

Blood, toil, tears and sweat: the Biological and Toxin Weapons Convention since 2001

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“We are here to review the functioning of the Biological Weapons Convention under circumstances none of us would have wished and none of us foresaw.”

John R. Bolton, Head of the United States delegation to the Fifth Review Conference¹

For lovers of spectacle and drama, the Palais des Nations was the place to be late in the afternoon of Friday 7 December 2001, the final day of the Fifth Review Conference of the Biological and Toxin Weapons Convention (BTWC). Tension had built to bursting point as the deadline crept relentlessly closer and delegates laboured feverishly to bridge the remaining differences in the draft final declaration. Could it be done? Only a few short hours remained: perhaps, if they stayed focused, they would get over the line. Suddenly, the conference room erupted. Flags flew up, junior diplomats scurried to retrieve their ambassadors from the coffee lounge, indignant delegates expressed their astonishment and dismay. Tempers flared, accusations of betrayal and treachery flew back and forth, distinguished heads of delegations, faces purple with rage, bellowed at each other nose to nose. Aggrieved spokespeople lectured startled journalists, or anyone else who would listen. Nobody actually banged a shoe on the table, but for the normally placid world of multilateral disarmament meetings, it was quite a show.

For devotees of the BTWC, however, and for partisans of disarmament and non-proliferation in general, the scene was deeply worrying. The Fifth Review Conference had failed to agree on a final declaration and had therefore been suspended for a year. Under the circumstances, the suspension was the only course open to the president of the conference, but there was no guarantee it would help: states parties were fundamentally and bitterly divided over the future of the convention, and it was difficult to imagine how the rift could be mended. Almost ten years of work developing an instrument to strengthen the convention had been lost, and nobody was able to say what, if anything, might take its place. Even the most optimistic and creative proponents of efforts to improve the convention were concerned; there was a real possibility that such efforts might come to a halt altogether. It was certainly a low point in the international quest to outlaw and prevent the possession and use of biological weapons.

Five years later, the picture is not nearly so grim. In fact, to the surprise of many observers, the convention has staged something of an unlikely comeback. At the forthcoming Sixth Review Conference, scheduled for 20 November–8 December 2006, there is reason to expect that states parties will gather

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less to exchange regrets and recriminations than to review an active and productive work programme held from 2003 to 2005, to decide on whether and how to continue it, and even to look at other possibilities for collective action. This is not to say that the divisions have vanished: there will undoubtedly be tensions and success is by no means guaranteed. But the story of the events of 2001 and how the BTWC states parties rose above them to continue to work together and strengthen the convention despite their differences is a compelling one, and is worth tracing in some detail.

The Fifth Review Conference: protocol, treason and plot

In retrospect, it is perhaps surprising that the initial session of the Fifth Review Conference got as far as the final day. Three factors conspired to ensure it would be an extremely difficult meeting.

First, the abrupt collapse in July 2001 of the Ad Hoc Group negotiations on a protocol to strengthen the convention with verification and other measures. It had been widely assumed that the main task of the conference would be to adopt the draft protocol. Instead, states parties arrived bitterly divided over the fate of the protocol, and with no clear idea of what the conference should do.

Second, the terrorist attacks of 11 September 2001 in the United States. The international security scene was still reeling from the events: it was evident that traditional concepts of and approaches to international security were going to change radically, and that terrorism would become a whole new focus of concern, but it was still far from clear what exactly this would mean for multilateral disarmament and non-proliferation regimes such as the BTWC.²

Third, the “naming of names” of alleged violators by the United States. During the Review Conference’s general debate, the head of the United States delegation, John Bolton, accused Iran, Iraq, Libya and North Korea (all states parties), as well as Syria (a signatory), of running clandestine biological-weapon programmes in violation of the convention.³ Those named reacted indignantly, but the problem for the conference was not so much the naming, more that the United States declined to offer any evidence or initiate formal procedures, yet still expected to include language on the non-compliance in the final declaration.⁴

The main contribution of this third factor was to sour the atmosphere of the conference and amplify the effects of the first two factors. The principal immediate effect of the attacks of 11 September 2001 was to sharpen differences over the protocol, and in particular to stiffen the United States’ resolve to ensure that the protocol was abandoned. It was therefore the first factor, the collapse of the Ad Hoc Group’s protocol negotiations, which was really the key to the success or failure of the conference, and which has remained the single most prominent element affecting the actions of states parties since 2001.

