

An Effective Intersessional Process and Implementation Support Unit

by Graham S. Pearson* and Nicholas A. Sims†

Introduction

1. This article has been developed from chapters written for the *Key Points for the Eighth Review Conference* published in August 2016 by the University of Bradford and available at: <http://www.brad.ac.uk/acad/sbtwc/briefing/keypoints.htm>

2. It was noted in Chapter 1 of *Key Points* in regard to the *Intersessional Process and its Structure*, which was identified as a topic on which **decisions** are required at the Eighth Review Conference, that:

17. ... it is evident that consideration needs to be given to establishing a more effective arrangement than that adopted hitherto. In these Key Points we recommend the establishment of an Annual Meeting of States Parties with a clear mandate to agree and to take actions as appropriate supported by two Open-Ended Working Groups (OEWG) and a Technical Working Group on Confidence-Building Measures. The **first** OEWG should address the topic of relevant advances in science and technology whilst the **second** OEWG should address providing reassurance that States Parties are implementing all Articles of the Convention. This OEWG should address the implementation of Articles of the Convention, particularly III, IV, V and X, and would provide a forum within which consideration could be given to the annual submission of CBMs as well as to the biennial reports by States Parties on the implementation of Article X. Reassurance concerning implementation needs to be addressed across the Convention as a whole. A Technical Working Group on CBMs should address enhancing the effectiveness of the Confidence-Building Measures (CBM) process, increasing participation therein, revising the forms as necessary and further developing the electronic platform.

3. The same chapter also identified *The Implementation Support Unit* as another topic on which **decisions** are required at the Eighth Review Conference saying that:

32. In regard to the Implementation Support Unit, it needs to be recalled that at the Seventh Review Conference there was considerable support for a modest increase in the strength of the ISU from 3 to 5 positions. However, it became evident late in the Seventh Review Conference that this could not be agreed. In a report‡ on the Seventh Review Conference it was noted that:

Financial constraints were particularly emphasised by States Parties from southern Europe, but the climate of austerity they reflected was more widely

* Graham S. Pearson, Visiting Professor of International Security, Division of Peace studies, University of Bradford, Bradford, UK.

† Nicholas A. Sims, Emeritus Reader in International Relations, London School of Economics and Political Science, University of London, London, UK.

‡ Graham S. Pearson and Nicholas A. Sims, Report from Geneva, The Biological Weapons Convention Seventh Review Conference: A Modest Outcome, Review no. 35, March 2012. Available at <http://www.sussex.ac.uk/Units/spru/hsp/Reports%20from%20Geneva/HSP%20Reports%20from%20Geneva%20Special%20March%202012.pdf>

felt. It is evident from the paper circulated by the Secretariat on 21 December 2011 that the annual additional resources sought from Portugal and Spain for the measured and modest augmentation of the ISU in BWC/CONF.VII/4 were \$2,869 for Portugal and \$17,775 for Spain. Given that the major participants had accepted the measured and modest augmentation of the ISU, and that the EU Joint Action in support of the BTWC [Council Joint Action 2008/858/CFSP of 10 November 2008] with its budget of 1.4 M Euro (\$ 1 M) was about to terminate at the end of December 2011 with some \$270,000 unspent, it appears that this was yet another example of the EU's fragmentation and its failure to think and plan ahead in a coordinated way. These constraints resulted in the Conference adopting, in its final hours, a budget embodying zero real growth increase subject only to variations for inflation and for currency fluctuations against the Swiss franc. This strict budgetary discipline impinged on the costs permitted to the Intersessional Process and, notably, prevented any increase of staff or resources for the Implementation Support Unit. The BWC is, in comparison with many, a very inexpensive treaty to administer, but this fact counted for nothing: its diminutive scale of assessments on States Parties was still subjected to the full force of public expenditure cash limits.

33. The subsequent annual reports of the Implementation Support Unit in 2012 to 2015 have each year reiterated the difficulties caused by the lack of resources:

The decision of the Seventh Review Conference to mandate additional tasks to the Unit without increasing its resources did pose a challenge, however, and the concerns raised in the 2011 ISU report to the Seventh Review Conference about the capacity of the ISU to respond to the requests of States Parties and the geographic distribution of ISU activity remain unresolved – and have even been exacerbated. (MSP/2012/2, para 33).

The decision of the Seventh Review Conference to mandate additional tasks to the Unit without increasing its resources continued to pose a challenge and the concerns raised in the 2011 ISU report to the Seventh Review Conference about the capacity of the ISU to respond to the requests of States Parties and the geographic distribution of ISU activity remain unresolved. (MSP/2013/4, para 31).

