

**SSPC Dialogue:** *initiating discussion on issues of our time*

# **Biological and Toxin Weapons Convention (BTWC)**

## **Three Decades and Still Moving Forward**

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**SSPC DIALOGUE**

**1. Would you say few words on BTWC and future prospects on its thirty years of existence?**

**Angela Woodward:** I would say that the BTWC is an international legal instrument, which States have joined of their own free will and, as such, they are under a strict obligation to implement and enforce it to the best of their ability. Any structures that are necessary to assist them to do so should be established immediately (for the provision of technical cooperation and capacity-building assistance). Any other structures or systems necessary to ensure that they are complying with this agreement must also be established. In this respect, I mean a verification system.

However, I sometimes view the BWC as a pawn of international politics. States parties will only support the treaty if it is in their interest and will only implement it (despite their legal obligation to do so), if they have something to gain by doing so (moral authority, preventing BW attack by terrorist or state actors, safeguarding dangerous pathogens etc). But in order to be able to assess whether they are actually gaining anything by complying with the treaty, they need to be able to determine whether other states are complying, which requires a verification system. Without a verification system, this treaty cannot fulfill its promise over the next thirty years and beyond.

Nevertheless, the BTWC remains the cornerstone of the BW prevention regime and states must give it the resources it needs to work as effectively as it can and should do.

**Jean Pascal:** While the BTWC remains the single most important international expression of the norm against biological weapons, it is currently in very serious danger of becoming obsolete. Among these developments were:

- the transformation of the bipolar world system into initially multipolar and later unipolar one;
- the rapid expansion of biology and biotechnology as a major source of scientific, industrial and societal development involving a fluid complex of small companies whose operations are based on an extremely limited number of patents and venture capital and who are not organized in large overall industry organizations.

Furthermore, they are unfamiliar with verification and inspection procedures, which contributed to their fears regarding loss of propriety information and the threat such loss might mean for the future of the company;

- the controversial outcome of the so-called trilateral process in 1994 as an effort by the co-depositaries of the BTWC to determine Russia's compliance with the convention, which illustrated how the reputation of private companies could be seriously damaged by false allegations of involvement in illicit BW programmes;
- the establishment and operation of the Preparatory Committee of the Organisation for the Prohibition of Chemical Weapons (OPCW) in 1993, in which the debates on contentious issues like verification, compliance and technology transfers became institutionalized. There would be an increasing interaction between the outcomes of the debates between the OPCW in The Hague and the Ad Hoc Group in Geneva and vice versa;
- the growing realization of the importance of domestic legislation and national implementation of disarmament treaties following the entry into force of the CWC in 1997;
- the emergence of new actors in the security debate, such as terrorist and criminal entities, raised questions about the relevance of international agreements in achieving and maintaining security;
- the growing doubts about the verifiability of the BTWC as a consequence of the UN Special Commission on Iraq's (UNSCOM) inability to completely close the files on Iraq's BW programmes;
- the terrorist attacks of 9/11 on the United States and the subsequent attacks with anthrax laced letters contributed to a sweeping reorientation of US security policy in which the role of multilateral treaties in furthering US interests is fundamentally questioned;
- the growing threat to global civilization posed by natural emerging and reemerging diseases and the projection of disease pandemics onto the BW threat.

The combination of these and other factors contributed to the failure of the Ad Hoc Group to achieve consensus on a document to formally strengthen the BTWC. More important today is the question whether the CWC can still serve as a model for the future of the BTWC bearing in mind that the core goals are the prevention of future BW programmes and biological

warfare rather than the elimination of current weapon programmes and stockpiles, and that constituencies other than government agencies will play much more prominent roles in the effective verification of the future BTWC regime.

Although they find the current process of information exchanges useful, few states consider it to be sufficient. However, they realize that rejecting the current process would have meant a virtual condemnation to irrelevancy of the BTWC and that they have to wait for significant changes in the international climate before progress can be made again (and as noted above, the problems are not related to the ideology of a single country). Meanwhile, strategies can be considered whether to strengthen the BTWC in a holistic way (all treaty aspects at the same time) or to use a process of suboptimization (certain components are upgraded at different times, but over time the treaty as a whole is strengthened). It is important for civil society constituents to come up with novel and actionable ideas, especially for those things that may be realizable after 2006.

**Ajey Lele:** Many states are interested in seeing that it reaches to its logical conclusion. But states like US will not allow it to happen. One should not have only one sided view (anti US). The world must understand their compulsions and try to find a way out. If still they don't listen and don't show compromising attitude then think of lobbying against them.