THE AD HOC GROUP

For much of the history of the convention, states parties had fretted over concerns of non-compliance and the lack of any machinery in the convention to verify compliance or investigate alleged breaches. The Second Review Conference, held in 1986, had introduced a system of confidence-building measures (CBMs) that was a small step toward addressing the problem. But the negotiation of the Chemical Weapons Convention in the late 1980s and early 1990s, with its extensive verification mechanisms, provided inspiration for a similar effort in the BTWC.⁵ The Third Review Conference (1991) expanded the CBMs and commissioned an Ad Hoc Group of Governmental Experts, which

became known as VEREX, to “identify and examine potential verification measures from a scientific and technical standpoint”.⁶ VEREX met in 1992 and 1993, considered a large number of possible on- and off-site measures, and concluded that while no single measure could determine whether or not a state party was in breach of the convention, measures in combination “could be useful ... in enhancing confidence, through increased transparency, that States Parties were fulfilling their obligations under the BWC”.⁷ On the basis of the VEREX conclusions, the 1994 Special Conference established the Ad Hoc Group. The group was mandated to “consider appropriate measures, including possible verification measures, and draft proposals to strengthen the convention, to be included, as appropriate, in a legally binding instrument, to be submitted for the consideration of the States Parties”.⁸ It was to define terms, establish lists and institute confidence-building, transparency and compliance measures. However, it also had to ensure that sensitive commercial information and national security needs were protected. The mandate explicitly included Article X of the convention, dealing with the peaceful uses of biological science and technology, and required that the Ad Hoc Group’s proposals would not impede efforts to improve science and technology cooperation.⁹ This had been a key demand of many developing countries, and again parallels the approach of the CWC. It also helps to illustrate the degree to which the protocol was becoming the vehicle through which *all* the perceived shortcomings of the convention were to be addressed—not just verification.

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Negotiations in the Ad Hoc Group began in 1995 under the chairmanship of Tibor Tóth of Hungary. The Fourth Review Conference, held in 1996, noted the progress made and that the Ad Hoc Group would complete its work “as soon as possible before the commencement of the Fifth Review Conference”, thus setting a deadline for the negotiations.¹⁰ Progress was excruciatingly slow, with a number of serious problems hampering the negotiations from the outset. These included:

- tensions between the security aims of the protocol and the Article X-related aspects, in particular concerning transfers of potentially dual-use equipment and technology;
- the difficulty of designing measures that were sufficiently intrusive to detect violations of the convention, but which would not compromise national security or commercial secrets; and
- the difficulty of deciding, and then clearly specifying, exactly which facilities and activities should be monitored through declarations and inspections.

Although there were undoubtedly significant political dimensions to these problems (especially the first), they all had their roots in the inherent difficulty of distinguishing between permitted and prohibited uses of biological science and technology. In comparison with the nuclear and chemical fields, biology is much more widespread, has far more “everyday” applications, notably in health and medicine, and the line between legitimate and illegitimate applications is much finer and harder to discern. There is also greater sensitivity over access to equipment and technology: it is one thing to restrict access to equipment needed to enrich uranium for nuclear fuel, but quite another to do the same for equipment needed to produce essential vaccines or drugs.

Despite the problems, however, over the years a draft protocol did take shape. Clearly modelled on the Chemical Weapons Convention, it included provisions for declarations of relevant facilities, various kinds of on-site “visits” to check these declarations, clarification procedures, investigations of alleged violations, national implementation requirements, various measures for scientific and technical cooperation, and an international organization to operate all this. But although the overall shape of the protocol was clear by around 1999, differences on the detail proved extremely hard to resolve. The rolling text on which the negotiations were based had become a complicated and confusing tangle of square brackets and alternative texts, with so many interlinkages and counter-proposals that many delegates found it difficult to recall who had proposed what in exchange for which understanding.

