

**AGENDA ITEM 12: WORK DONE TO STRENGTHEN THE
CONVENTION IN ACCORDANCE WITH THE DECISION OF THE 1994
SPECIAL CONFERENCE**

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Introduction

1. At the Fourth Review Conference of the BTWC held on 25 November to 6 December 1996, the Final Declaration¹ addressed the Agenda item 12 *Consideration of the work of the Ad Hoc Group established by the Special Conference in 1994* by the following language:

Consideration of the work of the Ad Hoc Group established by the Special Conference in 1994

The Conference welcomes the report on the progress of the Ad Hoc Group as contained in BWC/AD HOC GROUP/32 and notes in particular the following:

- The Special Conference of the States Parties to the Convention on the prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (September 1994) agreed to establish an Ad Hoc Group open to all States Parties to consider appropriate measures, including possible verification measures, and draft proposals to strengthen the Convention.

- Since its establishment, the Ad Hoc Group has held one short organizational session and four substantive sessions of a duration of two weeks each.

- In accordance with its mandate, as contained in the Final Report of the Special Conference (BWC/SPCONF/1), the Ad Hoc Group has been considering appropriate measures, including possible verification measures, to strengthen the Convention. Where relevant, consideration of issues has sought to build on the considerable body of technical work connected with strengthening the Biological and Toxin Weapons Convention regime undertaken by the Ad Hoc Group of Technical Experts to Identify and Examine Potential Verification Measures from a Scientific and Technical Standpoint (VEREX) in 1992 and 1993.

¹United Nations, *The Fourth Review Conference of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction*, Geneva, 25 November - 6 December 1996, BWC/CONF.IV/9, Geneva 1996.

- *The Ad Hoc Group has made significant progress towards fulfilling the mandate given by the Special Conference, including by identifying a preliminary framework and elaborating potential basic elements of a legally-binding instrument to strengthen the Convention.*

- *Nevertheless, the Ad Hoc Group was not able to complete its work and submit its report including a draft of the future legally-binding instrument to the States Parties for consideration at the Fourth Review Conference. In this context it is noted that the cumulative period allocated to substantive negotiations in the Ad Hoc Group has been eight weeks.*

The Conference welcomes the decision of the Ad Hoc Group, in order to fulfil its mandate, to intensify its work with a view to completing it as soon as possible before the commencement of the Fifth Review Conference and submit its report, which shall be adopted by consensus, to the States Parties, to be considered at a Special Conference. The Conference encourages the Ad Hoc Group to review its method of work and to move to a negotiating format in order to fulfil its mandate.

The Conference notes that the Ad Hoc Group is considering, as part of its continuing work, definitions of terms and objective criteria, such as lists of bacteriological (biological) agents and toxins, their threshold quantities, as well as equipment and types of activities, where relevant for specific measures designed to strengthen the Convention.

Developments since the Fourth Review Conference

2. Since the Fourth Review Conference, the Ad Hoc Group had, in accordance with its mandate from the 1994 Special Conference, continued its negotiations of a legally-binding instrument *to strengthen the effectiveness and improve the implementation* of the Convention. It successfully transitioned in its seventh session in July 1997 to the negotiation of a rolling text for the legally-binding instrument. By the time of the Fifth Review Conference, the Ad Hoc Group had held 24 sessions with the latest, twenty-fourth, session being held in July-August 2001. In all, 19 sessions have been held since the Fourth Review Conference.

3. The negotiations of the rolling-text effectively reached stagnation in the latter half of 2000 when the Chairman initiated an intensive round of informal bilateral consultations with all the States Parties engaged in the Ad Hoc Group negotiations. This led to the introduction on 30 March 2001 of a Chairman's composite Protocol text². In an analysis³ prepared for the twenty-third session of the Ad Hoc Group, it was concluded that:

²United Nations, *Ad Hoc Group of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction*, BWC/AD HOC GROUP/CRP.8(FUTURE), 30 March 2001, Geneva.

³Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims, *The Composite Protocol Text: An Effective Strengthening of the Biological and Toxin Weapons Convention*, University of Bradford, Department of Peace Studies, Evaluation Paper No 20, April 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

It is evident from this evaluation of the composite Protocol text that it is in many areas identical to the language in the rolling text and is firmly based on the agreed language out of square brackets in the rolling text. Compromises have been adopted to address those issues where there continued to be a divergence of views. These compromises have emerged from the bilateral informal consultations held by the Chairman and have been explored through the written elements addressing conceptual solutions based on the rolling text which had been circulated by the Chairman for virtually the whole of the Protocol to all delegations by February 2001. Whilst these compromises will not satisfy the aspirations of all the delegations to the Ad Hoc Group, they do, in our view, successfully ensure that the composite Protocol text achieves its mandate of strengthening the effectiveness and improving the implementation of the Convention. The composite Protocol text has successfully retained all the essential elements for an effective Protocol ranging from definitions and objective criteria, through compliance measures to measures for scientific and technological exchange for peaceful purposes and technical cooperation.

