by a wide range of experts from national, regional and international entities from the public, private and civil sectors. International organisations such as the World Organisation for Animal Health, the Food and Agriculture Organization of the United Nations and the World Health Organization have been regular participants in the BWC meetings and their contributions are much appreciated by BWC States Parties. Cooperation and collaboration at the international level is also vital in facing the threats posed by the misuse of biological agents against humans, animals or plants. However, the recent Eighth BWC Review Conference was only able to find agreement on a small number of issues, which could put into question the role the BWC should play in countering biological threats in the future.

Keywords

Biological weapon – Biological Weapons Convention – Biosecurity – Bioterrorism – Weapon of mass destruction.

Introduction

As a result of multilateral negotiations that took place in the Conference of the Committee on Disarmament in Geneva from 1969 to 1972, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, better known as the Biological Weapons Convention (BWC), opened for signature on 10 April 1972. The BWC was the first multilateral disarmament treaty to ban the production and use of an entire category of weapons. It entered into force on 26 March 1975. In the years since then, increasing numbers of states have joined the Convention and it currently has 178 States Parties. A further six states have signed the Convention but are yet

to ratify it, while the remaining 12 states that the United Nations acknowledges as being eligible to join international treaties have neither signed nor ratified the Convention (1). The BWC effectively prohibits the development, production, acquisition, transfer, stockpiling and use of biological and toxin weapons and is a key element in the international community's efforts to address the proliferation of weapons of mass destruction.

Key provisions of the Convention include binding obligations on its States Parties to:

- never under any circumstances acquire or retain biological weapons (Article I)
- destroy or divert to peaceful purposes biological weapons and associated resources (Article II)

- not transfer biological weapons and not, in any way, assist, encourage or induce anyone else to acquire or retain such weapons (Article III)
- take any national measures necessary to implement the provisions of the BWC domestically (Article IV)
- consult bilaterally and multilaterally to solve any problems with the implementation of the BWC (Article V)
- request the United Nations (UN) Security Council to investigate alleged breaches of the BWC and to comply with its subsequent decisions (Article VI)
- assist States Parties which have been exposed to danger as a result of a violation of the BWC (Article VII)
- do all of the above in a way that protects and encourages the peaceful uses of biological science and technology (Article X).

Unlike similar regimes, for example the Chemical Weapons Convention, the BWC is not overseen by an international organisation and it does not include a system for verifying States Parties' compliance with its provisions. Such elements were not able to be agreed at the time that the Convention was negotiated during the Cold War, and an attempt to negotiate them subsequently did not succeed. However, the Convention does codify a very strong global norm against the development and use of biological weapons. As the Preamble of the Convention states, the use of biological weapons would be 'repugnant to the conscience of mankind'. Importantly, the Convention provides a comprehensive ban on biological agents or toxins that are harmful not only to humans, but also animals and plants. It is testament to the widespread acceptance of this norm that no country today identifies itself as possessing or seeking biological weapons and none argues that biological agents are legitimate weapons of war. The concept of deliberately using disease as a weapon of war has been thoroughly delegitimised. However, the norm needs to be nurtured and maintained, and attention needs to be paid to advances in science and technology and changes in the nature of terrorism and armed conflict which could have the potential to undermine the norm against biological weapons.

The World Organisation for Animal Health (OIE) has regularly participated as an Observer Agency in recent BWC meetings and its contribution was acknowledged by the Eighth BWC Review Conference in November 2016. The Review Conference also recognised the role that the OIE could play, together with States Parties and other relevant international organisations, in responding to the alleged use of biological weapons, and acknowledged the importance of working with the OIE, and other international organisations, with respect to infectious diseases and disease surveillance. These areas will likely be matters for further exploration in the coming years.