In late 2000, the chairman began hinting that he might attempt to cut the Gordian knot by producing a clean text, containing his best estimate of the deals and compromises necessary to achieve consensus. There was some resistance to this idea, mainly from members of the Group of the Non-aligned Movement and Other States (NAM),¹¹ perhaps due to a fear of losing bargaining leverage. But Tóth went ahead and tabled his so-called “composite text” in April 2001, shortly before the twenty-third and penultimate session of the Ad Hoc Group.¹² Reactions were mixed, with some delegations—again mostly from the NAM—insisting that the rolling text should remain the basis of negotiations. Others welcomed the production of the composite text, but signalled various objections to its content. In any case, no changes were made to it for the twenty-fourth and final session of the Ad Hoc Group, which was held from 23 July to 17 August 2001.

At the time Tóth was preparing and presenting his text, however, a new government had taken office in the United States. It was widely known that the Bush Administration was reviewing a whole range of foreign policies, including its approach to the BTWC and the protocol. But it nevertheless came as something of a surprise to many delegations when, shortly after the start of the twenty-fourth session, the United States announced that it could support neither the composite text, nor the approach of a protocol at all:

After extensive deliberation, the United States has concluded that the current approach to a Protocol to the Biological Weapons Convention, an approach most directly embodied in CRP.8, known as the “Composite Text,” is not, in our view, capable of achieving the mandate set forth for the Ad Hoc Group, strengthening confidence in compliance with the Biological Weapons Convention. One overarching concern is the inherent difficulty of crafting a mechanism suitable to address the unique biological weapons threat. The traditional approach that has worked well for many other types of weapons is not a workable structure for biological weapons. We believe the objective of the mandate was and is important to international security, we will therefore be unable to support the current text, even with changes, as an appropriate outcome of the Ad Hoc Group efforts.

The draft Protocol will not improve our ability to verify BWC compliance. It will not enhance our confidence in compliance and will do little to deter those countries seeking to develop biological weapons. In our assessment, the draft Protocol would put national security and confidential business information at risk.

... Because the difficulties with this text are both serious and, in many cases inherent in the very approach used in the text, more drafting and modification of this text would, in our view, still not yield a result we could accept.¹³

This announcement immediately halted negotiations on the composite text, and began an interminable exchange of recrimination and rebuttal that continues to this day. The rest of the twenty-fourth session was devoted to drafting the report of the Ad Hoc Group for the Fifth Review Conference. But in the end the group failed to agree even on a report, due to a dispute over how to describe the failure of the negotiations.

THE FIFTH REVIEW CONFERENCE: CRACKS TOO WIDE TO PAPER OVER

The United States was widely criticized for its sudden and complete rejection of the protocol at such a late stage in a very long negotiation. Certainly, many states parties—including close allies of the United States—were exasperated, not least because many of the weaknesses in the composite text

cited by the United States were only there in the first place partly or entirely because of US insistence. But for its part, the United States had some reason to resent being painted as the villain of the piece, or at least as the sole villain. First, as US representatives protested, it was not a sudden change in policy: the United States had always expressed strong reservations about the feasibility of CWC-style verification for the BTWC. Second, the flaws in the composite text highlighted by the United States were not imaginary: they had also been recognized by others, although not given such weight. Third, the composite text was far from agreed: it was not even clear that it had been accepted as the formal basis for negotiation. Many serious issues remained to be settled, and there was no guarantee that the text would have secured consensus by the end of the Ad Hoc Group's twenty-fourth session even without the United States' intervention. The United States' rejection, it could be argued, provided convenient cover for other delegations who also found the text unacceptable (and perhaps the whole idea of a protocol unwelcome). Indeed, as one ambassador was heard to observe cynically, "support for the composite text in some quarters seems much stronger after the announcement of 25 July than before".

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This, then, was the situation confronted by BTWC states parties at the opening of the Fifth Review Conference: the draft protocol, representing a complete and integrated package of measures to improve and strengthen various aspects of the convention, had been rejected. The United States' position had been further hardened by the events of 11 September and the anthrax letters, which, in the view of the United States, only further demonstrated how little use an instrument like the protocol would be to its security interests.¹⁴ Other states parties were variously disappointed, dismayed or angry at the waste of many years of negotiation, and fearful for the future of *all* multilateral disarmament and non-proliferation efforts. A few may have been secretly relieved at the failure of the Ad Hoc Group, and eager to profit by the opprobrium being cast on the United States.

