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CONFERENCE REPORT

Implementing the BTWC: Challenges and Prospects

EU Institute for Security Studies, Paris
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Introduction

The EU Institute for Security Studies held a conference on the Biological and Toxins Weapon Convention (BTWC) at its premises on 25 September 2006. It was organised in the context of the preparation for the 2006 BTWC Review Conference and in accordance with Council Joint Action 2006/184/CFSP. The conference was organised in cooperation with the Finnish EU Presidency and the office of Ms. Annalisa Giannella.¹

The main objective of the conference was to examine challenges associated with the implementation of the BTWC and possible implementation assistance requirements. Given its timing, it also served as a platform to circulate EU member states' papers submitted for consideration by States Parties to the BTWC. Three working groups were used to discuss national implementation of the BTWC, confidence-building measures, and the intersessional programme of work. Approximately sixty participants attended the conference, representing government, international organisations, think tanks and academia.

The challenges and prospects facing the BTWC

During the first plenary session, speakers identified challenges and prospects facing the BTWC. Concerning challenges, Ambassador Masood Khan, President-designate of the Sixth BTWC Review Conference, noted four general categories:

1. *Ensuring universal adherence to the Convention* – Currently, there are 155 State Parties and 16 Signatory States to the BTWC. Another 23 states have neither signed nor ratified the BTWC. As a result, continued efforts are needed to universalise the Convention. Ambassador Khan called for universal compliance prior to 2011.

¹ HR Solana's Personal Representative on non-proliferation.

2. *Addressing the possibility that terrorists or non-state actors gain access to biological weapons* – Bio-terrorism represents a challenge that needs to be met “with full force and refined skill.” Ambassador Kari Kahiluoto of Finland highlighted several causes for concern, including developments in weaponisation processes and means of delivery of biological agents.
3. *Recognising the risks posed by developments in life sciences* – In spite of immense gains in life sciences, developments in areas such as genetic engineering and synthetic biology warrant attention as they could extend the “lethality and range of biological weapons.” Several participants identified this dual-use aspect as both a challenge and a prospect.
4. *Strengthening compliance with the Convention* – Robust national legislation and administrative measures are still needed to ensure the coherent and coordinated implementation of the Convention. Among specific challenges are ensuring that research in bio-defense programmes are defensive in nature, are amenable to scientific oversight, and conform to the BTWC.

Speakers also identified several extraneous factors that could impact the BTWC Review Conference. These ranged from the “limited” outcomes of other recent review conferences (e.g. for Small Arms and Light Weapons and the NPT) to tensions in the international system (e.g. over Iran’s nuclear programme).

In light of these and other challenges, Ambassador Kahiluoto and Ms. Giannella underlined the strong commitment of the EU to the international non-proliferation treaty system and its efforts in strengthening the BTWC in particular. The EU wished to contribute to a successful outcome of the Sixth BTWC Review Conference, and was developing activities in order to promote the universalisation of the BTWC Convention and in order to assist countries party to the Convention in enhancing their national implementation.

On the prospects side, speakers highlighted two principal elements. First, there is good identification of the important issues to tackle for the near future. These are discernible in EU and other State Parties’ papers that have been submitted for consideration. Second, progress is encouraged by recent disarmament successes in countries like Libya and via mechanisms such as UNSCR 1540 and EU Joint Actions.

Working group findings and recommendations

The following section provides a brief overview of the main themes and recommendations discussed in the three working groups.

Working group 1 – National implementation of the BTWC

The potential for differing interpretations of the obligations in the BTWC and their impact on implementation efforts was one of the main themes covered in Working Group 1. Several illustrative examples were given:

- Article 1 – While there is no mention of “biological weapons” in this article, policymakers might narrow their prohibition efforts to that particular category rather than focus on the purpose for which agents and toxins might be used – thereby undermining the General Purpose Criterion.
- Article 3 – The reference “not transfer to any recipient whatsoever” may in some instances be interpreted as the equivalent of terrorist organisations – missing other relevant groups such as criminal organisations.
- Article 4 – The call on State Parties to “take any necessary measures to prohibit and prevent” prohibited activities within their territory leaves a wide margin for interpretation. Countries may choose legal instruments that affect their ability to adopt penal legislation.² For example, some State Parties regulate only peaceful uses arguing you cannot provide licenses for treaty-prohibited purposes. As a result, the only violation that can be prosecuted for treaty-prohibited activity is breach of licensing arrangements.

Ms. Giannella explained in detail the assistance options to third states (assistance in drafting legislation and other measures relevant for the implementation of the BTWC) which are financed by the EU Joint Action. She encouraged interested states to discuss concrete assistance needs and the parameters of that assistance. Ms. Giannella also indicated that a future EU Council decision could provide for some financial resources for assistance to third countries in the area of physical protection.