Implementing the Biological Weapons Convention

National implementation

As with many international agreements, it is not enough for states to simply join the BWC. The text of the Convention itself, in Article IV, requires each State Party to take any necessary national measures to prohibit and prevent the development, production, stockpiling, acquisition or retention of agents, toxins, weapons, equipment and means of delivery by anyone under its jurisdiction, as well as parallel measures to prohibit and prevent encouraging, inciting or assisting others in any of these acts. The precise details of what measures are necessary to accomplish such a complicated task have been left to the discretion of individual States Parties. Different national circumstances and legal systems will necessitate different approaches to implementing the provisions of the Convention. However, national implementation of the Convention is essential. As a former US diplomat, Charles Flowerree, said: 'The means by which these agreements survive and adapt to changing conditions after they enter into force deserve as much attention as the negotiations that produced them in the first place. They cannot be left simply to fend for themselves' (2). National implementation has therefore been discussed by States Parties on a regular basis since 2002.

Reviewing science and technology

According to Article XII, when reviewing the operation of the Convention at Review Conferences every five years, BWC States Parties are specifically required to 'take into account any new scientific and technological developments relevant to the Convention'. Developments in science and technology are important for the BWC, as they can impact on its implementation and can also have implications for the threats posed by biological weapons. For example, advances which make the production or dissemination of biological agents easier could make the acquisition, development and use of biological weapons more likely. Conversely, scientific and technological advances can also bring benefits, for example by creating new or improved methods of detecting and defending against biological weapons. At the recently concluded Eighth BWC Review Conference, States Parties recognised that, 'while recent scientific and technological developments in the field of biotechnology would increase the potential for cooperation among States Parties and thereby strengthen the Convention, they could also increase the potential for the misuse of both science and technology' (3). There has been much discussion among States Parties in recent years as to whether reviewing such advances only every five years is adequate, given the increasingly rapid pace of advances in biology and related fields. One expert compares the situation to 'watching a movie and seeing

only five minutes of the film every thirty minutes' (4). From 2012 until 2015, selected scientific topics were discussed at annual BWC meetings and proposals were made prior to the Eighth Review Conference for new enhanced mechanisms to review science and technology, such as the establishment of a scientific advisory committee or a working group. However, none of these proposals was adopted by the Review Conference.

Promoting international cooperation

While it is primarily a security treaty, with its main objective being the elimination of biological weapons, the BWC also includes a commitment to promoting the peaceful uses of biology. Under Article X of the Convention, States Parties 'undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes'. In addition to this 'promotional' aspect, Article X also contains a 'regulatory' aspect whereby it states that the BWC 'shall be implemented in a manner designed to avoid hampering the economic or technological development of States Parties'. The importance of Article X has increased over the years, particularly for developing countries, and at the Eighth Review Conference it was described as the 'first priority' of States Parties belonging to the Group of the Non-Aligned Movement and Other States (one of the BWC's three regional groups, the others being the Western Group and the Eastern European Group) (5). Developed states have also recognised the importance of Article X and have submitted documents listing relevant activities that they undertake. The Seventh Review Conference in 2011 established a database (the Cooperation and Assistance Database) to facilitate the exchange of requests for, and offers of, assistance and cooperation among States Parties. This database is designed to match offers of assistance with requests for assistance, thereby allowing States Parties to make arrangements for collaboration. The requests and offers of assistance in the database relate to a wide range of activities, including building capacity, disease surveillance and biological risk management. Since the Seventh Review Conference, 30 requests for assistance have been made by six States Parties, while there were 64 offers of assistance submitted by eight States Parties and two groups of States Parties, namely the European Union and the Australia Group (a group of 41 countries that harmonise their national export controls on biological and chemical materials and equipment).