It was certainly not an auspicious beginning for a multilateral conference. But as the general debate got under way, and excepting the naming names controversy, many states parties from across the regional groups demonstrated a good deal of constructive pragmatism. It became apparent from the statements that a large proportion of delegations thought that all was not lost, and that negotiations on a protocol—or some kind of instrument, perhaps aimed more explicitly at terrorism—could at some stage be resumed. It quickly emerged that the best strategy would be to aim for a final declaration that somehow kept options open on the Ad Hoc Group and the protocol, while establishing some interim or "follow-up" activities to fill the gap in the meantime. Work toward such an outcome crept forward, hampered by a tense atmosphere and constant recriminations. By the final day, according to the president of the conference (Tibor Tóth again), the text of the draft final declaration was "95 per cent" agreed.¹⁵

But then came the bombshell: late in the afternoon, the United States circulated a textual proposal establishing some "follow-up" activities of the type that had been discussed, but explicitly terminating the Ad Hoc Group and its mandate. Uproar followed; Tóth quickly secured agreement to suspend the conference and resume it after a one-year "cooling off" interval.¹⁶

Dark times, desperate measures

It is difficult to overstate the mood of pessimism that descended following the suspension. Tóth, however, was apparently undaunted by the turn of events, and immediately set himself to engineering a rescue package. For most of 2002 he consulted key players intensively, trying to find a potential outcome that could attract consensus and still deliver some kind of practical impetus to the

implementation of the convention. His theme was that there were two possible approaches to improving the convention. One was through a single, one-off instrument, as was done with the CWC. The other was a gradual, incremental approach where instruments and activities were added and expanded over time, as had been done in the nuclear field with the International Atomic Energy Agency. Tóth argued that now the one-off approach had failed, it was time to try the gradual alternative.

Many states parties were sympathetic to Tóth's approach, but he was working in an atmosphere of deep distrust and suspicion. Some states parties felt that they had been "twice bitten" by the United States and had no inclination to cooperate, having seen their earlier attempts at compromise abruptly swept aside. Others worried that agreement on some kind of incremental process would mean an end to any hope of an eventual return to negotiations on a legally binding instrument. Some NAM delegations in particular were concerned that the "balance" of the Ad Hoc Group mandate would be lost in any new process: they feared that, if the United States had its way, a new process would deal only with security aspects of the convention and not with Article X at all.

Despite the difficulties, Tóth persisted, cajoling and entreating states parties not to give up, assuring them that something worthwhile could be retrieved from the mess. It was evident he was considering some kind of programme of "follow-up" activity, but as the resumed session approached, he played his cards close to his chest. At the opening of the resumed session on 11 November 2002, he tabled a proposed outcome that was as brief as it was unusual, telling the assembled delegations that it was this or nothing. The proposal read as follows:

1. The Conference decides to hold three annual meetings of the States Parties of one week duration each year commencing in 2003 until the Sixth Review Conference, to be held not later than the end of 2006, to discuss, and promote common understanding and effective action on:
 - i. the adoption of necessary national measures to implement the prohibitions set forth in the Convention, including the enactment of penal legislation;
 - ii. national mechanisms to establish and maintain the security and oversight of pathogenic microorganisms and toxins;
 - iii. enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease;
 - iv. strengthening and broadening national and international institutional efforts and existing mechanisms for the surveillance, detection, diagnosis and combating of infectious diseases affecting humans, animal, and plants;
 - v. the content, promulgation, and adoption of codes of conduct for scientists.
2. All meetings, both of experts and of States Parties, will reach any conclusions or results by consensus.
3. Each meeting of the States Parties will be prepared by a two week meeting of experts. The topics for consideration at each annual meeting of States Parties will be as follows: items i and ii will be considered in 2003; items iii and iv in 2004; item v in 2005. The first meeting will be chaired by a representative of the Eastern Group, the second by a representative of the Group of the Group of Non-Aligned and Other States, and the third by a representative of the Western Group.
4. The meetings of experts will prepare factual reports describing their work.
5. The Sixth Review Conference will consider the work of these meetings and decide on any further action.¹⁷