The decision of the Seventh Review Conference to mandate additional tasks to the Unit without increasing its resources continued to pose a challenge. The concerns raised in the 2011 ISU report to the Seventh Review Conference about the capacity of the ISU to respond to the requests of States Parties and the geographic distribution of ISU activity remain unresolved. (MSP/2014/4, para 34).

As described in previous reports, the decision of the Seventh Review Conference to mandate additional tasks to the ISU without increasing its resources continued to pose a challenge. The concerns raised in the 2011 ISU report to the Seventh Review Conference about the capacity of the ISU to respond to the requests of States Parties and the geographic distribution of ISU activity remain unresolved. (MSP/2015/3, para 36).

34. Consequently, States Parties in their preparations for the Eighth Review Conference need to give early consideration to the provision of adequate resources for the Implementation Support Unit.

4. Our intention here is further examine the decisions that need to be taken by the Eighth Review Conference to achieve an **effective** Intersessional Process and Implementation Support Unit.

The Intersessional Process

5. Three intersessional periods have now been successfully completed – from 2003 to 2005, then 2007 to 2010 and most recently 2012 to 2015 – and States Parties have demonstrated that they can do things together. However, they have been less successful in producing concrete **actions** with results. In fact, the practice at the annual Meetings of States Parties has increasingly been to agree the substantive paragraphs of their Reports by using the approach of **consensus by deletion** rather than recognizing that an objective can be achieved by various alternative routes. It is timely – and necessary – that States Parties prepare for the Eighth Review Conference by considering how States Parties can work together **effectively** using the intersessional process and **actually** strengthen the Convention and its implementation.

Decisions

6. In regard to decisions and actions being agreed and taken by States Parties during the intersessional process, it needs to be recognized that the mandate agreed at the Seventh Review Conference for the intersessional period was *to discuss, and promote common understanding and effective action on those issues identified for inclusion in the intersessional programme by this Seventh Review Conference* [Emphasis added]. Furthermore, it was evident that States Parties were indeed clearly expected to achieve *conclusions or results* as the agreed mandate also states *All meetings, both of experts and of States Parties, will reach any conclusions or results by consensus.* [Emphasis added]. In practice, there was little if any effective action or results as the States Parties chose to defer any further consideration until the Eighth Review Conference.

7. Looking back at the intersessional period completed in 2015, it is evident that few decisions were made and little if any effective action was agreed let alone taken and undue attention was given to maintaining a careful balance – rather than recognizing the **reality** that decisions for effective action could be agreed and taken in some areas whilst not in others. The mandate of the Annual Meeting of States Parties should authorise it to take decisions on such matters as adjustments to the detail of the intersessional work programme, and to the CBMs, within the framework laid down by the Review Conference. It should also be authorised to make recommendations for action to the States Parties, year by year, and not have to wait until the Ninth Review Conference. The consensus rule would continue to apply to the Annual Meeting, so giving it limited powers of decision-making would not disadvantage any State Party or detract from the authority of the Review Conferences.

8. Consequently, consideration should be given at the Eighth Review Conference to providing the Annual Meeting of States Parties with a clear mandate to take appropriate decisions and to agree actions. This could be achieved by modifying the mandate for the Intersessional Process so as to read along the following lines – amendments shown in **bold**:

*to discuss, and promote common understanding and **take decisions for effective action** on those issues identified for inclusion in the intersessional programme by this **Eighth Review Conference**.*

A further amendment should be made for clarity to the sentence in the mandate reading – amendment shown in **bold**:

*All meetings, both of **Working Groups** and of States Parties, will reach any **decisions, conclusions or results by consensus**.*

Structure

9. The structure of the Intersessional Process also needs to be modified so as to be more effective. Consideration should be given at the Eighth Review Conference to whether a more effective arrangement could well be to have an Annual Meeting of States Parties with a clear mandate to agree decisions and actions as appropriate, supported by two Open-Ended Working Groups (OEWG) and a Technical Working Group. **One OEWG** should address the topic of relevant advances in science and technology – this should be an OEWG so that participation is **inclusive** of all States Parties. Moreover, this OEWG should include diplomats and policy makers as well as relevant scientific experts from government, academia and industry. **A second OEWG** should address providing reassurance that States Parties are implementing all Articles of the Convention. This OEWG should particularly address the implementation of Articles III, IV, V and X and would provide a forum within which consideration could be given to the annual submission of CBMs as well as to the biennial reports by States Parties on the implementation of Article X. Reassurance concerning implementation needs to be addressed across the Convention as a whole. **A Technical Working Group** should address enhancing the effectiveness of the Confidence-Building Measures (CBM) process, increasing participation therein, revising the forms as necessary and further developing the electronic platform.