Providing assistance if biological weapons are used

Article VII requires BWC States Parties to provide or support assistance to any Party which so requests it, if the UN Security Council decides that it has been exposed

to danger as a result of a violation of the Convention, for example through the use of biological weapons. This provision has not been invoked since the entry into force of the BWC in 1975. However, much more attention has been paid to Article VII in recent years, particularly as there is growing evidence of terrorist interest in acquiring biological weapons. In particular, States Parties are considering their readiness to respond to an attack. Several high-level reports after the Ebola outbreak in West Africa in 2014/2015 have identified multiple weak points in the international response framework for dealing with pandemic diseases (6); as such gaps could also negatively affect the international response effort in the case of biological weapons use, BWC States Parties have closely examined the lessons learned from the outbreak. At the Eighth Review Conference, States Parties underlined the importance of rapid detection and prompt, effective and coordinated response in addressing outbreaks of infectious diseases, and recognised that such considerations would also be relevant in the event of alleged use of biological weapons, which may pose additional challenges. The Review Conference agreed that the UN and other international organisations (including the OIE) could also play an important role in coordinating, mobilising and delivering the required support and assistance and noted the need for a procedure by which timely emergency assistance could be provided.

Current status of the Biological Weapons Convention

Intersessional work programmes, 2003–2015

The failure in 2001 of negotiations to strengthen the BWC, through a protocol which would have created an international organisation with a verification system, led to States Parties taking a different approach to the strengthening of the Convention. Since 2002, intersessional work programmes have been developed between each Review Conference. While initially seen as an interim measure, and still seen as such by some today, these work programmes consist of a series of annual meetings at both the technical and political levels. From 2003 to 2005, the annual technical meetings were two weeks in length, whereas in the subsequent two programmes (2007–2010 and 2012–2015, respectively) they were reduced to one week per year. In the first and second work programmes, specific topics were addressed in particular years, whereas from 2012 to 2015 'standing' agenda items were introduced whereby the same topics were addressed every year in order to encourage continuity and foster longer-term approaches. The fundamental purpose of the annual meetings, namely to 'discuss, and promote common understanding and effective action' on the topics selected for consideration, remained unchanged from 2003 until 2015. The annual meetings themselves were not

mandated to adopt decisions, a prerogative retained only by the Review Conferences which considered the outcomes from each work programme in 2006, 2011 and 2016.

Over the years from 2003 to 2015, the annual technical meetings in particular played a useful role as spaces in which the full range of stakeholders involved in BWC implementation at the international, regional and national levels could participate, exchange information and interact with one another. Many international organisations, including the OIE, participated in the meetings, frequently making presentations and briefing participants on their relevant activities.

The longstanding institutional deficit of the BWC was partially addressed by the Sixth Review Conference in 2006, which agreed to create an Implementation Support Unit (ISU) for the BWC whose mandate would last until the Seventh Review Conference in 2011, at which time the ISU's activities would be reviewed. The ISU consists of three full-time staff members, housed within the Geneva branch of the United Nations Office for Disarmament Affairs, and is funded by all States Parties to the Convention. The unit has an administrative function, but is also tasked with assisting efforts to encourage the universal adoption of the Convention and with providing support to States Parties as they implement the decisions and recommendations of the Review Conferences. In 2011, the Seventh Review Conference renewed the mandate of the ISU until the Eighth Review Conference in 2016, at which time it was decided to renew the mandate for a further five years until the Ninth Review Conference in 2021.

Implementation issues

While much has been achieved since 2003, the view is widely held that BWC implementation is not as comprehensive and effective as it should be, given the potential risks posed by biological weapons. Many States Parties argue that the best way to further strengthen the BWC would be to revive efforts to negotiate a comprehensive legally binding instrument to complement the Convention. Some States Parties also argue for much more attention to be paid to Article X and the issues relating to economic and technological development. Other States Parties argue that a greater focus should be placed on assessing compliance with the BWC and on improving ways in which to monitor developments in science and technology. Alongside these high-level debates about the future of the BWC, there are more practical implementation issues. In his opening statement to the Eighth BWC Review Conference, Mr Kim Won-soo, UN Under-Secretary-General for Disarmament Affairs, identified four 'gaps' in relation to BWC implementation (7). First, a 'universality gap': while a majority of states have joined the BWC, 178 so far, there are still 18 states that have not yet done so. This is much higher than the number of states still to join the Chemical

