

Tuesday 1st August 2023

Setting the scene for the substantive sessions of the BWC Working Group

The Second Session of the Working Group (WG) on the strengthening of the 1972 Biological and Toxin Weapons Convention (BWC/BTWC) is scheduled to convene in Geneva from 7 to 18 August 2023. The Group was established by a decision of the Ninth BWC Review Conference held at the end of 2022.

The First Session met during March 2023 to discuss organizational issues and appointed Ambassador Flávio Damico (Brazil) as Chair of the Working Group with Ambassador Camille Petit (France) and Irakli Jgenti (Georgia) as Vice-Chairs, each of whom is in post until the end of 2024. The First Session also adopted an agenda for the Working Group and an indicative programme of work for the substantive sessions.

Documents and statements (where those giving them have wanted them posted) from the Second Session will be posted to the official webpage for the Session at <https://meetings.unoda.org/meeting/67451>. Official BWC documents are also available via <https://documents.un.org>. A number of working papers have been published and more are expected.

Topics and facilitators

The 'Bureau' – the body composed of the office holders that administers the Working Group – has appointed facilitators to assist in each of the topic areas to be discussed by the Working Group. It is possible that further facilitators will be appointed over time.

There are seven topics for discussion at the Working Group with two potential mechanisms to be considered. The seven topics [and the facilitators for each] are:

- (a) international cooperation and assistance under Article X [JJ Domingo (Philippines) and Thomas Fetz/Trevor Smith (Canada)];
- (b) scientific and technological (S&T) developments relevant to the BWC [Grisselle Rodríguez (Panama), Peter Ahabwe/Musa Kwehangana (Uganda), Vincent Bodson (Belgium) and Ljupčo Gjorgjinski (North Macedonia)];
- (c) confidence-building and transparency [Angel Horna (Peru) and Laurent Masmejean (Switzerland)];
- (d) compliance and verification [Alonso Martínez (Mexico) and Ambassador Robert Bosch (Netherlands)];
- (e) national implementation of the Convention [Grisselle Rodríguez (Panama), Athikarn Dilogwathana (Thailand), Reski Ilahi (Indonesia), Faith Bagamuhunda (Uganda) and Michelle Carr (Australia)];
- (f) assistance, response and preparedness under Article VII [Angel Dalmazzo (Argentina) and Sofie Kallehauge (Denmark)]; and
- (g) organizational, institutional and financial arrangements [Husham Ahmed (Pakistan), Ambassador Ichiro Ogasawara/Shigeru Umetsu (Japan) and Arsen Omarov (Kazakhstan)].

The first two topics are those which have proposals for implementation mechanisms associated with them which will be the subject of additional discussions.

The selection of topics represents the breadth of issues that BWC delegations have felt need developing in order to strengthen the Convention and there is a widespread

recognition that any consensus efforts for strengthening of the Convention will require action in each of the topic areas. As with many other multilateral issues, there are diverse perspectives on the emphasis placed on each of the topics and elements within them.

Activities during the Second Session

The First Session agreed that Monday 7 to Wednesday 9 August will be dedicated to topic (a) international cooperation and assistance/Article X with the Thursday focused on the proposal for mechanism for implementation in this issue area. Friday 11, Monday 14 and Tuesday 15 August will discuss topic (b) on S&T developments with Wednesday 16 looking at proposals for a mechanism to review S&T developments. The final two days of the Second Session – Thursday 17 and Friday 18 – will focus on issues of national implementation as topic (e).

During July, the Chair circulated an indicative programme of work with further details which includes time for remarks from facilitators for each topic and panels to enhance discussion.

The initial week of the Second Session will be running in parallel with the Preparatory Committee for the next Review Conference of the nuclear Non-Proliferation Treaty (NPT) that is meeting during 31 July-11 August in Vienna. Countries that are states parties to both treaties, especially those with smaller disarmament delegations, may find their resources stretched for the overlapping week.

Topics and dates for subsequent sessions

The Third Session is scheduled for 4-8 December 2023 and will be immediately followed by the annual Meeting of States Parties (MSP). The Third Session includes time allocated for (c) confidence-building and transparency (one day), (d) compliance and verification (three days) and (g) organizational, institutional and financial arrangements (one day).