4. The procedural report of the April/May 2001 twenty-third Ad Hoc Group session⁴ contained the Chairman's composite Protocol text as Annex B and the latest version of the rolling text as Annex A. The report stated that *"While recognizing the Rolling Text as the underlying basis for negotiations, the delegations expressed their views with regard to the compromise proposals contained in the Composite Text, both in formal and informal sessions."*

5. A further analysis⁵ prepared for the twenty-fourth Ad Hoc Group session examined the value of the Protocol by making comparisons, first between the BTWC with its Protocol regime and the BTWC alone, and then between the BTWC with its Protocol regime and the Chemical Weapons Convention (CWC) regime, given that both Conventions overlap -- and rightly so -- in the areas of toxins, bioregulators and peptides. The comparison with the BTWC alone shows that the Protocol brings significant and worthwhile benefits to all States Parties whilst the comparison with the CWC shows that in respect of the monitoring of dual-purpose materials and facilities, the two regimes are very comparable, with the Protocol regime imposing a less onerous but more focussed burden in respect of declarations and visits whilst the international cooperation provisions are much more extensive than those of the CWC. The analysis concluded by saying that:

*In evaluating the composite Protocol text, it has to be remembered that the BTWC with its basic prohibitions and obligations has been **in force** for over 25 years and that the Protocol is to strengthen the effectiveness and improve the implementation of the Convention. It is evident from the analysis of the principal costs and benefits on an Article by Article basis of the composite Protocol that the Protocol will bring significant and worthwhile benefits to **all***

⁴United Nations, *Procedural Report of the Ad Hoc Group of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction*, BWC/AD HOC GROUP/56-1 and 56-2, 18 May 2001, Geneva.

⁵Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims, *The Composite Protocol Text: An Evaluation of the Costs and Benefits to States Parties*, University of Bradford, Department of Peace Studies, Evaluation Paper No 21, July 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

*States Parties -- both developed and developing. Furthermore, a consideration in a wider perspective shows that signing and ratifying the composite Protocol will bring a **net gain** for all States Parties. The Protocol will be effective, over time, in increasing transparency and building confidence between States Parties that other States Parties are indeed in compliance with the Convention, thereby reinforcing the norm that work on biological weapons, whether directed against humans, animals or plants, is totally prohibited. The Protocol will bring improved health, safety, security and prosperity to **all** States Parties.*

6. The twenty-fourth session of the Ad Hoc Group opened with plenary statements on Monday and Tuesday 23 and 24 July 2001 on behalf of over 50 of the approximately 55 States engaged in the negotiation of the Protocol that the Chairman's composite Protocol text should form the basis for the political decisions to adopt the Protocol before the Fifth Review Conference later this year. On the morning of Wednesday 25 July, a further two States Parties spoke in support of the Protocol. This was then followed by a statement by the United States which said that "*After extensive deliberation, the United States has concluded that the current approach to a Protocol to the Biological Weapons Convention,...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.*" The statement went on to say that "*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.*" This rejection by the United States was a great disappointment as it represented a reversal of the approach which had been pursued by all delegations up to that point.

7. A detailed analysis⁶ of the United States statement prepared during the twenty-fourth session concluded that the elements and arguments in the statement were based on illogical assessments and are incorrect and not valid. Several were based on alleged concerns that had no basis in the actual composite Protocol text. It was evident that the United States was indeed making a "stunning" mistake⁷ and was failing to take all possible steps to strengthen the international norm totally prohibiting biological weapons and to obstruct the proliferation of biological weapons. The United States was urged to urgently reconsider its position.

8. In the event, the twenty-fourth session of the Ad Hoc Group ended without agreeing a procedural report. It has subsequently become apparent that the other States Parties engaged in the Ad Hoc Group negotiations are not prepared to conclude a legally-binding instrument without the participation of the United States. It was, however, evident at the twenty-fourth session of the Ad Hoc Group that all the States Parties, including the United States, supported the mandate for the Ad Hoc Group

⁶Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims, *The US Rejection of the Composite Protocol: A Huge Mistake based on Illogical Assessments*, University of Bradford, Department of Peace Studies, Evaluation Paper No 22, August 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

⁷Barbara Hatch Rosenberg, *Allergic Reaction: Washington's Response to the BWC Protocol*, Arms Control Today, July/August 2001, pp.3-8. Available at http://www.armscontrol.org/act/2001_07_08/rosenbergjul_aug_01.asp?print

agreed at the 1994 Special Conference⁸. For convenience, the key elements of the mandate are reproduced here.

