

Wednesday 15th March 2023

The BWC Working Group: setting the scene for the organizational meeting

The Ninth five-yearly Review Conference for the 1972 Biological and Toxin Weapons Convention (BWC/BTWC) held at the end of 2022 agreed on the establishment of a ‘Working Group on the strengthening of the Convention’. Although the Review Conference was unable to agree many details of how the Working Group might operate, the creation of the Group is seen by many practitioners as an advance on earlier arrangements for activities between Review Conferences.

The Working Group 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.’ Issue areas to be covered are: international cooperation and assistance under Article X; scientific and technological (S&T) developments relevant to the BWC; confidence-building and transparency; compliance and verification; national implementation of the Convention; assistance, response and preparedness under Article VII; and organizational, institutional and financial arrangements.

The Working Group has been allocated 15 days of meeting time each year from 2023 to 2026 for substantive discussion, but is encouraged to complete its work before the end of 2025. In addition, the Review Conference decided there should be two further days in 2023 to consider organizational issues; hence the remit for the current meeting. Each year, a three-day Meeting of States Parties (MSP) will oversee the activities of the Working Group and be responsible for managing the inter-sessional programme of work. The scheduled dates for the substantive sessions for the Working Group this year are 7-18 August and 4-8 December. The annual MSP is scheduled for 11-13 December – the first three working days after the second substantive Working Group session.

The official website for the meeting is <https://meetings.unoda.org/node/67449> where Working Group documents will be posted to. The Final Document of the Review Conference, as well as other documents from the Conference, are available from its official website at <https://meetings.unoda.org/bwc-revcon/biological-weapons-convention-ninth-review-conference-2022>.

Organizational aspects

As the Working Group is a novel development with many aspects undecided at the Review Conference, it is hard to predict what is to be expected during the organizational meeting. The only task specifically stated for the organizational meeting is the election of office holders consisting of a Chair and two Vice-Chairs. However, there will be a range of further organizational aspects to be dealt with, such as how the various topics will be discussed during the life of the Working Group. Administrative and procedural issues may seem dull, but it is hard to reach conclusions on substantive issues without agreement being reached on how discussions should be carried out.

As is traditional, the office holders are spread between the three regional groups. The agreement reached at the Review Conference was that the office holders for the Working Group should be appointed for the period 2023-24. The Review Conference did not specify which regional group would hold which post in the Working Group and so there has been informal discussions about this. The non-aligned group has put forward Ambassador Flávio Damico (Brazil) as its nomination for the Chair of the Working Group. For the two Vice-Chairs, the western group has nominated Ambassador Camille Petit (France) and the eastern group is understood to be in the process of preparing a nomination for the meeting. The formal decision on office holders will be one of the first actions of the organizational meeting.

The Chair for the annual MSP in 2023 is also to be from the non-aligned group, as decided by the Review Conference, and this role would be expected to rotate between the regional groups each year as has been past practice.

Evolution of the inter-sessional processes/programmes of work

The term ‘inter-sessional’ refers to the periods between the five-yearly Review Conferences. Up until 2001 there were many activities between Review Conferences, the most notable of which were negotiations on a protocol to strengthen the BWC in a forum known as the Ad Hoc Group. Key aspects of the protocol negotiations were measures to enhance compliance (and confidence in compliance) primarily through verification. The protocol negotiations encountered a number of political difficulties, including a statement by the USA that year that it could not agree to anything that might result from them. The Fifth BWC Review Conference which convened later that year had to be suspended as it could not reach a conclusion. When it reconvened the following year it agreed what was then called ‘the new process’ which comprised a Meeting of Experts (MX) in the middle of each calendar year and an MSP towards the end of the year. The Sixth Review Conference (2006) agreed a similar but modified process that then became known as ‘the inter-sessional process’ or the ‘inter-sessional programme of work’. Conveniently, both terms could be summarised by the same abbreviation – ISP. With hindsight, the ‘new process’ became known as the first ISP.