A representative of Jordan suggested that apart from legislative assistance, follow-on activity may be needed in the form of providing training to enforcement personnel and providing equipment. Ms. Angela Woodward, legal coordinator for the implementation of EU technical assistance project, provided further information on EU assistance and distributed to all participants assistance request forms as well as a checklist of obligations deriving from BTWC.

Another theme discussed by the working group was the value of model legislation to facilitate implementation of the BTWC. According to one speaker, only 50 of 132 States reporting to Legislative Database of the UNSCR 1540 Committee have declared legislation relating to biological weapons – suggesting significant gaps in coverage – even among BTWC States Parties

Participants in favour of model legislation efforts suggested that it could be done through an international advisory group at the regional or international level financed through a trust fund. Some participants were sceptical to this idea, noting that different legal systems mean that there is no one-size-fits all model. A system based on a list of “proven practices” was considered more effective. Among the recommendations forwarded by Working Group 1 are to:

² While there is no explicit obligation to adopt penal legislation, some speakers observe that Article IV suggests that they form part of the BTWC obligations. This is also noted in the EU paper on “Assessment of National Implementation of the BTWC.”

- *Establish national points of contact and/or national authorities.* Some speakers noted that national coordination is lacking in many State Parties. The establishment of national contact points and/or authorities could facilitate national implementation and monitoring of national compliance.
- *Encourage registration and licensing systems.* Registration and licensing schemes should be encouraged to the extent possible to ensure better control of sensitive materials.
- *Balance the quantitative and qualitative aspects of BTWC implementation.* Some participants underlined that universalisation should not mainly hinge on the number of State Parties to the BTWC. The quality of implementation efforts should be taken into careful consideration.
- *Ensure that implementation extends beyond the legal domain.* While legal assistance is vital for the implementation of the BTWC, speakers underlined that State Parties require more “practical” assistance ranging from expertise to monitoring equipment.
- *Provide additional guidance during the 6th Review Conference.* It was proposed that the 6th Review Conference consider the viability of an “action programme for the universalisation and fulfilment of national implementation measures, with appropriate facilitation and resources.” Progress achieved could be reported during annual BTWC meetings.

Working group 2 – Confidence-building measures (CBMs)

There was a general agreement that CBMs are not working as well as they could or should. On the other hand, there was general consensus that CBMs are vital for building credibility and engagement in the regime among State Parties, non-State Parties, and the general public.

A key concern voiced by several participants was the low level of participation in the CBM process. References were made to the statistics provided in the EU paper on the enhancement of the CBM process. For example, between 33 and 45 declarations are turned in each year from a pool of 155 State Parties. Analysis shows that a total of 90 State Parties have never submitted a declaration. Furthermore, participation levels are highly variable according to national groupings. To illustrate, while the “western group” had an average CBM participation rate of 65 per cent between 2000 and 2005, the equivalent figure for the group of “non-aligned and other states” was 6 per cent.

Since the value of CBMs is directly related to the type of information included and its veracity, Working Group members also pointed to the importance of complete and consistent returns. However, several working group members acknowledged the need to balance issues relating to transparency and secrecy.

From another angle, it was noted that some sections in the CBMs might contribute to confusion affecting their overall value. For example, response fields provided in the preliminary declaration, giving the response option of “nothing to declare” and

“nothing new to declare”, could easily be misinterpreted. The inability to assess the completeness and veracity of returns did not make things any better.

With respect to recommendations, participants identified several “quick fixes” that could be implemented while a longer-term strategy for enhancing the CBM process is developed. Examples of such quick fixes include to:

- *Facilitate means to analyse CBM data.* Participants suggested an annual analytic report – prepared by the UN Department for Disarmament Affairs – to analyse aggregate trends in CBM returns. To the extent possible, data from UNSCR 1540 should be included to enhance cross-sectoral analysis.
- *Simplify the CBM form.* For example, by relying on simplified tick-boxes and multiple-choice questions that also facilitate consistency and translation.
- *Clarify the CBM form.* It was suggested that the ambiguity between certain response categories such as “nothing to declare” and “nothing new to declare” be removed.
- *Leverage information technology.* This includes exploring the viability of web-based CBM forms (e-CBMs) and other electronic tools to assist with the CBM process (e.g. CBM “helpdesk”).
- *Incorporate reminders.* Simple measures such as “CBM email reminders” could be sent to State Parties at the outset of each year to encourage greater participation. Another reminder could be sent after the April 15th deadline.
- *Provide options to make information available to a wider audience.* Could it be made easier for State Parties to indicate whether they would like their CBM forms to be made public? An idea presented might be to place a tick box on the front page of the CBM in which State Parties can indicate their preference.
- *Consider follow-on work.* Could the CBM process become a subject in a possible future intersessional work programme?