## ***2. How would you react to the observation: 'Thirty Lost Years of BTWC'?***

**Angela Woodward:** I think the activities, or lack of them, over the last thirty years are a result of the political environment of that time (especially the Cold War). States parties went a long way down the road to instituting a verification system for the BTWC that would have put it alongside the CWC (with OPCW verification). I am hopeful that, while it won't be in that form, states parties can build on their discussions and understandings in VEREX and the Ad Hoc Group, to revisit the need for a verification system and, hopefully, institute some appropriate and effective multilateral verification measures in the near future.

Surely the last thirty years were important in setting a tone for how alleged non-compliance should be dealt with (which wasn't handled very well at all) and for getting the treaty off to a good start, but states parties need to pull together now to make the treaty work effectively from now on.

**John Borrie:** I think such a comment would be too harsh. While it's true that the period since the first Gulf War could be characterized a 'lost decade' because of the failure of the BWC's members to agree on a verification protocol, this doesn't nullify the value of a widely adhered to international norm against biological weapons. It means the international community needs to try harder in bolstering it.

**Jean Pascal:** Were 30 years lost? Until the late 1980s onsite inspections were politically impossible. The core prohibition has been pretty strong. Perhaps it was also a mistake to think that the CWC verification regime could be simply copied into the BTWC.

## ***3. What do you think of the various statements issued by State parties and European Union; and levels of commitment showed towards BWC on the occasion?***

**Angela Woodward:** I had thought the US had amended the joint statement by the Depositaries, to a version that was less supportive. As it turns out, that was due to a technical error in the State Department. I am pleasantly surprised that the US was prepared to sign a statement that emphasized the importance of the BTWC as the cornerstone of the BW prevention regime. Of course, words must be followed by deeds, so I would hope that the US and UK support of efforts outside the BTWC (specifically, UNSCR 1540) are followed up with greater support for the BTWC. The US could do a lot more to ensure that the BTWC intercessional meetings 2003-2005 have a meaningful result and they must also ensure a successful Sixth Review Conference in 2006.

I was very pleased with the EU statement on the 30th anniversary and not a bit surprised at its level of support for the BTWC. The EU has issued various directives requiring Member States to take action relating to BW

prevention, by requiring national legislation, controls on pathogens etc. I think the EU may be lagging behind a little in overseeing implementation by Member States and, especially, in providing guidance to the accession states. While this falls outside the ambit of the BTWC itself, any such system would also ensure that Member States are complying with the BTWC, as I understand that these directives stipulate precise actions required by states that are described more generally in the BTWC text and Review Conference understandings.

**Chandre Gould:** I think Angela Woodward's comments sums it up pretty nicely. It is encouraging that the EU statement (which also reflects the UK position) refers to verification, and it is an option that should be followed. However, we must also look beyond those states.

**John Borrie:** I think these statements are significant, and have value in the current environment in which many features of the international security landscape are being called into question. But actions speak louder than words. The ultimate test for BWC States Parties really committed to strengthening the norm is in going ahead to adopt measures in conformity with its spirit, even if that may not command consensus. The Sixth Review Conference in 2006 will be a key test if the United States, in particular, proves unwilling to provide leadership in this respect.

**Ajey Lele:** Many things remain on paper but still at least they have honest intentions. It will take time but one should not give up. Even Kyoto Protocol had success (if I may call so).

#### ***4. How important is the Implementation of National Legislation?***

**Angela Woodward:** This is critically important! States parties must ensure that they implement all of their obligations under the BTWC into their domestic law in order to be able to comply with it. If they don't, they are not only in non-compliance: they leave themselves open to activities that constitute a violation

of the treaty occurring on their territory, whether it is by their nationals or companies, or foreign nationals (including terrorists) and companies on their territory.

States parties will likely have to adopt national laws (criminal laws, export control laws etc) and national measures (administrative decrees and so on) to ensure they have fully implemented the treaty.

As long as there is no effective, multilateral verification system for the BTWC, we (the international community) must rely on states parties adopting and enforcing the myriad of national implementing measures necessary to ensure their national compliance. (That is, instead of multilateral, independent, impartial verification of state party compliance, we must rely on all states parties taking their obligation to implement and enforce the treaty in their own territory seriously). States parties must establish a system to effectively share information on their national measures. This will have a confidence building effect and also provide useful technical information for other states that are considering what measures they require. States must review the effectiveness of their measures continuously, so that they can keep up with the changing threat of BW.

**Chandre Gould:** National legislation is an important as an expression of the norm against biological weapons at a national level. It is also important in that it makes it possible for states to prosecute individuals or groups that are found to be developing or attempt to use biological weapons. However, national legislation is not a panacea.

