



Universalization of the Biological and Toxin Weapons Convention

A Backgrounder

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Brief overview of universalization of the BTWC

Unlike with other disarmament conventions such as the Chemical Weapons Convention (CWC) and the Comprehensive Test Ban Treaty (CTBT), there has been no specific or sustained coordinated action undertaken by the States Parties to encourage wider adherence to the Biological and Toxin Weapons Convention (BTWC) until recently. Several independent forums regularly espouse the importance of universalization and yet concrete, coordinated action had yet to materialize until 2006.

Successive review conferences have reaffirmed the belief of States Parties in the importance of universal adherence to the Convention. Calls for signatories to ratify the Convention and non-signatories to accede ‘without delay’ are a staple of Review Conference Final Documents.

The annual United Nations General Assembly resolution on the BTWC also typically calls upon signatory states to ratify the Convention ‘without delay’, and upon ‘those States that have not signed the Convention to become parties thereto at an early date, thus contributing to the achievement of universal adherence to the Convention’.¹

UN Security Council Resolution 1540 (2004) calls upon States, *inter alia* ‘to promote the universal adoption and full implementation...of multilateral treaties... whose aim is to prevent the proliferation of nuclear, biological and chemical weapons’ and ‘to renew and fulfil their commitment to multilateral cooperation, in particular within the framework of...the Biological and Toxin Weapons Convention, as an important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes.’²

The first sign of increased activity in the issue of universalization occurred at the Third and Fourth Review Conferences (1991 and 1996 respectively) where States Parties were encouraged to take action to persuade non-parties to accede and regional initiatives to increase the number of States Parties were ‘particularly welcomed’. However, at this point there were no coordinated activities and no means of keeping track of any efforts made by States Parties.

Lacking a permanent organization to tend to the Convention, calls for States not yet party to the Convention to join had little lasting effect and the rate of new States parties slowed. Without a permanent organization, there were no sustained campaigns to promote the Convention—an activity sorely needed to keep the BTWC on national agendas and encourage ratification.

¹ See BWC ISU website for all documents: <http://www.unog.ch/bwc>

² S/Res/1540 (2004) adopted by the Security Council at its 4956th meeting, on 28 April 2004, para 8(a) and (c).

A renewed sense of urgency in widening adherence to the BTWC blossomed in the aftermath of the 2001 anthrax attacks in the US. In addition, since that time it became apparent that the BTWC was significantly lagging behind its sister treaty, the Chemical Weapons Convention, in terms of membership: between 2001 and 2006, 2 signatories ratified the Convention³ and nine non-signatories acceded,⁴ bringing the number of states parties to the Convention to 155.⁵ By comparison, over this same period 33 states ratified or acceded to the Chemical Weapons Convention (CWC) bringing the total in 2001 to 179 States Parties,⁶ a development generally attributed to the adoption of the Action Plan to Promote the Universality of the CWC in October 2003 by the Executive Council of the Organisation for the Prohibition of Chemical Weapons.

However, with the 5th Review Conference of the BTWC in disarray (2001, resumed in 2002) and the 1st intersessional process carefully negotiated, no further attention was given to the issue until the lead up to the 6th Review Conference in 2006.

2006 marked a revitalization of efforts to universalize the BTWC beginning with the commencement of the European Union's Joint Action in support of the BTWC⁷ in February and the decision at the BTWC 6th Review Conference (20 November to 8 December 2006) for States Parties to embark upon concerted efforts to persuade states not party to join the Convention and for the Chairs of Meetings of States parties to take on an active coordinating role, aided by the newly-formed Implementation Support Unit.⁸

In 2007, 4 states joined the Convention (Trinidad & Tobago, Kazakhstan, Gabon and Montenegro). So far in 2008, Zambia and Madagascar have joined the ranks of States Parties. As of March 2008, the BTWC now has 161 states parties, and 14 signatory states and 20 non-signatory states. Whilst this rate of ratification/accession/succession is still below that of the Chemical Weapons Convention, it illustrates the success of universalization efforts undertaken so far.

³ Mali and Morocco.

⁴ Holy See, Antigua and Barbuda, Palau, Timor Leste, Sudan, Azerbaijan, Kyrgyzstan, Republic of Moldova, and Tajikistan.

