

The 2018 Meeting of States Parties (MSP) on Biological Weapons Convention: An Assessment

Dr. Manish

Dr Manish is currently Professor with the Centre for International Politics, School of International Studies, Central University of Gujarat, Gandhinagar, Gujarat.

Summary

It is extremely hard to assess prospects for the 2016 MSP. There have been a number of preparatory events in the run-up to this MSP. However, if there is no outcome from this Meeting of State Parties (MSPs), it is unlikely that agreement could be reached before 2021 BWC Review meeting. This MSP was the final chance for a BWC inter-sessional process. It is likely that governments will move activities to reduce deliberate biological threats away from the BWC. It would then be harder to promote discussions on the subject of deliberate biological threats. This would weaken the position of Geneva-based diplomats to influence policy on the BWC. And what would be the potential areas for future work for a programme on BWC between now and 2021 is now anyone's guess.

The Eighth Review Conference of the Biological Weapons Convention which was held in Geneva during 07-25 November 2016 had an extremely disappointing outcome. This Review Conference, as is now widely known, could not conclude. But more importantly, it could also not achieve a meaningful programme for the inter-sessional sessions which are preparatory to the next Review Conference, scheduled for 2021. Despite this the 2016 Review Conference had received a number of substantive proposals for inter-sessional activities. Infact, the final document prepared towards the closure of the Conference called for an annual Meeting of State Parties (MSPs). The first MSP was held in 2017. Though it did not have an specific agenda, it was able to established a series of Meetings of Experts (MXs). The topics of these MXs and their Chairs as established in 2017 MSP which are enumerated below¹:

- MX1 - Cooperation and Assistance, with a Particular Focus on Strengthening Cooperation and Assistance under Article X - Ambassador Maria Teresa Almojuela (Philippines)²
- MX2 - Review of Developments in the Field of Science and Technology Related to the Convention - Pedro Luiz Dalcero (Brazil)
- MX3 - Strengthening National Implementation - Ambassador Julio Herráiz Espana (Spain)
- MX4 - Assistance, Response and Preparedness - Daniel Nord (Sweden)
- MX5 - Institutional Strengthening of the Convention - Otakar Gorgol (Czech Republic)³

And it should now be known that the major agenda item for the recently concluded MSP, held at Geneva in December 2018, was to 'consider reports of the above mentioned MXs reflecting their deliberations, including possible outcomes' as a preparatory to the 2021 Ninth BWC Review Conference.

The Biological Weapons Convention in Review

As known, the Biological Weapons Convention (BWC) is the only instrument which prohibits the weaponization of biological pathogens. Negotiated in 1972, it was the first ever multilateral treaty banning the production of the entire category of Bacteriological (Biological) and Toxin Weapons (BWC or BTWC). However, the BWC does not define what biological weapons (BW) are, rather it circumscribes its prohibitions by a general-purpose criterion. The BWC bans the development, stockpiling, transfer, and use of biological weapons (BW) worldwide. Only agents and toxins in types and quantities that have 'no justification for prophylactic, protective or other peaceful purposes' are banned.⁴

During the BWC negotiations, it was clarified that the term 'prophylactic' encompasses medical activities such as diagnosis, therapy and immunization, whereas 'protective' covers the development of protective equipment and warning devices. It must not be interpreted as permitting possession of biological agents and toxins for defence, retaliation or deterrence.

Therefore, by extension, the provisions of the BWC essentially express four principles:

- the prohibition to acquire or retain biological or toxin weapons;
- The prohibition to assist others to acquire such weapons;

- The obligation to take necessary measures to ensure that such weapons are prohibited at a domestic level;
- Finally, the commitment to ensure that peaceful use of biological science and technology may nevertheless develop.

Over the years, there has been a growing recognition of the challenges faced by BWC. Thus, a vigorous deliberations during the MSPs was called for. After a careful introspection of the BWC, it was clear that the scope of the BWC is rather ambiguous. What is to be banned and what is to be exempted from the BWC a bit doubtful. This is important because of the scientific and technological advances have lowered the barriers to acquiring and using a biological weapon. The debates about new developments-including gain-of-function experiments, potential pandemic pathogens, Crispr and other genome editing technologies, gene drives, and synthetic biology- make the BWC a weak instrument.

Secondly, there has been a lack of an enforcement mechanism. Thus, it is hard to confirm whether the member -states are complying with their BWC obligations. However, Article VI of the BWC offers only an ineffective option of appealing to the United Nations Security Council in cases of suspected noncompliance.⁵

Third, the central efforts to prevent biological terrorism and the spread of bioweapons is starting to shift away from the BWC towards the UN Security Council Resolution 1540. This resolution was first approved in 2004 and imposes an obligation on all UN members to improve their legal authorities and bureaucratic capacities to prevent non-state actors from acquiring, developing, or using nuclear, biological, and chemical weapons. While the bioweapons treaty provides one of the foundations for 1540's mandate, the

resolution appears to be becoming the preferred international vehicle for enhancing biosafety, biosecurity, export controls, and the criminalization of biological weapons.⁶

Fourth, the BWC's administrative body, the Implementation Support Unit, is understaffed. While the overall bioweapons nonproliferation regime has benefited greatly from 1540, the original mission of the regime risks becoming relegated to better-funded organizations.