Subsequent Review Conferences agreed ISPs that were based around a mix of MXs followed by MSPs with some variations but there were many perceptions of limitations, not least that the MSPs were unable to reach consensus conclusions on substantive matters that had been discussed in the MXs. A commonly identified benefit of the MXs was that they were less formal than traditional diplomatic meetings and that this allowed for effective collaboration between experts. The new Working Group will involve some interactions between experts and there may be benefits in drawing from the experiences of the MXs.

One of the challenges at each Review Conference was the selection of topics to be discussed in the following ISP as this had to be agreed by consensus and there was resistance in some quarters to discussion of verification issues. The fourth ISP, resulting from the Eighth Review Conference (2016) and decisions taken at the 2017 MSP, included a topic of ‘institutional strengthening’ of the Convention which allowed for some discussion of these issues. The inclusion of the terms ‘compliance’ and ‘verification’ in the mandate of the Working Group therefore represents a step change in the evolution of the ISPs, notwithstanding that there are many challenging issues and divergent perspectives around what is understood by these terms.

BWC membership

Although universalization issues are in the remit of the MSP rather than the Working Group, it is worth highlighting that since the Ninth Review Conference the membership of the Convention has risen with South Sudan depositing its instrument of accession to the BWC on 15 February, becoming the 185th state party to the Convention.

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Thursday 16th March 2023

The first day of the BWC Working Group organizational meeting

The Working Group on the strengthening of the 1972 Biological and Toxin Weapons Convention (BWC/BTWC) completed the first of two days of meetings on organizational issues on Wednesday. There was considerable discussion on issues in relation to the agenda, duration and handling of topics. Discussions on these will continue on Thursday.

Opening of the meeting and election of office holders for 2023-24

The meeting was opened on Wednesday morning by Mélanie Régimbal, Chief of Service of the UN Office for Disarmament Affairs, Geneva Office. She confirmed the nominations of Ambassador Flávio Damico (Brazil) as Chair and of Ambassador Camille Petit (France) as Vice-Chair by the non-aligned and western groups respectively. Slovakia, as convenor of the eastern group, informed the meeting that the nomination for the other Vice-Chair would be Irakli Jgenti (Georgia). Ambassador Damico was elected Chair by acclamation and took his seat on the podium. He noted there were some exceptional circumstances to his taking this position as, until May, he is also Chair of the Group of Governmental Experts looking at Lethal Autonomous Weapon Systems. Rather than have him steering two processes in parallel, Vice-Chair Petit would preside over the rest of the proceedings for the organizational meeting once appointed. When Ambassador Damico asked the meeting to approve the Vice-Chair nominations, Russia asked for more time to consider the one from the eastern group. This delay was granted. Ambassador Petit was appointed and took on the role of Acting Chair.

Adoption of the Agenda

One of the first tasks of the meeting was the adoption of the agenda. A draft agenda had been circulated to delegates just before the meeting by Ambassadors Damico and Petit which was focused on the organizational aspects of the Working Group. It became clear very quickly that there were differing views on this subject that related to whether this meeting should be adopting an agenda for its own work on organizational matters that was separate from the agenda that would be adopted for the Working Group as a whole, including the sessions on substantive issues. Russia proposed an alternative text, based on the agenda adopted for the Ad Hoc Group (AHG) in January 1995. This included an item on adoption of rules of procedure which was needed for the AHG but not relevant for the Working Group as its rules of procedure were specified by the Ninth Review Conference. Nonetheless, the Russian proposal provided a focal point for discussion which enabled further development of a draft agenda that might be suitable for the Working Group as a whole. Concerns were raised that any agenda adopted at this meeting that would apply for the duration of the Working Group should be simple in scope in order to allow flexibility of activities as these could continue into 2026. On the other hand, concerns were also raised that too much flexibility could lead to long procedural discussions in the future as meetings considered how to tackle particular issues. A new draft agenda was circulated after lunch to delegates for their consideration and possible adoption on Thursday.