**Jean Pascal:** In many developing countries there is very little capacity to draft and implement the legislation required. Despite the assistance offered by IGOs, NGOs and states parties to the BTWC, there is a concern that cut-and-paste legislation is not sufficient. Legislation is only as good as the ability of the state to enforce and implement it - the technical challenges to law enforcement agencies with regard to the implementation and enforcement of this legislation in the field of biological weapons are huge and are unlikely to be overcome in the developing world without significant support from developed countries.

**5. Are you expecting a repetition of 2001 in 2006 RevCon? If yes, what would be the future course of action, or the Road Ahead?**

**Angela Woodward:** I don't think the 2006 Review Conference will end in as much disarray as the 2001 Review Conference. That particular meeting was turned upside down by the last minute revelation by the US that it wouldn't support the draft protocol or the AHG's mandate. This situation was somewhat salvaged by reconvening the meeting in 2002.

The 2006 meeting will meet after states parties have held three years of information sharing meetings that have been relatively positively received (even though they haven't resulted in concrete proposals for strengthening the treaty). This precedent of annual meetings must be retained during the period 2007-2011, as it puts a spotlight on the treaty every year, which is necessary given the speed of related technological developments.

I don't think there is the same level of animosity between states parties that will result in as tense, or difficult a Review Conference as occurred in 2001. But states parties must work hard to prepare in advance for a successful meeting in 2006. It will require those states that are supportive of the regime working together to garner agreement of states parties collectively. This work must start before the end of 2005.

**John Borrie:** I think it's very difficult to say, especially as governments themselves currently have widely differing ideas of where the BWC process should lead. Broadly, I think it would enhance the prospects of success in 2006 if progressive countries indicated they meant business by being prepared to undertake measures in cooperation among themselves, even if blocked from doing so in the RevCon's consensus environment. [VERTIC and Jez Littlewood's papers on the Weapons of Mass Destruction Commission's website provide good analysis and options in this respect.]

**Ajey Lele:** Road ahead is tough. Realpolitik is more important. Every state will have realistic state centric

views. What is required is that how all states together can move ahead. Tools of bargain will come in play. EU can play a major role definitely. WTO can be used as a tool for bargain. International opinion is not emerging as a force as seen in case of NPT. The Community of experts working on these issues have failed to exploit SARS, Bird Flu etc. to create public opinion. While it is imperative to do more, the politicians and policy makers should sensitize themselves on the issue.

**Jean Pascal:** No, but it cannot be excluded. It is therefore important that civil society comes up with ideas for concrete programme proposals. My current fear is that many states parties are so afraid of failure that they cannot see beyond 2006, which in itself may be an important cause of failure. It can be expected that the NAM countries in particular will bring up the ghosts of 2001/02, but it is up to the states the focus on the job at hand, namely the review of the convention. Another potential source of problems is the current intersessional process. It is clear that its outcomes should be considered at the RevCon, but how central to the whole review should this be? In my mind, it cannot overtake the review of the treaty provisions.

**6. What role the United Nations should play in the years ahead?**

**John Borrie :** That depends on what 'United Nations' you're talking about. The UN already plays a secretariat function, as well as providing policy advice and a forum for exchanging views between governments. If you're referring to governments themselves, that is going to depend on the importance they attach to norms against poisoning and deliberate spreading of disease, a realistic perception of threat and their collective willingness to go ahead with strengthening the BWC even if it incurs political costs. At present the signs are not especially positive that this will be the case.

**7. What do you think of US role in future course of action?**

**Jean Pascal/Chandre Gould:** The United States has a vital role to play in the future of the BTWC. Indeed, it is likely that unless the United States sees an increased

role for the BTWC in addressing its security concerns, it will continue to frustrate attempts to strengthen the Convention.

**8. *Would you like to shed some light on the issue of Verification, UNSCR 1540 and State participation?***

**Angela Woodward:** As a researcher on verification issues, I should also add that the need for effective verification of this treaty has not gone away, even though states parties political will for redressing this gap in the BTWC has substantially dissipated. I don't believe the states parties can return to the AHG forum to consider these issues, or dust off the Composite Text or Rolling Text of the Protocol as their starting point. As much as certain states parties persist to argue for this, other states parties just as vehemently oppose them. Instead, supportive states parties must think creatively about how they can fill the verification deficit. This may involve activities and measures outside the BTWC regime but which support it.

However, we mustn't rely on the provisions of UNSCR 1540, as these focus on the threat of non-state actors (and specifically, terrorists) obtaining BW. As we know, states still pose a significant BW threat and efforts to reduce and eliminate that threat should be tackled with the involvement of the BTWC. This means that there should also be considerable efforts to get those states that haven't joined the BTWC to do so as soon as possible. It has taken the other arms control treaties a long time to boost membership: the BTWC has had thirty years to achieve universalisation but still has a long way to go. There must be an universalisation strategy and appropriate resources for implementing it.