Fifth, the issue of transparency, which is an important tool for reassuring members of one another's compliance with treaty obligations. The last two decades have seen a dramatic increase in biodefense activities and the number of facilities and researchers working with dangerous pathogens around the world. This has generated a number of trade-off risks related to safety, security, responsible science, and particularly transparency. A major risk here is that these expanding activities could be used as a cover for an offensive bioweapons program, or could be perceived as such. This, in turn, can provide other states with a justification for initiating or continuing offensive biowarfare programs. Only by encouraging trust and transparency among its members can the treaty hope to prevent such an escalation.

Most of these issues as mentioned earlier were part of the Eighth Review Conference agenda, held in November 2016. Indeed, a number of proposals for inter-sessional activities were also received by the Implementation Support Unit, which serves as a secretariat to the BWC. However, no consensus could be reached on a programme. Instead, the only Final Document that was agreed was one that did not include any substantive discussion topics for inter-sessional work. Nevertheless, it did include a provision to host an annual MSP. The idea of this MSP was to make progress on issues

of substance and process for the period before the next Review Conference, i.e 2021. Then there was a provision to hold Meeting of Experts (MX). Based on the MXs, the agenda for the 2018 MSP was set up and circulated along with a number of Working Papers (either informal or advance copy versions) along with other materials. The 2018 MSP should be necessarily seen against this backdrop.

Agenda & Procedural Aspects of the 2018 MSP

During the general debate spanning between 04- 07 December 2018, the states' and their delegations delivered plenary statements, individually or in a group, to outline their positions.⁷

General Debates within the MSP

The key themes and common threads which appeared to follow from the general debates are as follows: With roughly two-thirds of those on the speakers' list giving their statements on an opening day, it is possible to identify some themes and common threads which follow

The first is the issue of BWC Universality.

The 'universality gap', i.e. while a majority of states 182 as of 2018, have joined the BWC, still there are many off the hook. It should be noted that the efforts to prohibit biological weapons through the 1925 Geneva Protocol and the Biological Weapons Convention (BWC) have been very successful. The BWC enjoys near-universal membership, with now 182 member states party to the Convention. Today the prohibition of the use of biological weapons is a rule of customary international humanitarian law, binding on all parties to all armed conflicts, including non-state armed groups.⁸ However, there are some states that have not yet signed or ratified

the treaty. Most members during the MSP believed that there can be no justification for remaining outside the BWC, and all States should be able to reap the benefits and protections that it affords. Despite successes in universality and adherence, the BWC has faced challenges in adapting to changing circumstances and improving the level of implementation.⁹ This was made evident at last year's Review Conference, where a consensus could not be reached on an inter-sessional work programme.¹⁰ Meanwhile, scientific and technological developments continue apace, and opportunities to enhance the world's safeguards against poisoning and the deliberate spread of disease are being missed.

The second issue relates to the BWC finances

Many statements noted that the root cause of the financial difficulties was the late payment of assessed contributions. Numerous calls were made for those states parties behind with payments to clear their arrears and, in future, to pay in full and pay on time. There were a number of expressions of support for some method to smooth cash flows such as a working capital fund. It was noted that such a fund could be established through voluntary contributions, by placing any credits from future budgetary underspends into it or by putting arrears payments from past financial years into it. On this issue, the MSP also received a briefing from managers involved in administering UN support to the BWC: Clemens Adams, Director of Administration, UN Office at Geneva and Anja Kaspersen, Director, Geneva Branch, UN Office for Disarmament Affairs.

The third issue was related to the Meeting of Experts (MXs)

The overall impression given from statements that the MXs were viewed more

positively than the previous MX arrangements. Indeed, most of the vitality to the 2018 MSP came from the MXs held during the month of August 2018. Assistance under Article VII was discussed in MX4.

The fourth important issue was related to the threat perceptions

There were a number of statements that talked about perceptions of threats. There were perceived threats from possible state programmes, from non-state actors/terrorists and from naturally occurring diseases. Lessons continue to be drawn from the outbreaks of Ebola Virus Disease in 2014 and subsequently other such disease outbreaks.

Concerns over Article VII & responses to disease outbreaks

There was a widespread recognition of a need for means to enable prompt assistance under Article VII. The Article VII of the BWC requires States Parties to assist States which have been exposed to danger as a result of a violation of the Convention. To date, these provisions have not been invoked. One topic to be discussed under the Assistance and Cooperation standing agenda item is capacity-building for detecting, reporting, and responding to outbreaks of infectious disease or biological weapons attacks, including in the areas of preparedness, response, and crisis management and mitigation. Over a period, state parties have discussed the need to promote interagency coordination and multi-sectoral cooperation to prepare for, detect, and respond to infectious disease outbreaks whether natural, accidental, or deliberate in nature. In addition, they discussed the importance of supporting states in building defences against new and emerging diseases and developing national capacity for responding to biological threats through detection, containment, and decontamination.