Duration of the Working Group

The Ninth Review Conference allocated 15 days of meeting time each year from 2023 to 2026 for substantive discussion within the Working Group. The Review Conference was also explicit in encouraging the Working Group to complete its work before the end of 2025 – the year that marks the centenary of the 1925 Geneva Protocol and 50 years since the entry into force of the BWC. If the Working Group was able to complete its work during the tenure of its initial office holders it would only need 30 working days. If it needed all the possible time allocated it would use 60 working days. This indeterminacy of duration raised further questions about how the Working Group might decide when it had completed its work, but also how the topics should be dealt with to make the best use of available time.

The handling of topics

The seven topics for discussion by the Working Group handed down by the Ninth Review Conference are: (a) international cooperation and assistance under Article X; (b) scientific and technological (S&T) developments relevant to the BWC; (c) confidence-building and transparency; (d) compliance and verification; (e) national implementation of the Convention; (f) assistance, response and preparedness under Article VII; and (g) organizational, institutional and financial arrangements.

There was broad agreement that the topics should remain as specified by the Review Conference. Many interventions noted that the topics were sufficiently diverse that they may need different approaches at times during the Working Group. Some were highlighted as possibly needing more time than others, such as (a), (b) and (d). There were some suggestions that the topics should be allocated a block of time each; for example, the August substantive session of two weeks could deal with one topic in its first week and another in its second.

Ambassador Leonardo Bencini (Italy), the President of the Ninth Review Conference who had overseen the adoption of the mandate for the Working Group, suggested that one approach could be to work through all of the topics in the first two years. The Working Group could assess the situation and repeat this cycle in 2025 to allow topics to be reconsidered if this was desired. There would also be the chance for a further repetition in 2026, if needed. There were a number of expressions of support for this idea. Bencini had used the term ‘cycles’ in his intervention and for some this raised echoes of the repetitive Meetings of Experts from the previous inter-sessional process. Others suggested that potentially useful proposals raised in a session may take time to be considered by delegates but also by their capitals; therefore it would be useful for any process to include a return to topics so that views from capitals could be considered and proposals further developed.

The role of facilitators to deal with specific topics became a topic of discussion. Ambassador Bencini highlighted how useful they had been in making progress during the Review Conference. There was broad support for their use within the Working Group and in particular how they might be able to make progress on issues between formal sessions.

While the current meeting is about procedure rather than substance, there were some comments about aspirations for the Working Group process. An example of how much the debate over strengthening the Convention has changed in recent years was given in a statement by the United States during the afternoon. Ambassador Ken Ward highlighted that the aim of the Working Group included ‘legally-binding measures’ and efforts to ‘institutionalise the Convention’. From the US perspective, the Working Group should therefore be identifying the building blocks that could be taken up in a subsequent formal negotiation to ‘finally achieve an implementation agreement for the BWC’. This is a perspective that country would not have brought into a BWC meeting for much of the past two decades.

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Monday 31st July 2023

Completion of the First Session of the Working Group on organizational issues

This report covers the conclusion of the First Session of the Working Group on the strengthening of the 1972 Biological and Toxin Weapons Convention (BWC/BTWC) that met in Geneva in March 2023 and includes some reflections on the Session.

The Working Group held its second and final day of meetings on organizational issues on Thursday 16 March, continuing into the evening beyond the provision of interpretation to complete its work. There was agreement on the agenda for the Group overall and on an indicative programme of work, both of which are included in the procedural report of the First Session – document BWC/WG/1/2, available from the website for the First Session at <https://meetings.unoda.org/meeting/67449/>. The site for the Second Session in August is at <https://meetings.unoda.org/meeting/67451/>. Official BWC documents are also available via <https://documents.un.org>.

The proceedings of the second day

As with the day before, the proceedings of the second day were presided over by Vice-Chair Ambassador Camille Petit (France). The first action of the morning was the approval of the other Vice-Chair, Irakli Jgenti (Georgia), who had been nominated by the Eastern Group. The Chair of the Working Group, Ambassador Flávio Damico (Brazil), was present in the room for the day's proceedings in line with the exceptional circumstances outlined and accepted the day before.

The focus of discussion was how to organize the work of the substantive sessions of the Working Group. To this end, a draft 'indicative programme of work' had been circulated to delegates on Wednesday night, although a technical issue meant many delegations did not see it until Thursday morning. This initial draft prompted a number of suggestions on how to develop it further.