Weapons Convention or the Nuclear Non-Proliferation Treaty. Second, Mr Kim identified an 'implementation gap'. For example, a recent report assessed that 'there are significant quantitative gaps in States Parties' implementing measures for the Convention; many States have yet to adopt necessary measures to give effect to certain obligations' (8). There is also a lack of concrete activities to promote peaceful uses of biology, as compared to other similar treaties. Third, Mr Kim referred to a 'response gap', stating that it is still not clear how or through what mechanisms States Parties would react and respond in the event of a biological attack. The Ebola response showed the importance of international coordination and how much still needs to be done. Finally, Mr Kim said that each of these issues is underpinned by what he called an 'institutional gap'. He said that, compared to the other major disarmament treaties, the BWC is a 'skeleton operation'. Its meetings, especially those enabled to take decisions, are infrequent and its minimal institutional support structure cannot meet all of the demands placed on it. Furthermore, Mr Kim highlighted the fact that several States Parties have not paid their contributions to the BWC budget.

The Eighth Review Conference

Article XII of the BWC mandates that the Review Conference should review the operation of the BWC, taking into account relevant scientific and technological developments. States Parties have striven to ensure that the Convention remains relevant and effective, despite the changes in science, technology, politics and security since it entered into force. States Parties have decided that these reviews, like the reviews of other disarmament treaties, should occur at five-year intervals. There was a slightly extended interval between the first and second conferences, which were held in 1980 and 1986, respectively, but since then, conferences have taken place in 1980, 1986, 1991, 1996, 2001 (the conference was suspended and resumed again in 2002), 2006, 2011 and, most recently, in 2016. In recent years, two main functions of the Review Conference have evolved – to undertake a 'backwards-looking' review of the operation of the BWC over the preceding five years, and to agree a 'forward-looking' set of activities for the next five years. This structure was reflected in the final documents agreed by the Review Conferences in 2006 and 2011.

The Eighth Review Conference convened in Geneva in November 2016 and was presided over by Ambassador György Molnár of Hungary. Unlike previous Review Conferences, which were preceded by a single Preparatory Committee meeting, this conference was preceded by a strengthened preparatory process which consisted of two meetings of the Committee, one from 26 to 27 April and the other from 8 to 12 August. Another innovation was that the Preparatory Committee considered both procedural and substantive issues ahead of the Review Conference.

The intention behind this innovation was for substantive preparations to take place prior to the Review Conference in order to maximise the chances of a successful outcome at the conference itself.

Participation in the Review Conference was the highest ever for a BWC meeting, with representatives from 124 States Parties, four Signatory States and two states not party to the Convention. The number of working papers submitted by delegations was much higher than at previous Review Conferences – 44 in 2016 compared with 29 in 2011 and 39 in 2006. This was in addition to the 39 working papers submitted to the Preparatory Committee earlier in 2016 and reflected the high level of interest in the BWC and the high level of preparatory work undertaken by States Parties for the Review Conference. In addition to these formal preparations, a series of informal preparatory meetings had also taken place. Four regional workshops, supported by the European Union, Canada, Norway and the International Law and Policy Institute, were hosted by the African Union, Brazil, India and Kazakhstan. In addition, Canada, China and the ISU organised an international workshop in China, in which the OIE participated, and informal meetings were also held in the United Kingdom and in Geneva itself. Given the extensive formal and informal preparations, expectations for the Review Conference were high and many States Parties had developed substantive proposals for the intersessional period up to the Ninth Review Conference in 2021.