Dates for the BWC meetings in 2024 have been proposed as 12-23 August for the Fourth Session and 2-6 December for the Fifth. The 2024 MSP would then follow the Fifth Session. The Fourth Session is scheduled to start with discussion of topic (f) assistance, response and preparedness under Article VII, following which topics previously discussed will be returned to.

Outputs from the Working Group

Paragraph 16 of the Final Document of the Ninth BWC Review Conference, states that '[a]t the completion of its work' the WG is to 'adopt a report, by consensus, that includes conclusions and recommendations according to its mandate'. The report is to be presented for consideration at the Tenth Review Conference (scheduled for 2027), 'or earlier at a Special Conference if it is requested according to the procedure established by the Third Review Conference (BWC/CONF.III/23), to decide on any further action'.

The challenges of reaching consensus in the final week of the Ninth Review Conference meant that there were a number of things added to the Working Group in a form of consensus by deferral. The lack of time at the Ninth Review Conference to get into details of how the Working Group would operate has left open a question of how much detail the WG needs to get into on any proposed measures. In other words, should the Working Group simply outline what are the collection of measures that would strengthen the Convention under each topic in order for a follow-on process to elaborate them further or should the Working Group propose detailed measures?

In addition to the final substantive report of the Working Group, there will be a procedural report from each Session, in line with BWC past practice. No time has been specifically allocated within each Session for this task in the expectation that preparation and adoption of a procedural report should not take much time.

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Wednesday 2nd August 2023

International cooperation and assistance/Article X - setting the scene

The topic for the first three days of the Second Session of the Working Group (WG) on the strengthening of the 1972 Biological and Toxin Weapons Convention (BWC/BTWC) is ‘Measures on cooperation and assistance under Article X’. This is topic (a) of those allocated. The fourth day of this session will be devoted to discussion on possibilities for a mechanism to improve implementation of international cooperation and assistance.

The Working Group is scheduled to convene in Geneva from 7 to 18 August 2023, as decided by the Ninth BWC Review Conference (2022). The First Session of the WG met during March 2023 to discuss organizational issues. Reports in this series from those meetings are available from the links provided overleaf.

Article X of the BWC is about access to the life sciences for peaceful purposes and sits at the heart of the issues relating to international cooperation and assistance. Article X embodies a key bargain within the Convention that the renunciation of biological weapons and the implementation of controls over hostile uses of the life sciences have to be balanced so that there is not hindrance to the use of the life sciences for peaceful purposes. Article X also provides that 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’. The concept of ‘cooperation and assistance’ goes further than Article X itself, including other aspects such as capacity building.

The importance of the Article X issues within the BWC is reflected in the Working Group mandate which notes that any measures proposed by the Group ‘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.’

To assist with discussions, JJ Domingo (Philippines) and Thomas Fetz/Trevor Smith (Canada) have been appointed as facilitators on these issues.

Article X and cooperation and assistance in context

The topic of international cooperation and assistance brings together a cluster of issues for which there have been long-standing divergences of views between governments.

Security, economic and geographical considerations and perspectives influence how individual governments see the balance between the two sides of the bargain embodied in Article X of the Convention. Most Western states have consistently put emphasis on the security aspects of the bargain, while states seeking greater economic development see access to peaceful uses as a key justification for using precious governmental resources in their engagement with the Convention. There are many delegations who hold positions somewhere in between these two perspectives, with many perceiving the global benefits of activities such as capacity building and efforts to control infectious disease as worth pursuing in their own right, irrespective of BWC provisions.

Where the divergence remains strongest is on the scope of Article X and on the question of how to improve implementation of it. Some delegations have expressed the view in past BWC meetings that Article X is incompatible with the imposition of

economic sanctions (often referred to as ‘unilateral coercive measures’) and that denials of export licences for materials and technologies for peaceful purposes are contrary to Article X. A larger number of delegations have taken an opposite view and have highlighted the challenges of controlling materials and technologies that have peaceful uses as well as having potential to contribute to a biological weapons programme.

An illustration of the significance of Article X-related issues is that they have been included in some form in each of the inter-sessional work programmes since the first was established at the resumed Fifth BWC Review Conference in 2002.

