

## **WHAT FUTURE FOR BIOLOGICAL DISARMAMENT?**

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What future for biological disarmament?

In posing the question this way I am making two points. First, the BWC is a disarmament treaty before anything else. It has other functions, certainly, but its disarmament function is primordial. Second, it is not guaranteed a bright future. It could find itself trapped in an acceptance of immobility, an empty ritual exchange of predictable arguments but no forward movement. It risks becoming marginalised as the world moves on. Let us all resolve to make sure that does not happen.

I am conscious of a strong sense of obligation to the people who brought the BWC into being. Last year I took part in a witness seminar for an inter-university research project on the prehistory and early history of the BWC when we surviving 'old hands' shared our recollections of its context, the politics and personalities of the time, and this brought home to me how few of the pioneers are still living. We owe it to the pioneers to reinvigorate this disarmament treaty and steer it towards a brighter future. Some of us have been trying to do this for a long time. We used to pursue this goal under the name of clarification, then reinforcement, then strengthening. Whichever word we use, the goal is the same. It is to make the BWC work better, to build on its strengths and remedy its main weakness. I will identify its main weakness in a few minutes, but first let us examine its strengths.

### **The strengths of the BWC**

The strengths of the BWC lie in its comprehensive scope and its essential logic. The deliberate infliction of disease, whatever the disease, is an affront to humanity which almost all governments have renounced, comprehensively, as even a distant military option. They are saying "We don't have BW but we could be vulnerable to BW attack by other people so we want to be sure that no one else has BW either." That is what I mean by the essential logic. I first heard it expressed in 1969 when the UK initiative which led to the BWC was gathering support. It struck me as good common sense then and it still does now. It required those who at the time still possessed BW stockpiles to renounce and destroy them and everyone else to make their renunciation permanent. What the BWC does is fix that renunciation of BW in a lasting treaty relationship of legal equality. In that treaty relationship common sense further requires the parties to reassure one another that they are honouring their obligations; and to find ways of demonstrating that fact. They owe that much to one another as treaty partners. Some would say they owe that to humanity as a whole.

In 1986 there was some worry lest there were some novel micro-organisms or toxins or bioregulators not covered by the legal scope of the Convention. But this worry was misplaced. Once the comprehensiveness of the BWC's legal scope was reasserted, the concern shifted

back - and it remains rightly a concern - to whether there might occur changes in the balance of incentives and disincentives for a State Party to break out of the BWC's treaty constraints or for a non-party to attack. That is one reason why relevant developments in science and technology (S&T) require close and continuous scrutiny. These S&T reviews, like regular assessments of the Convention's health more generally, are made easier by its comprehensive scope and the legal equality of obligations on all its treaty partners.

### **The main weakness**

The main weakness of the BWC lies: where? Not so much, now, in its definitional imprecision or lack of universality or even its famous institutional deficit, because all of those are, albeit very slowly, on their way to being alleviated. No, it lies in the area of reassurance. That is the perennial gap at the heart of the BWC. It flows from the failure of the States Parties, building on the text as it stands, to derive a common understanding as to how to reassure one another and demonstrate that their shared commitment to biological disarmament governs what they are doing and what they allow to be done. Without it, doubts and suspicions persist and erode the credibility of the Convention as they stay unresolved.

Some attempts have been made to remedy this weakness. Individual States Parties have come up with concepts of an accountability framework, or peer review, or compliance assessment, or transparency measures, or a compliance framework, or fuller use of Article V. A few of these concepts have developed into joint initiatives. These initiatives are to be commended and they invite emulation. None of them makes an exclusive claim. And none of them on its own bridges the gap. But instead of calling them distractions their critics should come up with better initiatives of their own. At some stage there may be a collective decision on how to integrate these patchwork initiatives into the BWC treaty regime. But first they need to be encouraged and developed, and this can best be done in a conceptual discussion of compliance, what it is and how it can be demonstrated. Such a conceptual discussion of compliance needs to be open-ended, without preconditions. I do urge the States Parties at the Eighth Review Conference next year to revive this proposal and give its implementation high priority and a serious allocation of resources in shaping the constructive evolution of the BWC.

This is only one of several proposals which the Seventh Review Conference failed to adopt but are just as relevant now and challenge the Eighth Review Conference to shape a better future for biological disarmament. In this category I would also put the many good ideas for reshaping the CBMs into a set of measures that really do build confidence, a modest expansion of the Implementation Support Unit to match a realistic mandate, an Open-Ended Working Group to improve on the present arrangement for review of developments in S&T, and the restructuring of the whole intersessional process to make it robust and effective. If time allowed I could add more. We all have our wish-lists. But nothing is more important than the effort to find solutions to the problem of reassurance: to develop a common understanding and effective action to remedy this main weakness of the Convention.

### **The perspective of 1975-2015 and the next 40 years**

I want to spend the remaining few minutes on the perspective of 1975-2015 and the next 40 years. I can assure you as one who was there to witness entry into force on 26 March 1975 that it had felt like a long time arriving. There had been many disagreements and obstacles to overcome in the seven years since the BWC had first been conceived.