Despite these high expectations, deliberations at the Review Conference were actually protracted and there were few topics on which States Parties could agree, other than the outcome document agreed at the previous Review Conference in 2011. While States Parties did perform the required 'backwards-looking' review of the operation of the Convention since 2011, much of the agreed text was simply copied verbatim from the final document of the Seventh Review Conference. With respect to the 'forward-looking' agenda of the Review Conference, the outcome was even more disappointing. Based on consultations during the Review Conference, the President tabled a proposal for a shake-up of the intersessional programme. He suggested replacing the five-day Meeting of Experts with a ten-day period in which four 'open-ended working groups' (on implementation, cooperation and preparedness, science and technology, and assistance) would meet (9). An annual Meeting of States Parties (MSP) would continue as before, with a duration of five days. The President also proposed that the Working Groups would reach any conclusions or recommendations by consensus and that the MSP would be authorised to consider and take action on such recommendations. Finally, the President proposed extending the mandate of the ISU for another five years and also expanding its staff with the addition of two posts.

Despite hard work and extensive consultations, States Parties could not agree on this proposal or suggested alternatives. Agreement could only be reached on a 'minimal' package comprising a renewed mandate for the ISU and one annual MSP, albeit without a substantive agenda. The first such meeting will take place in December 2017 and will have a mandate to 'seek to make progress on issues of substance and process for the period before the next Review Conference, with a view to reaching consensus on an intersessional process' (10). At the time of writing it is not yet clear what it will be possible to achieve at the meeting in December 2017. A lot will depend on the informal preparations that will be conducted during the course of 2017, presumably under the guidance of the chairperson of the meeting, Ambassador Amandeep Singh Gill of India.

The future

While many States Parties and observers of the BWC expressed disappointment at the outcome of the Eighth Review Conference, it should be recalled that a treaty's implementation should not be assessed only in terms of the success or failure of diplomatic meetings. Indeed, it was apparent from the Review Conference and the preparatory work undertaken that much activity is actually under way at the national and regional levels. According to one expert, 'great progress is being made with the implementation [of the Convention] (and its norm against the weaponisation of disease and the life sciences) on the local and regional levels, even if the lack of outcomes at meetings in Geneva can be the source of intense frustration' (11). Much work was done in preparation for the Review Conference, with more than 80 working papers submitted to the Preparatory Committee and Review Conference and six regional or international workshops convened. This body of work, including the discussions that took place during the Review Conference itself, is documented and can continue to be drawn upon. Whether further steps can be agreed at the MSP in December 2017 will depend on whether or not the differences that emerged at the Eighth Review Conference can be bridged, and any progress will inevitably require the building of a broad-based consensus.

In the longer term, it is important that the outcome of the Eighth Review Conference does not lead to a further reduction in the political attention paid to the BWC. One expert has described the BWC as 'the most important arms control treaty of the twenty-first century' (12). The growing importance of the life sciences in advancing public health and sustainable development makes it vital to prevent their misuse to inflict harm and death. However, the globalisation of knowledge and the wider access to information and equipment mean that prevention is more challenging. The BWC is the only multilateral and comprehensive forum in which issues relating to the use and misuse of the life

sciences can be discussed, and therefore suggestions that it is 'irrelevant' should be countered, as should developments which serve to fragment its comprehensive scope. Although it lacks a strong central agency, the BWC can continue to serve as 'a crucial keystone among numerous instruments and initiatives in our collective defences against poisoning and deliberate disease' (13). It is therefore important that States Parties continue to support activities that highlight the BWC as a 'living' treaty, for example the promotion

of universalisation to encourage more States to join the BWC, the improvement of the Cooperation and Assistance Database and activities in support of provisions of the BWC that relate to practical issues, such as international cooperation, national implementation and preparedness and response.