There have been many lessons from events outside of the BWC for Article X discussions. Outbreaks such as Ebola Virus Disease and the COVID-19 pandemic have illustrated the challenges of responding to infectious disease. Experience shows that no country is safe from a highly transmissible disease unless there are capabilities to deal with that disease across the globe. As biological weapons are essentially tools for the deliberate spread of disease, it follows that enhanced capacities to deal with naturally occurring diseases reduce the potential for harm from deliberate disease. There are considerable synergies with Working Group topic (f) on assistance, response and preparedness under Article VII which will be discussed during 2024.

Proposals and developments on Article X and related issues

The Seventh BWC Review Conference (2011) decided to ‘establish a database system to facilitate requests for and offers of exchange of assistance and cooperation among States Parties’. This has become known informally as the ‘Article X database’ and contains rising numbers of offers of help and requests for assistance. The operation of the database is summarized in the Annual Report of the BWC Implementation Support Unit (ISU) each year. A number of delegations have suggested during BWC meetings that the database is underused. A proposal for a counterpart database in relation to Article VII was agreed in principle at the Eighth Review Conference (2016).

During the negotiations for a protocol to strengthen the BWC that came to halt in 2001 there were significant elements of the rolling text that were designed to enhance implementation of Article X. One of these elements was a ‘cooperation committee’. At the Sixth Review Conference (2006) there were proposals for an Article X action plan alongside action plans on national implementation and universalization. The plans did not achieve consensus and so were not adopted. In 2009 a proposal for an Article X implementation mechanism was made by the non-aligned group of BWC states parties and was updated occasionally and presented again. In 2019 India proposed the establishment of a voluntary trust fund to support cooperation and assistance activities. The Ninth Review Conference (2022) added a staff post to the ISU, the tasks for whom were not specified in the Final Document but which are understood to include international cooperation and assistance activities.

Paragraph 18 of the Final Document of the Ninth Review Conference reads: ‘The Conference decides to develop with a view to establishing a mechanism open to all States Parties to facilitate and support the full implementation of international cooperation and assistance under Article X. In order for this mechanism to be established, the Working Group on the strengthening of the Convention will make appropriate recommendations.’ Discussions during the Review Conference were unable to reach consensus on what form such a mechanism might take and this remains a subject for discussion. For example an ASEAN working paper to this WG Session (WP.1) proposes a ‘Cooperation Advisory Group’ to facilitate international cooperation activities. A second working paper (WP.3), from Australia, Germany, Japan, UK and USA, proposes establishment of a mechanism utilizing ‘a programmatic approach’ funded through a voluntary trust fund governed by an ‘ICA Fund Committee’.

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Thursday 3rd August 2023

Review of scientific and technological developments - setting the scene

The topic for days five, six and seven of the Second Session of the Working Group (WG) on the strengthening of the 1972 Biological and Toxin Weapons Convention (BWC/BTWC) is 'Measures on scientific and technological developments relevant to the Convention'. This is topic (b) of those allocated. The eighth day of this session will be devoted to discussion on possibilities for a mechanism to enable a systematic review of scientific and technological (S&T) developments relevant to the Convention.

The Working Group is scheduled to convene in Geneva from 7 to 18 August 2023, as decided by the Ninth BWC Review Conference (2022). The First Session of the WG met during March 2023 to discuss organizational issues. Reports in this series from those meetings, together with reports from BWC meetings since 2006, are available from the links provided overleaf.

There are ever-changing contexts that the BWC has to operate within, of which the changes brought about through S&T developments are key. Rapid advances within the life sciences, as well as other areas such as engineering, have significant impact on potential benefits and risks in areas relevant to the BWC. Such advances provide previously unsurpassed opportunities for peaceful uses through development of innovative medical treatments and new ways to detect the spread of disease, for example. Yet they also create negative opportunities for hostile uses through novel techniques. Moreover, as well as the cutting-edges of S&T developments, the adoption of biological techniques within new technological areas has led to more widespread availability and knowledge of materials and processes that may have potential for both peaceful and hostile purposes.

There has been a recognition amongst a large number of BWC states parties that the changing S&T contexts require ongoing review and that the five-yearly process during Review Conferences has not been enough. This is a critical challenge as real world experience has shown that S&T developments proceed at a faster pace than the policy developments intended to monitor them, and if new risks or benefits are identified, to manage them. Hence the inclusion of this topic within the mandate of the WG.