Recent Review Conferences have agreed upon the aforementioned including dangers from non-state actors. No country is likely to have all of the resources at its immediate disposal to respond to a severe biological attack and there is widespread recognition that there are many improvements that can be made in this area. The Article VII database proposal from France and India continue to receive support. Connections were made with 'one health' policies where the issues of diseases in humans, animals and plants (including in agricultural contexts for the latter two of these) are considered interconnected and therefore require some common approaches. This last aspect was also tied in with questions of capacity building.

Other issues Article X

The Article X of the Convention relates to access to the life sciences, and materials and equipment connected to them, for peaceful purposes; embodying a bargain that the renunciation of biological weapons (and thus the control of the hostile uses of the life sciences) should allow access to the use of the life sciences for peaceful purposes. Cooperation and assistance in this context also include issues such as capacity building. Rapid advances in the life sciences mean the BWC operates within a rapidly changing science and technology (S&T) context which changes the nature of challenges the Convention may need to counter as well as providing new opportunities for peaceful uses. These contexts need to be understood to ensure the BWC remains relevant. The improvement of the national implementation of the BWC in ways that are appropriate to national contexts has long been regarded as an important way of enhancing the effectiveness of the overall regime to control biological weapons. The BWC Confidence-Building Measures (CBMs) provide for returns to be submitted on certain relevant

activities and facilities. The CBMs now consists of six measures, A to G (without D) as enumerated below:

CBM A

Part 1: Exchange of data on research centres and laboratories;

Part 2: Exchange of information on national biological defence research and development programmes.

CBM B

Exchange of information on outbreaks of infectious diseases and similar occurrences caused by toxins.

CBM C

Encouragement of publication of results and promotion of the use of knowledge.

CBM E

Declaration of legislation, regulations and other measures.

CBM F

Declaration of past activities in offensive and/or defensive biological research and development programmes.

CBM G

Declaration of vaccine production facilities. While numbers of returns have been rising, there has been wide recognition that CBM participation could be improved further.

Conclusion

From the above discussion, it is hard at this stage to assess prospects for the 2018 MSP. Though, it is clear that there have been a number of preparatory events in the run-up to this MSP. A Russian-led statement by the three BWC depositary states (Russia, UK

and USA), issued to coincide with the conference, stated 'it is vital to redouble efforts to build consensus around the next programme of work the adoption of which, in our common view must be the main outcome of the MSP - a further clear sign of a Russian intention to seek a substantive outcome. If there is no outcome from this MSP, it is unlikely that agreement could be reached before 2021, even if delegations used a loose interpretation of the mandate in future years. In other words, this MSP is the final chance for a BWC inter-sessional process. If there is no agreement at the MSP, it is likely that governments will move activities to reduce deliberate biological threats away from the BWC. With resources freed up from not holding an annual Meeting of Experts or convening Open-Ended Working Groups, meetings could be held on specific topics on an ad hoc basis, possibly away from Geneva. The upshot of this would be that there will be fewer gatherings of diplomats and experts on the BWC in Geneva. It would, therefore, be harder to promote discussions in the city on the subject of deliberate biological threats. This would weaken the position of Geneva-based diplomats to influence policy on the BWC. Finally, what would be the potential areas for future work that might be considered for a programme between now and 2021 is now anyone's guess.

Endnotes:

1. The United Nations Office at Geneva, see <https://www.unog.ch/>
2. Richard Guthrie, "Informal Thursday: reports from the Meetings of Experts", BioWeapons Prevention Project, December 7, 2018, see <http://bwpp.eu/documents/Dailyreports/MSP18-04.pdf>
3. Richard Guthrie, "The 2018 Meetings of Experts: Continuity and Change", BioWeapons Prevention Project, August 7, 2018, see <http://www.cbw-events.org.uk/MX18-01.pdf>
4. ILPI, "The Biological Weapons Convention", see <http://nwp.ilpi.org/?p=3931>
5. Jonathan Tucker, "Biological Weapons Convention (BWC) Compliance Protocol", NTI, August 1, 2001, see <https://www.nti.org/analysis/articles/biological-weapons-convention-bwc/>
6. Gregory D. Koblentz, "It's time to modernize the bioweapons convention", Bulletin of the Atomic Scientists, November 4, 2016, see <https://thebulletin.org/2016/11/its-time-to-modernize-the-bioweapons-convention/>
7. The United Nations Office at Geneva, see [https://www.unog.ch/80256EE600585943/\(httpPages\)/C550A7F7B6D5A9A0C125830E002B2728?OpenDocument](https://www.unog.ch/80256EE600585943/(httpPages)/C550A7F7B6D5A9A0C125830E002B2728?OpenDocument)
8. Meeting of the States Parties to the Biological weapons convention - 2017, ICRC, December 06, 2017, see <https://www.icrc.org/en/document/meeting-states-parties-convention-prohibition-development-production-and-stockpiling>
9. Ibid.
10. n.8.