La Convention sur les armes biologiques

D. Feakes

Résumé

La Convention sur les armes biologiques (BWC) est le premier traité international à avoir interdit toute une catégorie d'armes de destruction massive. Dans le préambule de cette Convention, les États parties affirment clairement le principe de l'exclusion de la possibilité d'utiliser des agents biologiques en tant qu'armes, soulignant que la conscience de l'humanité réprouverait une telle utilisation. Si l'importance du principe d'exclusion des armes biologiques n'est guère contestée, la Convention elle-même, en tant que traduction juridique concrète et largement acceptée de ce principe nécessite une attention et un soutien continus. Quarante ans après sa signature, son application n'est toujours pas universelle et reste insatisfaisante. Toutefois, le traité et plus particulièrement les réunions des États parties à la Convention qui sont célébrées chaque année à Genève offrent à l'ensemble des parties concernées l'occasion d'échanger et de mettre en commun leurs informations, leur expérience et leur expertise afin de contribuer à une entente sur ces questions à l'échelle mondiale. Depuis quelques années, ces réunions ont accueilli de nombreux experts d'horizons variés, issus d'organismes nationaux, régionaux et internationaux des secteurs tant public que privé mais aussi de la société civile. Diverses organisations, dont l'Organisation mondiale de la santé animale, l'Organisation des Nations Unies pour l'alimentation et l'agriculture et l'Organisation mondiale de la santé participent régulièrement aux réunions de la Convention et leurs contributions sont fortement appréciées par les États parties à la Convention. La mise en place d'une coopération et d'une collaboration à l'échelle internationale est également essentielle pour faire face aux menaces posées par l'utilisation abusive d'agents biologiques contre les humains, les animaux ou les plantes. Néanmoins, lors de la huitième Conférence d'examen des États parties à la Convention qui s'est tenue récemment, ceux-ci n'ont pu s'accorder que sur un nombre limité de questions, ce qui pourrait remettre en cause le rôle déterminant de la Convention pour contrecarrer les menaces biologiques à l'avenir.

Mots-clés

Arme biologique – Arme de destruction massive – Biosécurité – Bioterrorisme – Convention sur les armes biologiques.

La Convención sobre Armas Biológicas

D. Feakes

Resumen

La Convención sobre las Armas Biológicas fue el primer tratado internacional por el que toda una categoría de armas de destrucción masiva quedó efectivamente prohibida. En su Preámbulo queda claramente fijado el principio según el cual todo uso de la biología como arma es algo que «repugna a la conciencia de la humanidad». Aunque pocos tendrían algo que objetar a la autoridad de un principio que condena el uso de armas biológicas, la Convención en sí misma, como materialización jurídica y ampliamente aceptada de tal principio, exige atención y apoyo permanentes. Aun después de 40 años, sigue sin revestir carácter universal, y su aplicación dista de ser satisfactoria. Pese a todo el tratado, y en especial las reuniones anuales que se celebran en Ginebra como parte de su aplicación, han servido de cauce para que todas las partes interesadas puedan reunirse, intercambiar información, experiencias y conocimientos técnicos y encontrar un terreno de entendimiento común a escala mundial. En los últimos años, a esas reuniones han acudido muy diversos expertos de entidades nacionales, regionales e internacionales de los sectores público y privado, así como de la sociedad civil. Organizaciones internacionales como la Organización Mundial de Sanidad Animal, la Organización de las Naciones Unidas para la Alimentación y la Agricultura y la Organización Mundial de la Salud han participado regularmente en las reuniones de los Estados partes en la Convención, que han acogido muy positivamente sus aportaciones. La cooperación y la colaboración internacionales también son imprescindibles para hacer frente a la amenaza derivada del uso indebido de agentes biológicos contra personas, animales o plantas. En la Octava Conferencia de Examen de la Convención, sin embargo, que tuvo lugar en fechas recientes, solo hubo acuerdo en torno a muy contadas cuestiones, lo que podría poner en entredicho la función que la Convención debe cumplir en el futuro para conjurar las amenazas biológicas.

Palabras clave

Arma biológica – Arma de destrucción masiva – Bioterrorismo – Convención sobre las Armas Biológicas – Seguridad biológica.



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