This proposal was to be the sole outcome of the Review Conference: Tóth explained that he did not think the political circumstances would allow consensus on a final declaration of the traditional kind. He went to some lengths to sell the proposal, and in particular to highlight the Article X-related parts, especially 1(iii). Nevertheless, there was considerable resistance, both to the proposal itself and to the fact that Tóth would not entertain any amendments to or negotiation on the text, insisting that it was the only outcome that had any chance of attracting consensus. It was widely assumed—and certainly never denied by Tóth—that the text had been cleared by the United States: indeed, parts of the proposal were very similar to proposals made by the United States at the initial session of the conference. This increased suspicions and reluctance, but Tóth stayed firm: if the states parties wanted to continue multilateral work of any kind to strengthen the convention, they would have to trust his judgement that this was the only feasible option. If they rejected the proposal, nothing would be done until at least the Sixth Review Conference in 2006. Any changes to the proposal, Tóth maintained, would result in its certain rejection (presumably by the United States).

It was an unconventional approach, and Tóth came under heavy pressure to relent, but in the end he prevailed. His text was incorporated without change into the report of the Fifth Review Conference, forming the substantive part of the Decisions and Recommendations section.¹⁸ Many delegations, especially in the NAM, agreed to this only with the greatest reluctance. The NAM made a statement at the conclusion of the conference, which included the following:

The NAM and Other States are disappointed at the limited nature of the decision that we have just taken. We are disappointed that we have again foregone [*sic*] the opportunity to strengthen the Convention and that limited work, which at best only has the potential of enhancing the implementation of the Convention, is all that could be achieved despite our best endeavours.

The NAM and Other States, together with other like-minded States Parties, have, however, succeeded in preventing any attempt to foreclose the option of more meaningful work in the future. The NAM and Other States, together with other like-minded States Parties, have also succeeded in preserving multilateralism as the only vehicle for preventing the reprehensible use of disease as instruments of terror and war in a sustainable way.¹⁹

Certainly, compared to a legally binding protocol, the outcome was slim indeed. Many delegations—and not just those in the NAM—were unhappy with the narrow mandate implied by “discuss, and promote common understanding and effective action on”: no negotiations or binding agreements were envisaged. The limited range of topics was also a matter for concern, although it was widely agreed that the topics that were included were sensible ones. There was a good deal of uncertainty as to how the new process would work, and few if any delegations expected that it would do much more than provide some nominally multilateral activity to fill in the time until the 2006 Review Conference.

A new hope?

Whatever their reservations and resentments might have been, however, the states parties cannot be faulted for their earnest and businesslike approach to this new process once it got under way. Although there was a degree of nervousness surrounding the initial meeting of experts, an impressive total of 83 states parties assembled to discuss the topics of national implementation and security of pathogens, many of them bringing experts from capitals. The initial debate produced some statements reiterating dissatisfaction with the fate of the protocol and the outcome of the Fifth Review Conference, but the meeting quickly moved on to expert presentations, most of which were relevant and informative.

It is possible that one reason for the pragmatic approach was that growing concern about terrorism had engendered a genuine interest in many states parties in better national implementation and pathogen security, and the chance to exchange ideas with other governments was timely and welcome.

The main anxiety was over the form of the outcome of the meeting. The United States was evidently worried about any kind of negotiated or agreed binding outcome, on the grounds that this might somehow lead back to a protocol. Iran, on the other hand, appeared to be worried about the same thing, but for the completely opposite reason: that a binding outcome would in effect be a substitute for a protocol, and would thus prevent an eventual return to negotiations under the Ad Hoc Group mandate. This curious congruence of views ensured that the outcome was very general: the report of the meeting of experts drew no conclusions at all, but annexed all the “statements, presentations and contributions” made at the meeting. The report of the meeting of states parties contained a short statement where the states parties “agreed ... on the value of” various general steps related to the two topics.

