

Strengthening the Biological and Toxin Weapons Convention

A three week session, the nineteenth, of the Ad Hoc Group (AHG) to consider a legally binding instrument to strengthen the Biological and Toxin Weapons Convention (BWC) was held in Geneva from Monday 13 March to Friday 31 March 2000. As in the previous sessions, negotiations focussed on the rolling text of the Protocol.

In the March session, 53 states parties and 1 signatory state participated; a net total of 1 more state party than in January/February as 3 states (Ireland, Mongolia, Singapore) participated in March whilst 2 states (Albania and Iraq) which had participated in January/February did not in March. The same single signatory state (Morocco) participated in March as in January/February.

The Friend of the Chair for the Seat of the Organization changed to Ambassador Seiichiro Noboru of Japan who had replaced Ambassador Akira Hayashi. In addition, a Friend of the Chair on Compliance Measures was appointed for Declaration Formats, Dr Anthony Phillips of the UK.

The sharp reduction in the number of new Working Papers was continued with only three being submitted in March (WP.413 to 415) with two presented by single states and one by the European Union.

The outcome of the March session was produced as a complete update of the Protocol issued as Part I of the procedural report (BWC/AD HOC GROUP/51). This was thus the

twelfth version of the rolling text – previous versions having been produced in June 1997 (#35), July 1997(#36), October 1997 (#38), February 1998 (#39) and June/July 1998 (#41), September/October 1998 (#43), January 1999 (#44), April 1999 (#45), July 1999 (#46), October 1999 (#47) and February 2000 (#50). As with previous procedural reports, a Part II containing an Annex IV was again produced containing papers prepared by the Friends of the Chair of proposals for further consideration in which the Part I draft Protocol text is modified in a transparent way. Annex IV (Part II text) reflected the structure of the Protocol with Friend of the Chair proposed language for the Articles, Annexes and Appendices of the Protocol.

The March session spent most time on compliance measures (5¹/₂ meetings of which 1 was devoted to declaration formats), investigations (4²/₃ meetings), definitions and objective criteria (4¹/₃ meetings), Article X measures (2²/₃ meetings) and with between ¹/₃ and 1¹/₂ meetings on the other topics. Three meetings were devoted to informal consultations on declaration formats. In addition, a number of informal consultations were held to discuss issues prior to their consideration at formal meetings.

The March session saw various NGO and other activities. On 13 March, the Department of Peace Studies at the University of Bradford presented and distributed a further three Evaluation Papers in its series: No 15 *Preamble*, No 16 *Article IV: Confidentiality Provisions*, No 17 *The BTWC Protocol: Proposed Complete Text for an Integrated Regime* (all are available at <http://www.brad.ac.uk/acad/sbtwc>). EP 17 presented a complete clean text for the Protocol which sought to introduce realism and to strike a balance between the different aspirations so as to arrive at a worthwhile and valuable Protocol acceptable to all states parties. As the 25th anniversary of the entry into force of the BWC occurred on Sunday 26 March, seminars were held in New York on 24 March and in Geneva on 27 March to mark the occasion. The New York symposium on “Strengthening the Biological Weapons Convention: International Cooperation and Exchanges in the Field of Biotechnology” was organized jointly by the UN Department of Disarmament Affairs and the International Centre for Genetic Engineering and Biotechnology (ICGEB): this had opening statements by Jayantha Dhanapala, Under Secretary-General for Disarmament Affairs and Ambassador Taylhardat, President of the Board of Governors of the ICGEB. Keynote Speakers were Dr Joshua Lederberg and Dr Arturo Falaschi on Article X of the BWC — technical cooperation in biotechnology, Ambassador Tibor Tóth on the work of the Ad Hoc Group of States Parties to the BWC, Dr Jack Melling and Dr Nikolai Gnuchev on the role of the biotechnology industry in technical cooperation and exchange, and Dr Demissie Habte and Dr Ottorino Cosivi on biotechnology and medicine — cooperative efforts in preventing and fighting outbreaks of diseases. The Geneva seminar on “25 Years of the Biological and Toxin Weapons Convention: Assessing Risks and Opportunities” was organized jointly by the United Nations Institute for Disarmament Research (UNIDIR), the Federation of American Scientists (FAS), the International Security Information Service (ISIS), the Verification, Research, Training and Information Centre (VERTIC) and the University of Bradford