Mandate for the Ad Hoc Group

9. The Special Conference was held on 19 - 30 September 1994 at which the States Parties agreed to establish a further Ad Hoc Group (AHG) with the objective being 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. In this context, the Ad Hoc Group shall, *inter alia*, consider:

- *Definitions of terms and objective criteria, such as lists of bacteriological (biological) agents and toxins, their threshold quantities, as well as equipment and types of activities, where relevant for specific measures designed to strengthen the Convention;*
- *The incorporation of existing and further enhanced confidence building and transparency measures, as appropriate, into the regime;*
- *A system of measures to promote compliance with the Convention, including, as appropriate, measures identified, examined and evaluated in the VEREX Report. Such measures should apply to all relevant facilities and activities, be reliable, cost effective, non-discriminatory and as non-intrusive as possible, consistent with the effective implementation of the system and should not lead to abuse;*
- *Specific measures designed to ensure effective and full implementation of Article X, which also avoid any restrictions incompatible with the obligations undertaken under the Convention, noting that the provisions of the Convention should not be used to impose restrictions and/or limitations on the transfer for purposes consistent with the objectives and the provisions of the Convention of scientific knowledge, technology, equipment and materials.*

The mandate also required that

- *Measures should be formulated and implemented in a manner designed to protect sensitive commercial proprietary information and legitimate national security needs.*
- *Measures shall be formulated and implemented in a manner designed to avoid any negative impact on scientific research, international cooperation and industrial development.*

⁸United Nations, *Special Conference of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction*, Final Report, BWC/SPCONF/1 Geneva, 19–30 September 1994.

In addition, the Special Conference made it clear that the regime "*would include, inter alia, potential verification measures, as well as agreed procedures and mechanisms for their efficient implementation and measures for the investigation of alleged use.*"

Issues for the Fifth Review Conference

10. Recently, President George W. Bush has made a Presidential statement⁹ which states that "*The United States is committed to strengthening the Biological Weapons Convention (BWC) as part of a comprehensive strategy for combating the complex threats of weapons of mass destruction and terrorism.*" and goes on to propose that '*...all Parties:*

- *Enact strict national criminal legislation against prohibited BW activities with strong extradition requirements;*
- *Establish an effective United Nations procedure for investigating suspicious outbreaks or allegations of biological weapons use;*
- *Establish procedures for addressing BWC compliance concerns;*
- *Commit to improving international disease control and to enhance mechanisms for sending expert response teams to cope with outbreaks;*
- *Establish sound national oversight mechanisms for the security and genetic engineering of pathogenic organisms;*
- *Devise a solid framework for bioscientists in the form of a code of ethical conduct that would have universal recognition; and*
- *Promote responsible conduct in the study, use, modification, and shipment of pathogenic organisms.*

The statement continues to say that "*Our objective is to fashion an effective international approach to strengthen the Biological Weapons Convention. The ideas we propose do not constitute a complete solution to the use of pathogens and biotechnology for evil purposes. However, if we can strengthen the Convention against the threat of biological weapons, we will contribute to the security of the people of the United States and mankind as a whole.*"

11. Although there could be a temptation to engage in recriminations about the events in the Ad Hoc Group in its July/August 2001 session, this would **not** be in the interests of any individual State Party or of the Convention or of the international community. The fact that the United States has recently made proposals is to be welcomed and it is clear from the Presidential statement that the United States is expecting to engage in dialogue about these proposals as the statement said that "*I have directed my Administration to consult with our friends and allies, as well as with*

⁹The White House, *Statement by the President: Strengthening the International Regime against Biological Weapons*, 1 November 2001, Available at <http://www.whitehouse.gov/news/releases/2001/11/print/20011101.htm>

Congress, industry, and non-governmental experts, on these proposals. We look forward to hearing the new ideas on how best to achieve our common aim of eliminating biological weapons."

12. It is important that the Fifth Review Conference recognize the continuing need to strengthen the BTWC and the need to explore **all** proposals for achieving a legally binding instrument. Such proposals will need to be explored in an appropriate multilateral forum which might be a continuation of the Ad Hoc Group. The key requirement is to continue to work urgently on the strengthening of the Convention through a legally binding instrument.

Language for the Fifth Review Conference Final Declaration

13. It is therefore recommended that the Fifth Review Conference should adopt language developed from that in the Final Declaration of the Fourth Review Conference along the following lines, which have been drafted to be non-controversial and thereby attract the support of **all** States Parties:

Consideration of the work of the Ad Hoc Group established by the Special Conference in 1994

The Conference notes the work carried out by the Ad Hoc Group since the Fourth Review Conference and notes in particular the following:

- The Special Conference of the States Parties to the Convention on the prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (September 1994) agreed to establish an Ad Hoc Group open to all States Parties to consider appropriate measures, including possible verification measures, and draft proposals to strengthen the Convention.

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- In accordance with its mandate, as contained in the Final Report of the Special Conference (BWC/SPCONF/1), the Ad Hoc Group has been considering appropriate measures, including possible verification measures, to strengthen the Convention. Where relevant, consideration of issues has sought to build on the considerable body of technical work connected with strengthening the Biological and Toxin Weapons Convention regime undertaken by the Ad Hoc Group of Technical Experts to Identify and Examine Potential Verification Measures from a Scientific and Technical Standpoint (VEREX) in 1992 and 1993.

- The Ad Hoc Group has made progress towards fulfilling the mandate given by the Special Conference.

- Nevertheless, the Ad Hoc Group was not able to complete its work and submit its report including a draft of the future legally-binding

*instrument to the States Parties for consideration at the **Fifth** Review Conference.*

*The Conference encourages the Ad Hoc Group to **continue** its work in order to fulfil its mandate.*