Of all the topics allocated to the Working Group, the one on S&T developments is the one with the highest level of overlap and synergies with the other topics. For example, it impacts upon the operation of Article X on international cooperation and assistance; on Article VII responses to breaches of the Convention; and on national implementation. Moreover, better understandings of the developing S&T topics will be critical for compliance and verification under the Convention.

To assist with discussions, Grisselle Rodríguez (Panama), Peter Ahabwe/Musa Kwehangana (Uganda), Vincent Bodson (Belgium) and Ljupco Gjorgjinski (North Macedonia) have been appointed as facilitators on these issues.

Scientific and technological developments in context

Processes and procedures for science advice within governments are a challenge across the world. The different perspectives that policy practitioners and S&T practitioners bring to discussions can bring clarification and guidance to many contemporary issues; yet those

same differences can hinder discussions as well as enlighten them. It is therefore crucial that appropriate arrangements for review of relevant S&T developments are developed. A key aspect is to ensure that there are trusted sources of advice for those who have to develop policies.

One of the challenges is that it is simply not enough to identify relevant S&T developments; once developments are identified, what are their implications? One illustration of the need for this two-level approach can be found in the contemporary discussions about artificial intelligence. It is clear this particular field has been the subject of tremendous advances in recent years and while some implications are readily apparent, it is clear that there are likely to be more that will emerge. The same is true for many developments in the life sciences. One example, much cited, is the CRISPR/Cas9 gene editing tool (often simply referred to as CRISPR) that is barely a decade old which allows for exact and accurate editing of genetic sequences.

Proposals relating to S&T development issues

The widespread recognition for a number of years that there would be multiple benefits in reviewing S&T issues in a regular, consistent and ongoing manner has meant there have been many proposals for how a review might be carried out. The Meetings of Experts (MXs) in inter-sessional work programme between the Eighth and Ninth Review Conferences included one (MX2) dedicated to S&T issues which allowed more focused development of earlier ideas.

Many of the early proposals for arrangements to enhance review of S&T developments looked at one or other of two models. One model was or a panel selected in some way in order to create a board or committee. The other was to have a structure open to experts from all states parties willing to participate. These can be described as the 'selected' or 'open' models. Each approach has certain advantages and disadvantages. A small panel can be rapidly tasked to examine a new issue in depth and is the model for the Scientific Advisory Board created under the Chemical Weapons Convention. An open membership arrangement can encourage inclusivity with more direct links into national processes and has been used successfully in other issue areas. A selected panel would probably need financial resources to support it centrally whereas costs for an open membership model would be likely to fall on the states parties participating. More recently, many proposals have taken a hybrid approach that includes an open arrangement with some activities delegated to smaller panels.

The Ninth BWC Review Conference considered proposals for S&T review processes in some detail. However, the Review Conference faced considerable political challenges which made it hard to achieve consensus. In the last week of the Review Conference, as successive iterations of the sections on S&T review were being produced, more and more details were being removed. The Final Document is therefore sparse on this issue area and paragraph 19 reads: 'The Conference decides to develop with a view to establishing a mechanism to review and assess scientific and technological developments relevant to the Convention and to provide States Parties with relevant advice. In order for this mechanism to be established, the Working Group on the strengthening of the Convention will make appropriate recommendations.' In addition, the Ninth Review Conference added a staff post to the BWC Implementation Support Unit (ISU), the tasks for whom were not specified in the Final Document but which are understood to include S&T activities.

Working papers submitted to the WG Second Session have included proposals or discussion relating to S&T review. A working paper (WP.4) from the USA has been published and it is understood that further papers on this subject area are expected from other states parties.

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Friday 4th August 2023

National implementation issues - setting the scene

The topic for the final two days of the Second Session of the Working Group (WG) on the strengthening of the 1972 Biological and Toxin Weapons Convention (BWC/BTWC) is 'Measures on national implementation of the Convention'. This is topic (e) of those allocated to the WG.

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Without effective implementation, any international treaty is essentially just a declaration of intent. As the treaties dealing with control of weapons of mass destruction (WMD) are each concerned with types of weapons that are perceived to be of strategic importance, effective implementation is considered to be a high priority. Each of the WMD treaties therefore obliges states parties to carry out some form of national implementation to fulfil the obligations undertaken. In the case of the BWC, Article IV reads: 'Each State Party to this Convention shall, in accordance with its constitutional processes, take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition, or retention of the agents, toxins, weapons, equipment and means of delivery specified in article I of the Convention, within the territory of such State, under its jurisdiction or under its control anywhere.' In addition, BWC Article III contains obligations not to assist others (not just states) to acquire biological weapons.