The meetings in 2004 built on the practices established in 2003, with the new chairman, Peter Goosen of South Africa, taking advantage of the more relaxed atmosphere—and of the genuine interest of many states parties in the 2004 topics, especially disease surveillance—to take some modest additional steps. In particular, Goosen commissioned background papers from the Secretariat so that delegations would be aware of the current situation relating to each of the topics and thus able to focus on what could be done in future. Rather than simply attach all the individual statements and contributions to the report of the meeting of experts, he introduced the practice of extracting the actual proposals or suggestions from each contribution and compiling them into a list. This was at first controversial, but a draft list released at the end of the first week reassured many that there was nothing sinister afoot. The final list was attached to the report, with an almost comical paragraph in the report specifying that it was not agreed and had no status.²⁰

After the meeting of experts, Goosen pushed still further by preparing a “synthesis” of the list of proposals that removed the duplications, grouped the proposals thematically, and packaged the result as something that looked suspiciously like a draft outcome document for the meeting of states parties.²¹ Some delegations were alarmed at this, but in the end Goosen did not push his “synthesis” as an outcome document. Instead he produced a more modest and general draft outcome that was nonetheless considerably more specific than the 2003 one. After some negotiation²² and modification, this text was agreed, using the same “agreed on the value of” formulation to avoid making binding recommendations. The most interesting issue concerned the United Nations Secretary-General’s mechanism for investigating cases of alleged use of biological weapons, which in the absence of the protocol is the only existing option for mounting an international investigation under agreed rules. This mechanism had been developed in stages between 1982 and 1990 and it had not been updated.²³ Goosen’s synthesis paper and first draft of an outcome had included an agreement that the states parties would request the Secretary-General to review the mechanism. This proved too controversial to succeed, and revealed that some states parties had serious reservations about the appropriateness and utility of the mechanism.²⁴

John Freeman of the United Kingdom chaired the 2005 meetings, which dealt with codes of conduct for scientists. Freeman followed the same approach as Goosen, extracting proposals from contributions to the meeting of experts, producing a synthesis paper, and in due course an outcome document that—as in 2004—drew from the synthesis but was more modest and general. Freeman also introduced the innovation of inviting representatives of international, regional and national scientific and professional bodies to participate in the meeting of experts as “guests of the meeting”. This was a considerable step for a convention that had hitherto permitted only states and—with limitations—

intergovernmental organizations to participate in its meetings. It was allowed only because of the particular topic under consideration,²⁵ but was widely regarded as a useful exercise that did a good deal to raise awareness—both of the convention in the scientific community, and of scientific perspectives in the diplomatic and security circles.

Lessons for the future

By the time of the conclusion of the meeting of states parties in 2005, it was clear that this inter-review process, agreed with much reluctance as a kind of emergency or stop-gap measure in 2002, had in fact been surprisingly successful in improving the operation of the convention and reducing the risks of biological weapons being developed, acquired or used. Naturally, opinions differed on just how successful and worthwhile the exercise had been, and it would be wrong to suggest that the voices of dissatisfaction over the fate of the protocol and the outcome of the Fifth Review Conference had died away. The limited range of topics considered remains the single biggest complaint about the new process, and accusations of “cherry-picking” and neglect of the “promotional” aspects of the convention are still frequently heard.

Opinions also differed on *why* the new process had worked so well—relatively speaking—given its fraught antecedents. Some believed that the limited mandate was a reason for the success: states parties did not have to worry about negotiating a binding agreement, and so could afford to relax and engage in free and wide-ranging discussion and exchange of information, which, moreover, helped them improve coordination of their various government agencies nationally. Others thought that the limited mandate detracted from the utility of the process, as the inability to distil the discussions into an agreed set of recommendations represented a missed opportunity and meant that much of the information shared was effectively wasted, especially for those states parties that did not participate in the meetings. Many believed that the greater involvement of, and exchange with, international organizations and civil society was the key to the success of the exercise, and points the way forward at a time when the convention is increasingly seen as just one part of an interlinked series of measures aimed at security, public health and disaster response. Others are still wary of involving “outsiders” in the business of the convention, and of mixing weapon and security issues with health and humanitarian concerns.²⁶

What does come through consistently, however, is that despite the divisions and a residue of bitterness, a large majority of states parties have been prepared to put political differences aside and simply get on with making the best of the limited options available for collective efforts to strengthen the convention. This does not mean that they have changed their outlook or abandoned their principles: at the Preparatory Committee for the Sixth Review Conference, held 26–28 April 2006, the NAM,²⁷ the European Union²⁸ and a new grouping of Latin American states²⁹ all stated that a mechanism to verify the convention remained their long-term aim. It does mean that they view the convention as too important to be left in limbo.

