
Meeting of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction

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Consideration of the full range of approaches and options to further strengthen the Convention and its functioning through possible additional legal measures or other measures in the framework of the Convention

Review conferences, decision making and future institutional strengthening of the Convention

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I. Introduction

1. Effective and timely decision-making ought to feature as a central element in any arrangements aimed at the institutional strengthening of the Convention. During Review Conferences and various intersessional programme meetings, some States Parties have argued that only Review Conferences have the authority to take decisions that are politically binding on the States Parties. However, there has been no previous decision at any BTWC Review Conference that states this explicitly or even implicitly. In fact to the contrary, there is ample evidence that, since the first Review Conference in 1980, States Parties have agreed on numerous occasions to devolve specified decision-making authorities to other meetings or groupings. This Working Paper considers these instances, but this is more than a review of only passing historical interest. As we approach the Ninth Review Conference, now is the time to start thinking about how a future intersessional work programme could function more productively than its predecessors did. For that, we need carefully crafted and appropriate decision-making powers devolved to future Meetings of States Parties. Moreover, the consequences of events such as the COVID-19 pandemic underline the risk that the BTWC becomes more irrelevant, with its processes stuck in the past and decisions only allowed once every five years, while the real world moves on.

II. Review Conferences and devolved decision-making

2. Article XII of the Convention specified only one Review Conference, and that this should take place five years after the Convention's entry into force, or earlier if requested by



a majority of States Parties. This Conference had one express purpose, namely to review the operation of the Convention with a view to assuring that the purposes of the preamble and provisions of the Convention, including the provision concerning the negotiations on chemical weapons, were being realised. The focus on chemical weapons was important since many states had not been happy about the separation of chemical and biological weapons for disarmament purposes in 1968/9. This helps explain the BTWC's Article IX with its focus on progress towards prohibition of chemical weapons as the core of the Review Conference's mandate. The review had to take into account any new scientific and technological developments relevant to the Convention. The First Review Conference took place in 1980 and given the 'spirit of cooperation' in which it was conducted, and a recognition that such conferences constituted an effective method of reviewing the operation of the Convention, States Parties decided to hold a second Review Conference not earlier than 1985 and not later than 1990.¹

3. There have now been eight review conferences, which have all delegated decision-making powers to other meetings or groupings of States Parties, including the following examples:

- The Second Review Conference decided on a consultative meeting process that could consider any problems that may arise in relation to the objective of, or in application of the provisions of, the Convention. This meeting process could suggest ways and means for further clarifying any matter considered ambiguous or unresolved, as well as initiate appropriate international procedures within the framework of the UN.² One such consultative meeting process took place in 1997; it held three meetings with the participating States Parties taking their own decisions as required.³
- The Second Review Conference decided to hold an ad hoc meeting of scientific and technical experts to finalise the modalities for the exchange of information and data (the CBMs) by working out inter alia, appropriate forms for the States Parties to use for the exchange of information agreed to in the Final Declaration.⁴ This meeting, held in 1987, decided upon the initial CBM modalities and forms to give us the CBM process that we use now.
- The Third Review Conference further amplified the procedures of the consultative meeting process and stated in particular that in the taking of decisions, the consultative meeting shall proceed in accordance with rule 28 of the rules of procedure of the Review Conference.⁵
- The Third Review Conference established an Ad Hoc Group of Government Experts to identify and examine potential verification measures from a scientific and technical standpoint. This Group agreed its own report and circulated it to all States Parties for their consideration. As per the Group's mandate, a majority of States Parties then asked for a special conference to examine the report and to decide on any further action.⁶ This Conference decided upon the mandate for an Ad Hoc Group, which went on to consider appropriate measures, including possible verification measures, and draft proposals to strengthen the Convention,

¹ [BWC/CONF.I/10](#) page 9, 21 March 1980. It took place in 1986 to avoid clashes with the Third NPT Review Conference.

² BWC/CONF.II/13/II, page 5, 30 September 1986.

³ [BWC/CONS/1](#), 29 August 1997.

⁴ BWC/CONF.II/13/II, page 6, 30 September 1986.

⁵ BWC/CONF.III/23, Part II page 16, 27 September 1991.

⁶ BWC/CONF.III/23, Part II pages 16-18, 27 September 1991.

to be included, as appropriate, in a legally binding instrument, to be submitted for the consideration of the States Parties.⁷

- The Ad Hoc Group's 5th session decided that, in order to fulfil its mandate, it would intensify its work with a view to completing it as soon as possible before the commencement of the Fifth Review Conference and submit its report for consideration by the States Parties at a Special Conference.⁸ The Fourth Review Conference welcomed this decision.⁹
- The Eighth Review Conference decided that the States Parties would hold annual meetings. The Conference directed the first such meeting in 2017 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
- The 2017 MSP decided to establish the current intersessional process covering its content, structure and number of days for each part of the MX and MSP schedule between 2018 and 2020.
- The 2018 MSP decided to establish a Working Capital Fund financed by voluntary contributions and used solely as a source of short-term financing pending receipt of reasonably anticipated contributions, taking into account the average collection rate and pattern of payments over the preceding three years.¹¹

4. The historical record is clear. Review Conferences delegated significant decision-making powers to other meetings or groupings of States Parties such as the consultative meeting process, Special Conferences and Ad Hoc Groups, and even to the Meeting of States Parties in 2017. These powers were self-contained since these groupings did not need to refer back to a Review Conference for final approval or further consideration. Furthermore, these powers were far reaching and not limited to minor administrative issues. The essential point is that meetings of States Parties, in whatever setting, can agree to do anything on which they are able to reach consensus.

III. Institutional strengthening: Conclusions and recommendations

5. One key step that the States Parties can take in this context would see some decision-making authority delegated by the Ninth Review Conference. Deferring all decisions to a Review Conference is a recipe for delay; and moreover, is one reason why we have had little effective action in accordance with the explicit mandates given by the Review Conferences, since the first intersessional programme began in 2003. For this reason, the UK recommends that the Ninth Review Conference should endow annual Meetings of States Parties with the authority to decide on specific actions needed to strengthen the Convention when required. In fact, what we need is a body able to operate as effectively as the OPCW's Conference of States Parties, the IAEA's General Conference or CTBTO's Preparatory Commission. Any such meeting would operate under the existing rules of procedure used at Review Conferences adapted *mutatis mutandis*.

6. Such an outcome is fully consistent with past practice and outcomes from the Convention's eight Review Conferences held to date. Furthermore, such an outcome would

⁷ BWC/SPCONF/1, 19-30 September 1994.

⁸ BWC/AD HOC GROUP/32, 27 September 1996.

⁹ BWC/CONF.IV/9 Part II page 29, 6 December 1996.

¹⁰ BWC/CONF.VIII/4, paragraph 6, page 21, 11 January 2018

¹¹ BWC/MSP/2018/6, paragraph 22, 11 December 2018.

allow the States Parties to make substantive progress on strengthening the Convention in the periods between Review Conferences, as well as maintaining its relevance in the face of new threats and challenges in a post COVID-19 world.