Department of Peace Studies. It was chaired by Ambassador Tóth and had as speakers Nicholas Sims on “The Convention in historical perspective: the first, and the next 25 years”, Dr Mark Wheelis on “Biological weapons in the 21st century: the Convention, the Protocol, and the changing science”, Minister Antonio de Aguiar Patriota, Mission of Brazil to the UN on “The importance of technical co-operation for the Biological and Toxin Weapons Convention” and Dr Patricia Lewis on “Putting the Biological and Toxin Weapons Convention in the wider disarmament context”.

Political Developments

A number of political statements were made during the March session as there were several statements to the AHG by Foreign Ministers or Ambassadors to mark the 25th anniversary of the entry into force of the BWC. On the opening day of the March session, Portugal on behalf of the European Union made a statement saying:

The EU believes that the most appropriate manner in which to mark this anniversary year would be the early and successful completion of the negotiations on a Protocol to strengthen the implementation of the Convention. ... To achieve our goal, we must continue to improve on our working methods. ... We also now need to refine the crucial elements for an effective Protocol that are already well developed within the text before us.

After emphasizing the necessity for a comprehensive declaration regime in which:

The EU maintains that it is essential that biodefensive activities and facilities, vaccine production, maximum biological containment, work with listed agents and/or toxins and other production be declared annually

the statement went on to say:

The Protocol must contain an effective mechanism for follow-up of declarations in the form of visits. The concept of visits based on random selection that is now widely accepted is an important step forward. The EU emphasizes its belief that a visit regime must include such visits, selected on the basis of appropriate mechanisms of random selection, to enhance transparency of all declared facilities and activities, to promote accuracy of declarations and to ensure fulfilment of declaration obligations.

It also stressed that the Protocol must include appropriate clarification procedures, provisions for rapid and effective investigations, and specific measures to further international cooperation and exchanges in the field of biotechnology. The statement goes on to say:

the Protocol must also provide for effective measures regarding transfers/export controls. Those measures, through improved transparency and confidence-building among states parties, must ensure that inadvertent transfer of materials intended for purposes prohibited by the Convention will not occur.

It concludes by noting:

The EU member states are ready to support initiatives that will facilitate the negotiation process in order to conclude our work in a quick and effective manner. In this context, we encourage the Chairman to present his vision of a comprehensive text for the future Protocol.

Later the same week, on 16 March, President Clinton in videotaped remarks to the Carnegie Non Proliferation Conference in Washington, DC, said:

It would be foolish to rely on treaties alone to protect our security. But it would also be foolish to throw away the tools that sound treaties do offer: a more predictable security environment, monitoring inspections, the ability to shine a light on threatening behaviour and mobilize the entire world against it. So this year, we will work to strengthen the Biological Weapons Convention.”

The following two weeks saw a number of further political statements:

- 20 March: Mexico — Under-Secretary of Foreign Affairs, Ambassador Carmen Moreno;
- 23 March: UK — Minister of State, Foreign & Commonwealth Office, Peter Hain;
- 26 March: United Nations Secretary-General, Kofi Annan;
- 27 March: Joint Statement by the Depositary States (Russia, UK and USA);
Australia — on behalf of Australian Minister for Foreign Affairs, Alexander Downer;
Brazil — Ambassador Celso Amorim;
Finland — Minister for Foreign Affairs, Erkki Tuomioja;
Hungary — Minister for Foreign Affairs, Janos Martonyi;
India — Ambassador Savitri Kunadi;
Russian Federation — Ambassador Vassily Sidorov;
- 29 March: The Netherlands — Minister of Foreign Affairs, Jozias van Aartsen;
USA — President’s Senior Advisor for Arms Control, John Holum;
- 30 March: Cuba — Minister of Foreign Affairs, Felipe Perez Roque; and
- 31 March: USA — Ambassador Don Mahley, Right of Reply to 30 March statement.

Rather than considering each of these statements in chronological order it is more interesting to consider some of the points made about the importance of the Protocol, the maturity of the text, the importance of both development and security, the topic of transfer regimes and export controls and the completion of the Protocol.

