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## TIME TO WRAP UP

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The negotiations for the Protocol to the Biological Weapons Convention (BWC) are now coming to the end of their fifth year. Having begun in January 1995, the Ad Hoc Group (AHG) will have met for a total of 44 weeks by the end of 1999.

These five years of work should not, however, be seen in isolation, or as the start of a new process. The negotiations are the culmination of a process begun many years ago. Both the 1986 and 1991 Review Conferences of the BWC instituted procedures that aimed to build confidence among states parties to the BWC. At the Third Review Conference in 1991 the states parties also approved a study of possible verification measures by scientific experts, the VEREX process. This study resulted in the 1994 Special Conference and the formation of the AHG with its mandate to negotiate a Protocol *to strengthen the effectiveness and improve the implementation* of the Biological Weapons Convention.

Since 1995 the work of the AHG has moved through three stages. First, from 1995 to mid-1997 the preliminary work of the AHG built upon the VEREX negotiations and final report to identify elements of a Protocol. The July–August 1997 session of the AHG witnessed the transition to a rolling text of the draft Protocol and initiated the second phase of the negotiations; the inclusion of detailed provisions in the Protocol and an intensification of the work of the AHG, as called for by the states parties at the Fourth Review Conference. January 1999 saw the third phase of the negotiations, the move to a final framework for the Protocol and the detailed negotiation on key elements.

It is timely and relevant to look back at the evolution of the negotiations to consider what needs to be done in the period ahead of us.

At the March 1997 session the AHG requested the Chairman to submit to the Group a document reflecting in a structured manner the progress of the work of the AHG during its six previous sessions. Thus, I presented a draft rolling text at the beginning of the seventh session. This rolling text became the basis of the work of the AHG.

In the period July 1997 to the beginning of January 1999 the AHG had a total of 17 weeks of negotiations. During this period the AHG further developed the preliminary elements of the draft Protocol into a more coherent

framework. Delegations inserted new concepts and debated fully many of the contentious issues with a view to developing language in the Protocol that would serve the needs of all states parties. Nonetheless, alternative versions of text proliferated throughout. By the end of 1998 the text contained nearly 3200 pairs of square brackets. This was to be expected and formed part of the negotiating process. We began our work on the rolling text with preliminary elements in a draft format. This has developed in the AHG as proposals were discussed, refined and formulated into a more coherent and structured manner.

Interest from external actors to the AHG increased as time progressed. The European Union “Common Position” was first presented to the AHG in March 1998. The Non-Aligned Movement (NAM) issued a communiqué in May 1998 following their Ministerial meeting in Cartagena de Indias. In the Final Document of the Twelfth Conference of the Non-Aligned Countries held at Durban in August–September 1998 the Heads of State or Government noted the progress achieved so far negotiating a Protocol and stressed the importance of achieving further substantive progress. In September 1998 the High-Level Meeting of Ministers in New York, *inter alia*, noted that: “The Ministers are determined to see this essential negotiation brought to a successful conclusion as soon as possible.” Such political support certainly added to the momentum of the AHG.

The beginning of this year saw the start of 16 weeks of negotiations. As the text continued to develop it was facilitated by the new “Part II” documents of each Friend of the Chair (FOC) seeking to identify possible solutions and

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facilitate the negotiations at each subsequent meeting. Since October 1998 the FOCs have produced in Part II proposals for the various Articles in the Protocol showing how they envisage the Articles developing. Since July 1999 the Part II version has been structured to reflect the Protocol format. In October 1999 there was Part II text for 19 of the 23 Articles, thus providing a consolidated set of new proposals.

Negotiations in the last six months and especially in the September–October session have made considerable progress towards our common goal of a Protocol. Within the rolling text we have seen:

- A reduction in alternative language and the deletion of repetitions across the text, resulting in a more coherent whole for the Protocol;
- A reduction in the number of working papers submitted to the AHG, indicating that the necessary elements are already within the rolling text;
- New language to address previously contentious issues, such as the “NAM and Other States” paper on “Visits”.

Informal consultations are also becoming a more utilised forum by delegations, including bilateral, in respective groups of states, and those facilitated by myself. For example, during the September–October session, a total of 97 formal and informal meetings took place. Outside the AHG, other international organizations have begun to take an interest in how the identification and implementation of cooperative programmes might facilitate the achievement of such common goals as fighting emerging and reemerging infectious diseases.