⁵ Information supplied by the Depository Governments of the Convention: the Russian Federation, the United States of America and the United Kingdom of Great Britain and Northern Ireland.

⁶ BWC/CONF.VI/INF.5, 28 September 2006. Background information document on the status of universality of the Convention. Prepared by the Secretariat.

⁷ Council Joint Action 2006/184/CFSP of 27 February Full text available at: <http://www.euja-btwc.eu/files/20060227%20EU%20Joint%20Action_0.pdf>.

⁸ BWC/CONF.VI/6 Final Document of the 6th Review Conference of States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, pp.22-23, <<http://daccessdds.un.org/doc/UNDOC/GEN/G07/600/30/PDF/G0760030.pdf?OpenElement>>.

Rejuvenation of efforts to universalize the BTWC

Developments at the 6th Review Conference of the BTWC

In the 6th Review Conference Final Document States Parties reiterated ‘that the effective contribution of the Convention to international peace and security will be enhanced through universal adherence to the Convention, and... call[ed] on signatories to ratify and other states not party to accede to the Convention without delay’.⁹ Further, States Parties were encouraged to continue to make efforts to persuade non-parties to accede to the Convention and ‘particularly welcom[ed] regional initiatives that would lead to wider accession to the Convention’.¹⁰

More significantly, in recognition that the BTWC lags behind other major disarmament treaties in terms of universalization, and that concerted effort is needed to improve the situation, the Conference adopted an action plan that requested states to take a concretely active role in promoting universalization through bilateral, regional and multilateral fora and activities, in addition to informing the newly-formed Implementation Support Unit (ISU) of a national focal contact points for ‘facilitating information exchange of universalization efforts’. States parties were also requested to report on any activities undertaken at future annual meetings of States Parties and to provide the ISU with any relevant information on the promotion of universalization in the meantime.¹¹

The States Parties also agreed to task the Chairs of Meetings of States Parties to coordinate several universalization-related activities, including:

- address states not party to the Convention;
- provide an annual report on universalization activities at Meetings of States Parties; and
- provide a progress report to the Seventh Review Conference, bearing in mind the primary responsibility of the States Parties on the implementation of this decision.

The ISU was mandated to provide support to the Chairs in carrying out these tasks as well as maintaining a list of national points of contact and to consolidate and make available information on progress made by states not party towards joining the Convention.¹²

⁹ BWC/CONF.VI/6 Final Document of the 6th Review Conference of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons Convention and on Their Destruction, p. 9.

¹⁰ *Ibid*, p. 18

¹¹ *Ibid*, p. 22-23.

¹² *Ibid*, p. 23.

States Party progress and activities since 6th Review Conference

On the last day of the 2007 Meeting of Experts, the then Chairman, Ambassador Masood Khan (Pakistan) delivered a preliminary report on universalization in which he outlined the activities he had undertaken under the mandate given to the Chairs of Meetings of States Parties at the 6th Review Conference and urged States Parties to become involved by raising the issue bilaterally with non-state parties, placing the issue on national and regional agendas and in general by ‘seizing every opportunity’.¹³ Ambassador Khan also expressed the need for coordination and requested States Parties to report their activities to the ISU.

At the Meeting of States Parties in the following December, the Chair presented his Report on Universalization. By this point, four additional states had joined the BTWC, namely Gabon, Kazakhstan, Montenegro and Trinidad and Tobago, bringing the number of States Parties to 159. In addition to the letters sent earlier in the year to non-states parties, the Chairman had engaged in bilateral meetings in Geneva and New York and the ISU had met with the national authorities of 29 non-states parties in The Hague in November 2007. There remained 36 states not party to the Convention but it was reported that 5 countries were in the advanced stages of joining, and a further 8 had begun the process.¹⁴

From the information gathered by the Chairman and the ISU a table detailing their findings was produced in the Report:

Situation	States not party to the Convention	Total
<i>Accession or ratification process well advanced</i>	Burundi, Comoros, Madagascar, Mozambique, Myanmar	5
<i>Accession or ratification process started</i>	Cameroon, Côte d'Ivoire, Guinea, Namibia, Nepal, United Arab Emirates, United Republic of Tanzania, Zambia	8
<i>Waiting for further information or assistance, etc</i>	Andorra, Angola, Central African Republic, Chad, Cook Islands, Guyana, Liberia, Malawi, Marshall Islands, Micronesia, Nauru, Niue	12
<i>No action expected in near future</i>	Egypt, Israel, Syrian Arab Republic	3
<i>No information or feedback yet received</i>	Djibouti, Eritrea, Haiti, Kiribati, Mauritania, Samoa, Somalia, Tuvalu	8