An idea proposed for the medium-term is to enhance synergy with international organisations – such as the World Organisation for Animal Health (OIE) and the World Health Organisation – to facilitate the assembly of cross-sectoral information.

Working group 3 – Intersessional work programme

As a departure point, working group participants discussed the benefits coming out of the 2003-2005 Intersessional Work Programme. Participants identified both tangible and non-tangible benefits. Examples of these positive outcomes include the:

- Provision of a platform to find common ground and explore avenues to forward key topics;

- Possibility to consider new thinking, especially among those without legislation in place;
- Demonstration that the BTWC requires continual review and robust information sharing;
- Contribution to greater transparency and sharing of best practices;
- Participation of other groups and international organisations in the BTWC implementation process. This has facilitated progress in several areas such as for the formulation of Codes of Conduct for scientists;
- Ability to forge closer contact and greater openness between individuals, national experts, and State Parties.

Group members also discussed whether Meetings of State Parties should take decisions without referral to a future Review Conference in cases of consensus. Opinions were divided as some participants argued that such modifications would negatively impact the openness and productivity of meetings. Others thought such a mechanism might lower the workload during forthcoming Review Conferences.

Working group members also considered potential topics for a future intersessional work programme. The guiding principle for such work should be to strengthen the convention and avoid that its core elements – such as the General Purpose Criterion – are weakened. Among the topics identified by participants were national implementation, universalisation of the BTWC, the CBM process, international cooperation, scientific developments, and the effective implementation of Article X.

The recommendations forwarded by working group three focussed on the “process” for potential future work programmes. Examples of recommendations include to:

- *Transform the intersessional work programme from an ad-hoc process into a more “regular activity” for the benefit of State Parties.* For example, yearly meetings could be organised to evaluate and discuss progress in different areas (e.g. CBMs, scientific developments).
- *Investigate means to increase the profile and authority of the convention.* Several working group members noted that the BTWC is currently not well known outside official circles.
- *Look for synergies to enhance the effectiveness of the intersessional work programme.* For example, a paper submitted by Canada (to the PrepCom) suggests the possibility of combining the meetings of experts and of State Parties into a single meeting of two weeks duration.
- *Explore the viability of establishing a small “Implementation Support Unit” (4-6 professional staff).* Not all group members were warm to this idea, noting that it represented a “delicate” proposal. Among the tasks that could be attached to such a unit include:

- Providing background information relevant to the BTWC
 - Serving as liaison with other organisations relevant to the convention
 - Functioning as a depository of information
 - Facilitating consultations under Article X
 - Assisting with the CBMs process
 - Undertaking efforts to enhance BTWC universalisation
- *Encourage greater involvement of the scientific community in the work programme.* Typically, relevant sectors in the scientific sector have limited awareness of the BTWC and its ramifications (e.g. on dual-use aspects). An example of an awareness measure might be to include information on BTWC-related responsibilities in specific biomedical or bioscience curricula.

Towards the 6th Review Conference

During the concluding remarks, Ambassador Khan outlined his thoughts for the upcoming BTWC Review Conference – making four general observations. First, the Review Conference should be seen as a process. The use of “quick fixes” and a longer-term approach should thus not be mutually exclusive. Second, the Review Conference should not reinvent concepts or ideas. Rather, the focus should be to “review and reinforce” the BTWC. Third, the intersessional programme of work fulfils an important function since it provides a feedback loop that can be used to sustain the BTWC. Fourth, the Review Conference is a time to strike bargains (for example concerning Article X). Ambassador Khan encouraged State Parties to closely reflect on such bargains and prepare concise proposals to ensure a successful 6th Review Conference.

Closing the conference, Ambassador Kahiluoto reiterated the EU commitment to work for a successful outcome of the Review Conference and stressed the EU readiness to assist countries in acceding and implementing the Convention.

Annex: List of Countries Party to the BTWC Represented at the Conference

(in alphabetical order)

- Afghanistan
- Australia
- Austria
- Azerbaijan
- Belarus
- Belgium
- Benin
- Bosnia and Herzegovina
- Bulgaria
- Canada
- Costa Rica
- Cyprus
- Finland
- Former Yugoslav Republic of Macedonia
- France
- Germany
- Hungary
- India
- Iran
- Ireland
- Italy
- Japan
- Jordan
- Latvia
- Lithuania
- Netherlands
- Nigeria
- Pakistan
- Peru
- Poland
- Portugal
- Romania
- Russian Federation
- Serbia
- Sweden
- Switzerland
- Thailand
- Ukraine
- United Kingdom
- United States of America