One aspect for discussion was whether the Working Group had seven topics to discuss or nine. Seven topics were agreed by the Ninth Review Conference for the Working Group and listed in paragraph 8 of part II of its final report which are: (a) international cooperation and assistance under Article X; (b) scientific and technological (S&T) developments relevant to the BWC; (c) confidence-building and transparency; (d) compliance and verification; (e) national implementation of the Convention; (f) assistance, response and preparedness under Article VII; and (g) organizational, institutional and financial arrangements. It was suggested that the Article X and S&T review mechanisms should be dealt with as additional topics as the relevant paragraphs recording the decision of the Review Conference to work towards establishment of each of these mechanisms (nos. 18 and 19 respectively) included the wording: 'In order for this mechanism to be established, the Working Group on the strengthening of the Convention will make appropriate recommendations.' It was agreed that there would be allocated time specifically for discussion of each of the two mechanisms.

Once there was agreement on the number of topics there remained the question of how much time should be allocated to each topic. There was broad recognition that the discussions of the proposed mechanisms would build upon discussions in their relevant

substantive topics and thus the two mechanism topics might not need so much time allocated. Other than this, should each of the topics be allocated an equal time? For example the question was raised as to whether compliance and verification should be allocated more time than Article X and S&T review as these had been the subject of much more discussion at expert level in recent years. Other delegations expressed opposition to allowing some topics to be allocated more time at the expense of others. The balance between topics was the subject of plenary discussions together with informal consultations. The final agreed version allows for all but one of the topics [(f) on Article VII] to be considered at least once during 2023.

The mandate for the Working Group only specifies a final report and there was some discussion about whether time should be allocated to preparing progress reports. The mandate specifies that the Working Group Chair will update the annual Meeting of States Parties on the work of the Group. It was noted that past practice in BWC was to prepare a procedural report from each session of meetings. There was no discussion on what form the final report from the Working Group might take.

The phrasing of the key items on the agenda was agreed after considerable discussion. The key substantive item in the adopted agenda: 'Identifying, examining and developing specific and effective measures, including possible legally-binding measures, and making recommendations to strengthen and institutionalize the Convention in all its aspects within the mandate of the Working Group' is based on the wording in paragraph 8 of part II of the final report of the Ninth Review Conference. Another agenda item allows for discussion of 'Other matters within the mandate of the Working Group'.

Reflections

A conscious effort is taken in writing these daily summaries to report as objectively as possible. However, there are times that this style of reporting does not convey some of the atmosphere of meetings or possible consequences of activities. The following are some personal reflections that do not necessarily represent anyone's views other than the author's own.

The Working Group represents a significant opportunity for the Convention, but progress is not likely to be immediately obvious as the political differences between states parties that prevented agreement at the Ninth Review Conference on items such as the two proposed mechanisms seem likely to remain in the short term. Yet this should not be a reason to be pessimistic about the prospects for the Working Group as time should allow for positive developments.

Further clarity may be useful on what is expected from the Working Group as it was clear from the plenary discussions that there is a lack of an agreed vision on how the substantive work will be taken forward. In discussions in the corridors with delegates, many agreed with one description of the role, that the Working Group should prepare 'building blocks' for a legally binding instrument, while others indicated that the Group should be identifying parts of a collection of measures that should then be forwarded to a new body to be developed further. A clearer collective vision on the potential output may help focus proceedings and help deal with the challenge of turning what was a relatively brief discussion at the Review Conference on what the Working Group might do into a plan of activities in the coming years for the Working Group itself and beyond.

The adoption of an indicative programme of work stretching so far – all the way into 2026 – was surprising when looked at from the perspective of past negotiations in many forums. It is rare for an indicative schedule looking so far ahead to remain intact. Moreover, the consultations at a later stage to amend a previously agreed indicative schedule can be time consuming as it is a well-known negotiating tactic of those not keen on progress to argue that the agreed programme should be adhered to in circumstances where the majority of delegations see benefits in adaptation.

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