¹³ The report is available at:
[http://www.unog.ch/80256EDD006B8954/\(httpAssets\)/9B4FC512A42BAE0DC125734100525EE9/\\$file/Universalization+interim+report+24+Aug+07.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/9B4FC512A42BAE0DC125734100525EE9/$file/Universalization+interim+report+24+Aug+07.pdf).

¹⁴ BWC/MSP/2007/4 Report of the Chairman on Universalization Activities, 11 December 2007.

In addition, detailed information was given on each state not party.

So far in 2008, two further countries have joined the Convention: Madagascar and Zambia. Both these countries had previously reported their progress to the Chairman and were identified in the Chairman's report as in an advanced stage of accession and on the road, respectively. With such a good start for the year, and a number of states actively pursuing accession and ratification, 2008 could well shape up to overtake last year in the number of new States Parties to the BTWC.

The European Union Joint Action in support of the BTWC

On 27 February 2006 the European Union (EU) adopted a *Joint Action in support of the Biological and Toxin weapons Convention (BTWC)*.¹⁵ The programme was originally to run until September 2007 but has since been extended and will now conclude at the end of April 2008. The EU Joint Action forms part of a broader EU strategy to enhance the norm against the weaponisation of disease enshrined in the BTWC.

The Joint Action in support of the BTWC has two goals: to promote the universality of the Convention and to support national implementation of the BTWC through the provision of technical assistance.

The EU Joint Action envisaged promoting accession through 5 regional workshops, namely East & South Africa, West & Central Africa, Asia & the Pacific, Latin America and the Caribbean, and the Middle East. The meetings aim to raise awareness about the importance of a universal BTWC, encourage greater membership and explaining the benefits and consequences of adhering to the Convention. The regional workshops for South and East Africa and Asia and the Pacific took place in 2006 (21-22 June and 8-9 November, respectively). The Latin America and Caribbean seminar took place on 18-19 January 2007, followed by the seminar for West and Central Africa on 17-18 April 2007. The final workshop for the Middle East is scheduled for April 2008.¹⁶

Since the commencement of the EU Joint Action in 2006, 6 new States Parties have joined the Convention. Regular contact with signatory and non-signatory states has shown that at least a dozen are on their way to ratification or accession—a development due in no small way to the EU Joint Action, especially in raising awareness of the Convention amongst governments and encouraging states to join through its seminars and the supporting demarches of EU member states.

The future....

In accordance with the universalization action plan promulgated at the 6th Review Conference, there are a number of activities that States Parties should continue to undertake:

¹⁵ Council Joint Action 2006/184/CFSP of 27 February 2006 in support of the Biological and Toxin Weapons Convention. The implementation of the Joint Action was entrusted to the BioWeapons Prevention Project (BWPP).

¹⁶ The seminar reports are available from <www.euja-btwc.eu>.

- Report all activities to the ISU
- Provide national contact points to the ISU
- Conduct demarches
- Raise the issue of joining the Convention in every forum
- Investigate what technical assistance can be offered and inform the ISU of this.

In addition to such efforts, the EU will embark on a second Joint Action at the end of 2008. All States Parties should try to assist such projects in whatever region and forum they occur, as well as offer any assistance they can to ensure that new States Parties attend and fully participate in the annual BTWC meetings, as well as signatories and non-signatories.

The Devil's in the Details...

A note on Tuvalu and Kiribati

In the course of the BWPP's research on universalization over the last year, it has come to light that there might in fact be two more States Parties to the BTWC than currently assumed. The Pacific island nations of Tuvalu and Kiribati, both former colonies of the United Kingdom, can be argued to have succeeded to the BTWC following their independence according to the rules of international law.

The starting point for these arguments must be that when the United Kingdom of Great Britain and Northern Ireland (UK) ratified the BTWC in 1975, it did so also on behalf of territories and dominions under its sovereign control at the time—including the colonies of the Ellice and Gilbert Islands (modern-day Tuvalu and Kiribati respectively).

