

Wednesday 7th December 2022

CoW second reading starts and elements non-paper considered

Proceedings on Tuesday for the Ninth Review Conference for the 1972 Biological and Toxin Weapons Convention (BWC/BTWC) saw the Committee of the Whole (CoW), meeting in public, start to go through the compilation of suggestions for the article-by-article review. The informal plenary preparing for the Drafting Committee met again in private. There was a brief report from the Chair of the Credentials Committee.

The Committee of the Whole – second reading

The CoW met during the morning with Ambassador Tatiana Molcean (Republic of Moldova) in the Chair to start the ‘second reading’ of the article-by-article review which involves working through the compilation of suggestions. An updated version of the compilation has been produced as document BWC/CONF.IX/COW/INF.2 which incorporates the proposals contained in document INF.1 into the text of the final declaration of the Eighth Review Conference. Both documents are now on the official Conference website at <https://meetings.unoda.org/bwc-revcon/biological-weapons-convention-ninth-review-conference-2022>.

There were some comments noting the duplication of suggestions for most articles calling for them to be properly implemented and whether some space could be saved by inserting an overarching comment about all articles at the same time.

Much of the discussion regarding *Article I* focused on scope, on use, or on implementation. On scope, many delegations considered that the text from the Eighth Review Conference was sufficient to cover all scientific developments while others supported suggested changes that highlighted particular aspects of such developments. As ‘use’ does not appear in the text of the article it is not explicitly prohibited under the Convention. This has been argued by some to be a significant weakness and the Fourth Review Conference (1996) declared that use is implicitly prohibited by the Convention, a declaration repeated at each Conference since. Part of the logic for this is that use would rely on possession of prohibited items and therefore the use of biological weapons would fall within the prohibitions of Article I. One suggestion that attracted much attention was to add that the Conference would condemn threat of use as well as use within the Article I review. A suggestion about a legally-binding protocol being the best way to ensure implementation of this Article attracted diverging views.

[Historical note: Use had been explicitly included in the original (July 1969) and revised (August 1969 & August 1970) UK drafts on a prohibition on biological warfare that kick-started the negotiations towards the BWC. The US-Soviet joint draft (August 1971) that, with a few amendments, became the BWC did not include use. There appears to have been two threads of argument that had led to this. One was questioning whether the new body of international law relating to arms control and disarmament should impinge on the laws of war (an argument very much of its time). The other was whether including use in the BWC would weaken the role of the 1925 Geneva Protocol, especially as the prohibition on the use of chemical weapons in the latter was seen as needing to be preserved as there was no immediate prospect of a chemical weapons convention – that was only agreed two decades years later. In August 1971, UK

Ambassador Henry Hainworth, with the support of many other delegations, forcefully urged the reintroduction of use as a prohibition but this did not overcome the resistance of the USA and USSR before the BWC text was finalized in September 1971.]

There was only a brief discussion of the suggestions for *Article II*, much of which focused on what new states parties might be encouraged to declare in terms of intentions not to pursue biological weapons.

On *Article III*, a number of the suggestions, and interventions about them, focused on export control issues. The balance of obligations for each state party to ensure it does not assist others in the acquisition of biological weapons while at the same time to ensure fullest possible access to materials and technologies for peaceful purposes under Article X has long been the subject of discussion.

Credentials Committee

The proceedings of the CoW were paused at around noon to allow for a brief plenary so that a report could be given by Angus September (South Africa), the Chair of the Credentials Committee. He reported that a number of delegations had not yet supplied originals of their formal credentials and these delegations were urged to supply their credentials as soon as possible. This call was echoed by the President. The role of Credentials Committees at multilateral conferences is sometimes perceived as an almost mundane administrative process. However, there is an important purpose in checking that those present and participating in decision making have the relevant authority to be doing so. Without confidence in that authority there might, one day at some conference on some subject, be doubt in the legitimacy of the decisions.

Schrödinger's Committee

The informal plenary that is and is not the Drafting Committee met during the afternoon, with Sara Lindegren (Sweden) in the Chair. A major focus for discussion was a non-paper by the facilitators on elements that might be included in the forward-looking part of the final document. This elements paper is more developed than equivalents seen at this stage of previous BWC Review Conferences. This may have positive benefits in allowing earlier discussion on the overall shape of the forward-looking part; but it may also allow earlier criticism of the overall package. The terms 'balanced' and 'package' carry with them significant political baggage but the underlying concept that what is needed for the final outcome of the Conference is a balanced package of proposals provides some clarity to the discussions. There has to be enough in the collection of elements for everyone to support what appears in the final document. Expressed positions during the Tuesday session became firmer. The element most vocally supported by the majority of delegations, a science & technology (S&T) review process, was strongly criticised in at least one intervention. Past practice has been that revised elements papers are introduced.

Side events

There were three side events on Monday. At breakfast, the Nuclear Threat Initiative Global Biological Policy and Programs hosted a briefing on 'Safeguarding Bioscience and Biotechnology: IBBIS and the International Common Mechanism for DNA Synthesis Screening'. There were two events at lunchtime: the Global Partnership, the Africa Center for Disease Control and the BWC ISU convened a briefing on 'Supporting the universalization and effective implementation of the BWC in Africa' which updated the Conference on activities of the Signature Initiative; and Control Arms held a virtual briefing on 'Regulating Transit and Transshipment Across Weapons of Mass Destruction and Conventional Weapons – What has worked, what are the challenges and what is the way forward?'

This is the eighth report from the Ninth BWC Review Conference (28 November-16 December 2022). These reports have been produced for all BWC meetings with NGO registration since the Sixth Review Conference (2006) by the BioWeapons Prevention Project (BWPP). They are available from <<https://www.bwpp.org/reports.html>> and <<https://www.cbw-events.org.uk/bwc-rep.html>>. A subscription link is available on each webpage. Financial support for these reports has been gratefully received from Global Affairs Canada. The reports are written by Richard Guthrie, CBW Events, who is solely responsible for their contents <richard@cbw-events.org.uk>.