Within the rolling text we have seen a marked improvement in the status of certain key Articles. Definitions and Criteria in Article II have been streamlined and cross-referenced and addressed *vis-à-vis* their role in the declaration formats, declaration triggers, visits and investigations. The issue of “visits” as part of the procedures for follow up after declarations is becoming more coherent. The investigation elements of the Protocol are progressing at a good pace. Finally, specific measures for the enhancement of Article X of the Convention have been identified and brought together in a more coherent whole in Article VII of the Protocol.

This does not imply that few problems remain. Many issues still have to be addressed by the AHG. Some examples might include:

- The issue of the definition of basic terms in Article II and the impact so-called “objective criteria” might have on the General Purpose Criterion of the Convention;
- In respect of compliance measures there are still differences over the scope of declarations and visits;
- With regard to the investigation procedures, their nature and the underlying decision-making process (red light or green light) has yet to be resolved;
- In Article VII the question of transfer control arrangements and the relationship between the obligations of Articles III and X of the Convention have yet to be addressed.

Some of these issues are more fundamental than others. In previous sessions, these more contentious issues have been rapidly passed over. Yet now, particularly in the last couple of sessions, the AHG has begun a process of constructive engagement in these areas. All the elements necessary for completing the work of the AHG are in place and at this juncture what lies before the AHG are the key and most difficult topics. For many states parties these issues are of fundamental importance. However, whereas in previous sessions these issues might have been dealt with in a politically loaded atmosphere, the tenor of many discussions is now marked by the question, “how will this be implemented in practice?”

I have said that I believe the work of the AHG has moved through three stages and it is now my belief that the last session marked the end of the third phase. As one participant in the negotiations defined it: we are witnessing “the end of the beginning of the endgame”. When we assess what has been achieved and examine all the elements together, what we see is a convergence of factors pointing to the next phase of the negotiations: the move to the end game. The question, therefore, is whether the last session in 1999 and the early sessions in 2000 initiate the “endgame”?

The states parties of the BWC at the Fourth Review Conference called for the completion of the work of the AHG “as soon as possible before the commencement of the Fifth Review Conference” and to submit its report to a Special Conference. At the Fourth Review Conference it was agreed that the Fifth Review Conference shall be held “not later than 2001”, thus continuing the tradition of five-yearly review conferences. Assuming that states parties follow existing practice, the Preparatory Committee for the Fifth Review Conference should take place in the Spring of 2001. The steps that need to precede the Prepcom are the completion of the work of the AHG, the Special Conference of States Parties to adopt the work of the AHG, and the Signature Conference. Each of these steps would need a sufficient lead-time, of weeks if not months, to precede the work of the Preparatory Committee, thus providing the clarity needed not just on the final shape of the Protocol, but on those states that have signed up, before the review conference starts its work.

If the AHG moves into the final stage of its negotiations in 2000, there is no need to dwell unnecessarily on issues simply because the time is available. We might need all the time available but all states parties agree that the completion of the work of the AHG and the Protocol to the BWC are important objectives for the international community. Thus, collectively, we should move forward as quickly as possible, but not losing from sight the importance of producing a legal product of high quality.

We have managed to significantly diminish the number of brackets, especially as a result of the September–October session. Their number has fallen from 3200 to 2000. Proportionately, we now have 30 per cent fewer brackets in the Protocol rolling text than the draft Comprehensive Test Ban Treaty (CTBT) contained in April 1996, four months prior to the conclusion of the negotiations. We have begun to address the most difficult issues. In the September–October session, for the first time in the history of the negotiations, a massive removal of brackets in areas

of prime importance and high complexity did take place. Complex technical aspects still need to be refined, but the majority of the decisions facing the AHG are political in nature and thus require the most serious engagement of all parties in an active manner.

It is with some anticipation that I note that the year 2000 marks both the seventy-fifth anniversary of the 1925 Geneva Protocol and the twenty-fifth anniversary of the entry into force of the BWC in 1975. It is up to the states parties to mark both of them with achievements

commensurate with the moral and political legacy these anniversaries set for the contemporary world of global security and multilateral arms control. The opportunity to complete our work in accordance with our mandate is before us and I am sure we can and will achieve that goal.

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*This article is based on the statement made to the United Nations General Assembly First Committee by Ambassador Tóth on 22 October 1999.*