Tuvalu

A letter dated 19 December 1978 addressed to the then Secretary-General of the United Nations from the Prime Minister of Tuvalu acknowledged that Tuvalu had succeeded to a number of international treaties upon Independence by virtue of customary international law. The one caveat placed on this large-scale succession was that the government would not succeed to any international treaty deemed to have lapsed, and therefore reserved the right to conduct a legal examination of all treaties after which it would indicate which treaties it would treat as lapsed and therefore not binding on Tuvalu. In the meantime, the document continues:

‘The Government of Tuvalu desires that it should be presumed that each treaty purported or deemed to bind Tuvalu before Independence has been legally succeeded to by Tuvalu and that action should be based on the presumption *unless and until* the Government of Tuvalu decides that any particular treaty should be treated as having lapsed. Should the Government of Tuvalu be of opinion that it has legally succeeded to any treaty, and wish to terminate the operation of such treaty, it will in due course give notice of termination...’ [emphasis added]

To date there has been no statement by Tuvalu that the BTWC is considered by them to have lapsed nor of its wish to terminate the operation of the treaty. Furthermore, Tuvalu specifically stated that *unless and until* it decides a treaty has lapsed, it should be presumed or deemed to be binding on them. Presumably, therefore, Tuvalu can be considered a State Party to the BTWC until it states otherwise.¹⁷

¹⁷ In addition, note 12 to the Vienna Convention on Consular Relations (Vienna, 24 April 1963) shows that Tuvalu clearly regarded their note of 19 December 1978 as their notification of succession. In this instance the Government of Tuvalu relies on this notification to support its rejection of the Optional Protocol to Tuvalu, which it considered as having lapsed. Therefore, it is evident that Tuvalu has put into practice and abides by the terms

However, Tuvalu's position remains ambiguous. A *Note Verbale* (13 March 2007) to the United Nations from Tuvalu addressed to the Chairman of the Security Council Committee pursuant to resolution 1540 seems to indicate that Tuvalu is either unaware of its (possible) succession to the BTWC or considers itself not to be bound. In this note, the Government of Tuvalu makes no mention of its membership of the BTWC (whilst reporting its ratification of the Nuclear Non-Proliferation Treaty and the Chemical Weapons Convention and the Treaty of Rarotonga) and states that it 'supports in principle the objectives of the remaining international conventions and arrangements relevant to Security Council resolution 1540 and is considering accession to these...'—which one can only assume includes the BTWC.¹⁸

Kiribati

The situation of Kiribati is similar to that of Tuvalu.

Following its independence on 12 July 1979, the Beretitenti (President) of Kiribati wrote to the Secretary-General of the United Nations in reference to the 'question of the status of conventions, treaties and other international instruments applied to, or entered into on behalf of, the Gilbert Islands [by the United Kingdom government]... prior to independence:

'... the Government of the Republic of Kiribati declares that, with regard to multilateral treaties applied or extended to the former Gilbert Islands it will continue to apply the terms of each such treaty provisionally... until such time as it notifies the depository authority of its decision with respect thereto.'

As the BTWC was in force in 1975 and the UK expressly stated that it would apply to its territories, it is therefore clear that the BTWC was applied to the Gilbert Islands at that time. To date no notification from the Government of Kiribati has been made on the discontinuation of the application of the BTWC to its territory.

Again, it seems that Kiribati is either unaware of this or considers itself not to be bound. In its letter to the Chairman of the Security Council Committee pursuant to resolution 1540, Kiribati states that '[C]onsideration will be given to Kiribati becoming a party to the Biological and Toxin Weapons Convention.'¹⁹

set out in its notification of succession.

¹⁸ S/AC.44/2004/(02)/137 *Note Verbale* dated 13 March 2007 from the Permanent Mission of Tuvalu to the United Nations addressed to the Chairman of the Committee.

¹⁹ S/AC.44/2004/(02)/127 Letter dated 1 May 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1540 (2004) addressed to the Committee.

Follow-on action

In order to clarify these issues, acting upon this information brought to their attention by the BWPP, the government of the United Kingdom of Great Britain and Northern Ireland are pursuing clarification in coordination with its co-depository governments with the Governments of Tuvalu and Kiribati. Hopefully these investigations will result in two 'new' States Parties to the Convention in the near future.