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This encouraging conclusion has been further reinforced by the success of the Preparatory Committee for the Sixth Review Conference, which was faced with a difficulty over references to the Ad Hoc Group in the provisional agenda for the Sixth Review Conference that threatened to reignite disputes over the protocol and block agreement on the agenda. The states parties overcame this potentially paralysing problem with a compromise that, if not elegant, at least enabled them to get the job done.

If this attitude of pragmatism endures, and if states parties continue to recognize the fundamental importance of the convention to their security, there is reason to be cautiously optimistic about the Sixth Review Conference. It will not be easy—the temptation to settle scores remains barely concealed—but the resilience and resourcefulness displayed by so many states parties since 2002 suggests that it may be possible to shape an outcome that will allow work to continue that both contributes to the operation of the convention in its own right, and helps lay the foundations for the realization of future aspirations. With this in mind, it is interesting to recall a long-forgotten part of the report of the 1994 Special Conference, which said: “the complex nature of the issues pertaining to the strengthening of the Biological Weapons Convention underlined the need for a *gradual approach* towards the establishment of a coherent regime to enhance the effectiveness of and improve compliance with the Convention” (emphasis added).³⁰ Looking back to the wreckage of 2001, the states parties have much to be proud of in how they have retrieved the situation. Let us hope that the confidence they have earned takes them further still.

Notes

1. Statement to the Fifth Review Conference of the Biological and Toxin Weapons Convention, 19 November 2001, at <www.us-mission.ch/press2001/1911bolton.htm>.
2. Shortly before the conference opened, the anthrax letter incidents in the United States not only provided a pertinent demonstration that biological terrorism was more than a theoretical threat, but also cast new uncertainty over the respective roles of national and international avenues of response and investigation.
3. John R. Bolton, 19 November 2001, op. cit.
4. As Bolton later said, reasonably enough, it was perfectly legitimate to raise compliance concerns at a review conference, and to name alleged violators just as is done, for example, at the Commission on Human Rights. John R. Bolton, “The Biological Weapons Convention: Challenges and Opportunities”, briefing at the Monterey Institute of International Studies, 11 January 2002, at <www.cns.miis.edu/pubs/programs/dc/briefs/011102.htm>.
5. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature 13 January 1993, entered into force 29 April 1997, at <www.opcw.org>.
6. Final Document, Third Review Conference, UN document BWC/CONF.III/23, Part II, at <www.opbw.org/rev_cons/3rc/docs/final_dec/3RC_final_dec_E.pdf>.
7. Ad Hoc Group of Governmental Experts to Identify and Examine Potential Verification Measures from a Scientific and Technical Standpoint, Report, UN document BWC/CONF.III/VEREX/9, 24 September 1993, at <www.opbw.org/verex/docs/CONFIII-VEREX-9.pdf>.
8. Final Report, Special Conference, UN document BWC/SPCONF/1, Part II, 19–30 September 1994, at <www.opbw.org/spec_conf/docs/conf/BWC_SPC_1_E.pdf>.
9. Full title: Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, opened for signature 10 April 1972, entry into force 26 March 1975, at <www.unog.ch/bwc>.
10. Final Document of the Fourth Review Conference, UN document BWC/CONF.IV/9, Part II, at <www.opbw.org/rev_cons/4rc/docs/rev_con_docs/i_docs/IV-09.pdf>.
11. Hereinafter referred to, for the sake of brevity, as the “NAM”, although the Group of the NAM and Other States in the BTWC includes China, Brazil and Mexico.
12. Protocol to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, UN document BWC/AD HOC GROUP/CRP8, 3 April 2001, at <www.opbw.org/ahg/docs/CRP8.pdf>.
13. Donald A. Mahley, Statement by the United States to the Ad Hoc Group of Biological Weapons Convention States Parties, 25 July 2001, at <www.us-mission.ch/press2001/0725mahley.htm>.
14. This was elaborated in John Bolton’s statement of 19 November 2001, op. cit.
15. UN press release, 7 December 2001, at <disarmament2.un.org/wmd/bwc/fifth/bwc7Decb.pdf>.
16. For a thorough and entertaining account of the roller coaster ride that was the Fifth Review Conference, see Jenni Rissanen, 2002, “Left in Limbo: Review Conference Suspended on Edge of Collapse”, *Disarmament Diplomacy* 62, January–February, at <www.acronym.org.uk/dd/dd62/62bwc.htm>.
17. Draft Decision of the Fifth Review Conference, UN document BWC/CONF.V/CRP3, 6 November 2002, at <www.opbw.org/rev_cons/5rc/docs/rev_con_docs/i_docs/BWC-CONFV-CRP03.pdf>.