10. A further point that needs to be addressed in making future intersessional periods more effective is to address the need for continuity and leadership during the period such as by establishing a **Steering Committee** that would be made up of the Chair and Vice-Chairs of the Annual Meeting of States Parties together with the Chairs of the Open-Ended and Technical Working Groups and the Chief of the ISU as Secretary. This Steering Committee would be working on behalf of all States Parties and would report to each Annual Meeting of States Parties.

11. This **Steering Committee** would also be responsible for promoting the Action Plan on Universalisation of the Convention and nurturing progress in regard to accessions to the 1925 Geneva Protocol and withdrawal of any remaining pertinent reservations thereto, working in both cases closely with the respective Depositaries.

12. In addition to consideration of the above structural changes to improve the effectiveness of the Intersessional Process, attention also must be given to the resources for the Implementation Support Unit.

The Implementation Support Unit

13. As noted above in paragraph 3, it needs to be recalled that at the Seventh Review Conference there was considerable support for a modest increase in the strength of the ISU from 3 to 5 positions. However, it became evident late in the Seventh Review Conference that this could not be agreed as some States Parties had not prepared for the possibility of a very modest increase in their annual contributions to the funding of the Convention and the Implementation Support Unit.

14. Consequently, it was evident that States Parties in their preparations for the Eighth Review Conference needed to give early consideration to the provision of adequate resources for the Implementation Support Unit. The decision to prepare a background document entitled *Financial implications of proposals for follow-on action after the Eighth Review Conference* (BWC/CONF.VIII/PC/6) which was made available in June 2016 is greatly welcomed.

15. This document (BWC/CONF.VIII/PC/6) shows that the costs for a continuation of the present under-resourced ISU (one p-5, one P-4 and one P-3 with USD 25,000 for travel and equipment) would amount to USD 746,365 each year. In *Key Points* in the chapter on Agenda Item 11, we recommend that **the starting point** for considering the ISU should be the enhanced Implementation Support Unit as originally proposed (and essentially agreed) at the Seventh Review Conference[§] of one P5, one P4, two P3 and one GS/OL, with travel of 50,000 USD and equipment of 8,000 USD including the 13% programme costs which would today cost USD 1,038,588 each year.

16. For an effective Intersessional Process as outlined above, the resources for the ISU should for the period from 2017 to 2020 include the following **additional** provisions: an additional P4 for the OEWG on Science and Technology, an additional P4 for the OEWG on Providing Reassurance, and an additional P3 for the Technical Working Group on CBMs, together with additional travel costs of 30,000 USD and additional equipment of 3,000 USD including the 13% programme costs which would cost an additional USD 717,194 each year.

17. Consequently, the annual costs during the Intersessional period from 2017 to 2020 for a programme consisting of an Annual Meeting of States Parties lasting **one week** each year, prepared for by **three** one week meetings of the OEWG on science and technology, the OEWG on providing reassurance and the Technical Working Group on CBMs, an ISU with travel and equipment budgets as essentially agreed at the Seventh Review Conference and augmented by an additional P4 for the OEWG on Science and Technology, an additional P4 for the OEWG on Providing Reassurance and an additional P5 for the Technical Working Group on CBMs, together with additional travel costs of 30,000 USD and additional equipment of 3,000 USD, would amount to some USD 3,281,782 each year.

18. These costs should be put into perspective by recognizing that almost all States Parties to the BTWC are also States Parties to the Chemical Weapons Convention. It is therefore very reasonable to compare the proposed annual cost for States Parties to the BTWC with the **annual cost for 2016** of the OPCW of the Chemical Weapons Convention which was agreed

[§]United Nations, The Seventh Review Conference 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, Geneva, 5 - 22 December 2011, *Estimated costs of the intersessional programme of the Convention to be held from 2012–2015*, BWC/CONF.VII/4, 21 December 2011. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/652/31/PDF/G1165231.pdf?OpenElement>

on 3 December 2015 at the Conference of States Parties** as EUR 65,529,600 (which equates to USD 73,088,440). The recommended annual cost of the BTWC meetings and the ISU is thus **less than 4½ per cent** of the cost of OPCW for 2016.

19. Given the risk from misuse of biological agents and toxins – infectious disease recognizes no boundaries – to humans, animals and plants, States Parties should recognize the immense benefits they would gain from an augmented Implementation Support Unit and an enhanced effectiveness of the Biological and Toxin Weapons Convention for a cost of **less than 5 per cent** of that which virtually all States Parties already pay nationally as parties to the Chemical Weapons Convention and thereby members of the OPCW.

** OPCW Conference of States Parties, *Decision: Scale of Assessments for 2016*, C-20/DEC.7, 3 December 2015.