And talking of disagreements and obstacles, those of us who took part in the 25th anniversary event at the other end of the Palais could not have imagined how much grimmer the outlook would be when we returned for the 30th. What happened between 2000 and 2005 set back the constructive evolution of the BWC by several years. The same could be said of the period 1981-1986. But neither setback was fatal. And all credit to those who kept the faith and championed the Convention in those bleak years for the BWC, when it seemed to be under attack and needed all the champions it could find. The challenge now is to reinforce the Convention so it can survive whatever may assail it in the next 40 years and remain the preferred instrument of biological disarmament, reliably effective in performing that function.

At the entry into force ceremony in London which I attended David Ennals presided. He was the UK Minister of State responsible for arms control and disarmament. The tone of his speech, and of those made by Nikolai Lunkov and Ronald Spiers on behalf of the co-depositaries sitting beside him, was forward-looking and optimistic. It was an uplifting occasion. I will quote just one sentence. David Ennals said: "From today over 40 states are parties to this Convention, and have both renounced this entire class of weapons and undertaken to prevent their future development by appropriate measures. [emphasis added]"

That's the point. What are the "appropriate measures" to prevent BW over the next 40 years?

There has long been a fruitless argument over whether states or non-state actors present the greater risk. My answer is: no one knows. Surely everything we do to reinforce the BWC must be designed to guard against any BW threat, from whatever source it may come. That is the other side of the comprehensive scope and essential logic that I see as the strengths of the BWC.

Only constant vigilance will suffice. And it follows from this that renunciation of BW is only the beginning. The Article IV obligation to prohibit and prevent implies continual reinforcement of the defences against BW. Renunciation and prohibition on their own are not enough. The "appropriate measures" applied in both national and international implementation of the BWC must always be measured against the more stringent criterion of prevention.

Let me give a few examples. If governments really value the BWC they will be readier to restrict risky gain-of-function (GOF) experiments on dangerous pathogens and to regulate all dual-use research of concern (DURC). GOF and DURC are not banned by the BWC, but the BWC can only retain credibility if there is a parallel regime of research with an emphasis on comprehensive risk analysis and the precautionary principle. National implementation and codes of conduct must cover all government programmes so there are no suspicions of rogue agencies or individuals taking an unhealthy interest in BW. Everyone must share their latest knowledge for the S&T reviews crucial to the application of the BWC remaining up to date. And there should be a renewed emphasis on international cooperation for the prevention of disease - the only "peaceful purposes" application of scientific discoveries in biology singled out for mention in Article X - as well as on capacity-building and planning for emergency responses to outbreaks of disease when they occur. Such precautionary approaches should increase the disincentives to BW, which is why they have attracted attention under Article VII, as well as being evidently worth pursuing in their own right.

These are just a few examples. To identify and then apply "appropriate measures" and build them into the practice of every State Party, responding to fresh perceptions of BW threat and S&T developments as they emerge, offers a full agenda for the next 40 years.

Finally, a few words about trajectories for the BWC as a distinct treaty regime.

### **Trajectories for the BWC**

In my book *THE FUTURE OF BIOLOGICAL DISARMAMENT* (London: Routledge, 2009), I outlined possible trajectories good and bad. I would like to outline what is now my preferred trajectory for the BWC, assuming its States Parties can overcome the temptation to fall back on what I called an acceptance of immobility, an empty ritual exchange of predictable statements. My preferred trajectory has three elements: (1) that the BWC should pursue its own programme for the reinforcement of biological disarmament, by developing "appropriate measures" and applying them; (2) that it should steer towards a functional, not legal, convergence with the CWC, especially through close cooperation in the conduct of S&T reviews, to the benefit of both as distinct treaty regimes; (3) that it should finally fit into the wider universe of disarmament treaties so long awaited, when the gaping void in that universe is eventually filled by an NWC to complement the BWC and CWC. From where I stand nuclear weapons are the glaring anomaly in the disarmament enterprise, and nuclear disarmament must be pursued by all governments with reinvigorated commitment.

Whatever our preferred trajectory, there is much that we unofficial 'friends of the Convention' can do: to know the history and maintain a long-term perspective, to report and analyse the current diplomacy of the BWC meeting by meeting, to feed in ideas and propose acceptable language, to track the textual intricacies of the intersessional process (hard work, I assure you), and always to encourage the States Parties to move the BWC forward. For above all we look to the States Parties to make the BWC work better. Those of you who represent them should count it a privilege to be in a position here in Geneva to engage your energies and diplomatic skills in this process. The next 40 years are bound to contain setbacks and in confronting them you should bear in mind that when the BWC was at its most unpopular in 1981-1986 and 2001-2005 it was only the determined efforts of diplomats and others that brought it through those bleak years. Those same determined efforts will be needed to overcome whatever crises the next 40 years may bring. Otherwise the answer to my question "What future for biological disarmament?" will not be a comfortable one.

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