The phrasing of Article IV is a reminder that the BWC is not a treaty between governments but a treaty between sovereign states. This is important for two reasons. One is that when there is a change of government within a state the obligations under the BWC still apply to that state. The other is that the provisions of the Convention apply to all activities within states parties, not just those owned or operated by the government.

To assist with discussions, Grisselle Rodríguez (Panama), Athikarn Dilogwathana (Thailand), Reski Ilahi (Indonesia), Faith Bagamuhunda (Uganda) and Michelle Carr (Australia) have been appointed as facilitators on these issues.

National implementation issues in context

There are many reasons why a state party might have incomplete or ineffective national implementation. For some, this may start with a lack of specific implementation legislation owing to challenges in finding parliamentary time against competing priorities. For others it may be resource limitations that mean legislation is not properly enforced. In numerous statements in BWC meetings there has been widespread acknowledgement that there is much room for improvement in the field of national implementation.

Additionally, there is a need for ongoing review of existing legislation and enforcement activities in all states parties as ever-changing contexts (and in particular scientific and technological (S&T) developments) mean that implementation arrangements need to be kept up to date.

National implementation has many facets – from security of pathogens (i.e., disease-causing micro-organisms) to controls on certain types of equipment. One of the lessons of past revelations of illicit trading networks of proliferation-sensitive materials and technologies was that countries can be host to companies that are contributing to proliferation activities without the relevant governmental authorities being aware. Effective national implementation therefore includes much more than simply the enactment of legislation.

BWC national implementation is not carried out in isolation. For example, some provisions overlap with those required to implement UN Security Council resolution 1540 which is focused on preventing access to WMD-relevant materials to those who might use them for acts of terror. Indeed, for some states parties this is the key aim of enhanced national implementation. Yet it should not be forgotten that other provisions, such as disease surveillance, overlap with national public health measures. A further example is that regulations for the control of biological laboratories overlap with health and safety provisions and therefore issues of public safety.

There has been a balance to be struck with Article III obligations to ensure that direct and indirect transfers relevant to the Convention, to any recipient whatsoever, are authorized only when the intended use is for purposes not prohibited under the Convention and Article X obligations to allow access for peaceful purposes.

There are areas of overlap between national implementation and S&T developments. One of these is to ensure any BWC system for S&T review informs and assists national policy processes. Another is the issue of codes of conduct for scientists. Work over a number of years on model codes has led to the creation of the Tianjin Biosecurity Guidelines for Codes of Conduct for Scientists which were endorsed in July 2021 by the Inter-Academy Partnership, a global network of national academies of sciences. These guidelines were presented to the Ninth BWC Review Conference for further endorsement, but the challenges to reach consensus in the final week resulted in them not being referred to in the Final Document.

Proposals and developments relating to national implementation

Proposals relating to national implementation have mostly focused around how international processes, including coordination of national offers of assistance, could aid states parties in their implementation of the BWC. There is a significant overlap here with capacity-building activities under international cooperation and assistance measures associated with Article X. An example of this is the Signature Initiative to Mitigate Biological Threats in Africa (SIMBA) supported by the Global Partnership and highlighted in a working paper for this session, (WP.7) submitted by Japan, co-sponsored by Canada and Germany.

There have been suggestions that if there were a new legally binding instrument to strengthen the Convention this could contain guidance on what legal provisions were required nationally. The decision to convene the BWC Working Group is a clear sign that discussions in this area are developing and it remains to be seen whether there is an evolving convergence of perspectives on what forms of implementation activities should take place at a national vs an multilateral level.

As national circumstances and legal and political systems vary between countries, it has long been recognised that there is no one-size-fits-all solution for implementation arrangements. At the same time, there has been recognition that there are many lessons to be learned by states parties from the implementation experience of others. One of the side events of the WG Second Session will see the ‘live launch’ of the BWC National Implementation Measures Database being developed by UNIDIR and VERTIC which had its ‘soft launch’ during May.

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