The BWC Review: Issues and Challenges

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Summary

The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction usually referred to as the Biological Weapons Convention (BWC), or Biological and Toxin Weapons Convention (BTWC) is the first multilateral disarmament treaty banning the production of an entire category of weapons, entering into force in 1975. The Eighth BWC Review Conference was recently held at Geneva from November 7-25, 2016, Unfortunately, it appears to have flattened for the lack of consensus among the member-states until the next conference in 2021.

Use of biological pathogens to attack populations continues to be one of the major threats today, whether by state actors or in the hands of non-state actors, amorphous entities or a rogue microbiologist. The anthrax attacks of 2001, was not just one single incident. There may have been ample potential warnings of such imminent attacks in the past. One is still not sure if the 2009 H1N1 Influenza or the Ebola, were naturally-occurring threats or an orchestrated bio-attacks. But clearly, it demonstrated global and national shortcomings in our biodefense. Global efforts to prevent the deliberate use of biological pathogens appears to be now drifting, if seen against the backdrop of the recently concluded Eighth Review Conference of the Biological Weapons Convention (BWC), which for many was a lost opportunity of reinvigorating the treaty. The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction usually referred to as the Biological Weapons Convention (BWC), or Biological and Toxin Weapons Convention (BTWC) was the first multilateral disarmament treaty banning the production of an entire category of weapons, entering into force in 1975. This Convention itself was the result of a prolonged international negotiations to supplement the 1925 Geneva Protocol, which prohibited the use, but not possession or development of chemical and biological weapons. Fortunately, this treaty prohibits the "development, stockpiling, acquisition, retention, and production of biological agents and toxins of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes." Although the treaty is not universal, no state today legitimizes the use of biological

weapons as a means of warfare. The pace of biotechnology, however, has expanded exponentially, and biological warfare can no longer be considered under the purview of only state actors. New genome-editing tools have been developed which are dual-use, thereby posing the challenge for a strong prevention and response framework. The Eighth Review Conference, held at Geneva from November 7-25, 2016, thus was an opportunity to establish a stronger, more strategic scientific review process, and to revamp the inter-sessional process and institutional structures. The Conference appears to have flattened on all counts.

There are at least four critical issues confronting the BWC. The first is described as the "universality gap", i.e. while a majority of states, so far 177, have joined the BWC, still 19 states are off the hook. To bring them on board is one of the major challenges on the agenda of the Review Conference. Second, there is an "implementation gap": the verification of compliance of the treaty by BWC states requires implementation at the national level. Most disarmament treaties have a very elaborate international monitoring regime. Although there is a lack of data, it is thought that implementation of BWC has been sloppy and there have been violations in the past by the member states even after the entry into force of the BWC. For instance, during the 1970s, the Soviet Union expanded its existing offensive bio-weapons program. A research conglomerate of over 30 institutions produced and weaponised large quantities of bio-agents, including smallpox and the Marburg virus. These were reportedly tested under real-world conditions on an island in the Aral Sea. After the demise of the Soviet Union, a trilateral process was initiated between the three BWC depositary powers - the US, the UK, and Russia - to investigate this matter. However, the enquiry was terminated in the mid-1990s without tangible results, having ultimately failed to shed full light on the Soviet bioweapons program. Under Saddam's regime, Iraq is thought to have produced pathogens and toxins for military purposes. More recently, it has been transpired that Syria also produced the toxin ricin. Terrorists, too, have been involved with biological agents. The Japanese-cult Aum Shinrikyo is known to have experimented with anthrax and botulinum toxin. In September and October 2001, letters containing anthrax spores were sent to two US senators and several US journalists. These letters resulted in 22 anthrax infections and five deaths, but the case was never officially solved.

The BWC-compliance is difficult to verify. Bacteria and viruses can be cultivated swiftly, and many occur naturally. In order to establish increased transparency, the parties to the BWC agreed at the Second Review Conference in 1986 to introduce confidence-building measures (CBM), which require, inter alia, annual reporting about activities at high biosafety level laboratories (BSL-3 and BSL-4), the exchange of information on biodefense programs, documentation on national legislation for the implementation of the BWC, and reporting of human vaccine production facilities. These CBMs were not legally binding, therefore, more than half the state parties did not participate in them at all.

In January 1995, the BWC signatory states began negotiations on a legally binding additional protocol to strengthen the BWC verification process. In March 2001, a draft protocol was tabled requiring verification of compliance with the BWC based on annual national reports about biodefense programs, vaccine production facilities, BSL-3 and BSL-4 laboratories, and installations with high production capabilities by way of voluntary visits, transparency visits, and clarification visits, under the auspices an international

BWC organization. The US opposed this draft, claiming that the BWC was unverifiable, and that too much transparency could give rise to espionage against its pharmaceutical industry. Russia and China, too, were uncomfortable with the additional protocol. In order to avoid a complete termination of the multilateral process to strengthen the BWC, European and other Western countries advocated a substitute program that would take into account the US interests. On the occasion of the Fifth Review Conference, the states agreed to hold annual expert and states parties meetings on the following topics: National measures to implement the BWC, including national legislation; national measures to enhance safety in handling pathogenic microorganisms and toxins; improvements to international response capabilities in case of intentional deployment of biological weapons and outbreaks of diseases; strengthening of national and international efforts to identify and combat infectious diseases; and codes of conduct for scientists. Since 2003, these meetings have been held in the framework of the "Intersessional Process". In the meantime, the scope of topics has been expanded to include issues related to bio-safety and biosecurity, assistance in case of an attack using bioweapons, implementation of Article X, i.e. the use of biological agents and toxins for peaceful purposes, and improvements of CBM. Later in 2006, a three-member BWC Implementation Support Unit (ISU) was established in Geneva. The aim of the ISU was to serve as the secretariat of the states parties to the treaty. It was also mandated to collects the CBM reports and ensures the exchange of information.

The third critical issue is the so called "response gap": i.e. how should the state parties react and respond in case of a biological attack. This would also mean how they would coordinate amongst themselves, with international organisations including the UN and the World Health Organization, and between health and security sectors.

Finally, each of these issues is underpinned by what has been termed as the "institutional gap". The meetings, especially those enabled to take decisions, are infrequent with minimal institutional support structure and manpower. The Implementation Support Unit (ISU) is poorly staffed to meet the emerging trends and growing expectations of the member-states and the financing of the BWC is also inadequate.

The Eighth Review Conference of the BWC discussed a wide range of issues but there was a little change from previously expressed positions of the states. The major discussion at the Conference focused on the parameters of the work under the BWC for the period from 2017 to 2020. It was planned to set up four open-composition working groups to consider concrete topics and the states' initiatives, and to prepare possible recommendations. Discussions ranged from the importance of effective detection and surveillance for both naturally and deliberately occurring diseases, to response mechanism and transfer of new bio-technology for peaceful uses and verification issues. The ISU on the operation of the Assistance and Cooperation Database (commonly referred to as the Article X database) was also discussed. The NAM proposal for an Action Plan included a mechanism for 'full, effective and non-discriminatory implementation' of Article X and which also suggests the establishment of a cooperation committee. One aspect that has been the subject of significantly divergent views is the proposal that any Article X mechanism should include arrangements to review denials of export licenses, something which was opposed by many Western countries. China and Pakistan highlighted

their joint proposal, for a 'non-proliferation export control and international cooperation regime' to be established under the auspices of the BWC and intended to overcome some of these divergences. Unfortunately, for the lack of consensus, the Review Conference ended without an agreement on a detailed work-plan until the next conference in 2021. The BWC remains effect, but the dismal outcome of the Conference reflects a growing and a worrisome trend in arms control.