18. Final Document, Fifth Review Conference, UN document BWC/CONF.V/17, 2002, paragraph 18, at <[www.opbw.org/rev_cons/5rc/docs/final_dec/BWC-CONF.V-17-\(final_doc\).pdf](http://www.opbw.org/rev_cons/5rc/docs/final_dec/BWC-CONF.V-17-(final_doc).pdf)>.
19. Statement on Behalf of the Non-Aligned Movement and Other States, UN document BWC/CONF.V/15, 15 November 2002, at <www.opbw.org/rev_cons/5rc/docs/rev_con_docs/i_docs/BWC-CONF.V-15.pdf>.
20. *Report of the Meeting of Experts*, UN document BWC/MSP/2004/MX/3, 11 August 2004, paragraph 18, at <www.opbw.org/new_process/mx2004/bwc_msp.2004_mx_3_E.pdf>.
21. *Synthesis of Considerations, Lessons, Perspectives, Recommendations, Conclusions and Proposals Drawn from the Presentations, Statements, Working Papers and Interventions Made by Delegations on the Topics under Discussion at the Meeting of Experts: Chairman's Paper*, UN document BWC/MSP/2004/L.1, 1 December 2004, at <www.opbw.org/new_process/msp2004/BWC_MSP_2004_L.1_E.pdf>.
22. Which everyone agreed was not negotiation, since the meeting had no negotiating mandate. Who said multilateral processes were inflexible?
23. For a full description of the Secretary-General's investigation mechanism, see *Mechanisms Available to States Parties to Investigate the Alleged Use of Biological or Toxin Weapons and to Provide Assistance in Such Cases*, UN document BWC/MSP/2004/MX/INF.3, 1 July 2004, at <www.opbw.org/new_process/mx2004/bwc_msp.2004_mx_inf.3_E.pdf>.
24. Among the concerns stated were that the mechanism had not been negotiated multilaterally and that it had been designed for a specific circumstance (the Iran–Iraq war of the 1980s) and was thus no longer relevant.
25. As is made clear in the report of the Meeting of Experts, which states: “in recognition of the special nature of the topic under consideration at this Meeting and without creating a precedent, 23 scientific, professional, academic and industry bodies participated in informal exchanges in the open sessions as guests of the Meeting of Experts”. UN document BWC/MSP/2005/MX/3, 5 August 2005, paragraph 13, at <www.opbw.org/new_process/mx2005/bwc_msp.2005_mx_3_E.pdf>.
26. For an interesting account of a fuller discussion, by those actually involved, of the pros and cons of the new process, see the Summary Report of the Geneva Forum seminar “Meeting the Challenges of Reviewing the Biological and Toxin Weapons Convention”, held 9–10 March 2006, at <www.geneva-forum.org/Reports/20060309-10.pdf>.
27. Statement by Malaysia on Behalf of the Group of Non-aligned and Other States Parties, 26 April 2006, available at <www.opbw.org>.
28. Statement by Austria on behalf of the European Union, 26 April 2006, available at <www.opbw.org>.
29. Joint Declaration by Argentina, Brazil, Colombia, Costa Rica, Chile, Ecuador, Guatemala, Mexico, Peru and Uruguay, 26 April 2006, available at <www.opbw.org>.
30. Final Report, Special Conference, UN document BWC/SPCONF/1, Part II, 19–30 September 1994, at <www.opbw.org/spec_conf/docs/final_dec/SPC_final_dec_E.pdf>.