The importance of the Protocol was stressed:

- “... it is high time to fill this ever more evident gap in arms control provisions and, in so doing, give the Biological Weapons Convention the necessary teeth by the establishment of an effective compliance regime which will help deter and detect proliferators” — UK
- “The admission in the 1990s of former offensive biological weapons programs, and terrorist attempts that have fortunately failed, have created legitimate concerns within the world community. Those events have exposed even further biological weapons as second-to-none weapons of mass destruction, and, at the same time, the biological weapons prohibition regime as the weakest link in the system of weapons of mass destruction prohibition regimes” — Hungary.

Insofar as the maturity of the Protocol text was concerned a number of states made observations:

- “We also need to refine the crucial elements for an effective Protocol that are already well developed in the text before us” — EU;
- “The draft BWC Protocol already contains all the essential measures and much of the necessary language” — UK;
- “We are not there yet, but we are surely getting closer. We now must make the final strides to make it to the finish” — Netherlands;
- “From January 1999, ... you [the AHG] have managed to cut the forest of brackets in half, bringing it [the Protocol] extremely close to a draft ready for final consolidation” — Hungary; and
- “It seems that the text is well advanced. We have reached the stage where there is not much more to do, except turn our minds to resolving the fundamental differences which stand between us and a completed Protocol” — Australia.

A number of states made remarks about the elements of the Protocol regime — several emphasized the importance of visits:

- “the concept of on-site visits is central to the effectiveness of the BWC Protocol” and that “even a small number of visits will simultaneously help to confirm the consistency of declarations, maximize the transparency value derived from this information and deter non-compliance” — UK
- “Mexico, together with the Non-Aligned Countries, has introduced a proposal on the different types of visits that the Protocol must foresee. This proposal includes randomly selected, voluntary clarification and assistance visits” — Mexico;
- “We have submitted working papers ... on the concepts of voluntary assistance and randomly selected visits. In addition to enhancing transparency and promoting accurate and complete national declarations, such visits should serve the purpose of fostering cooperation and extending assistance.” — Brazil; and

Russia emphasised the importance of definitions:

- “we are in favour of a uniform understanding of the Protocol ensuring a uniform interpretation and evaluation of its provisions and its implementation. The Russian Federation submitted proposals on definitions of basic terms such as biological weapons, biological agents, hostile purposes and others. We assume that these definitions will not be aimed at revising the scope of the Convention and will be used exclusively for the purposes of verification under the Protocol”.

A number of states made statements about the importance of considering both development and security:

- “All States have a stake in the promotion of better practices, standards and capabilities in the biological field....The development and security challenges we face cannot be dissociated....There is thus a clear synergy to be explored between the improvement of national capabilities and our common pursuit of the optimal performance of the Protocol’s verification mechanisms” — Brazil;
- “We must further the enjoyment by all states, great or small, east or west, north or south, of the benefits that can be brought to them through peaceful uses of biotechnology. We must ensure that States get access to the

technologies they need for their economic prosperity” — Netherlands; and

- “It is of the utmost importance for the future Protocol to develop and improve the two pillars on which the Protocol is based: security and development” — Cuba.

The key issue of transfers and export controls attracted attention in a number of statements (including that of the EU already noted above):

- “Among the most difficult matters still before us and one which will require a greater degree of flexibility, we wish to highlight the relationship between multilateral treaties and political export-control arrangements” — Brazil;
- “The United States is prepared to remove its overall brackets from around this section of the rolling text [Measures to strengthen the implementation of Article III of the Convention] ... as a means to get the real negotiating process underway” — USA; and
- “Regulation of technology transfers for peaceful uses must be included in the Protocol and constitute the general legal framework for any transfer among States Parties” — Mexico.

There was also considerable emphasis on the completion of the Protocol:

- “Successful achievement of an effective Protocol within the agreed timeframe must be the objective of all States Parties” — co-Depositaries;
- “Every effort must be made by the international community to ensure that advancements in biotechnology are applied towards the improvement of life in our plant and never for purposes that run counter to the provisions of the Biological Weapons Convention. I would, therefore, encourage the States parties to conclude negotiations on a protocol to the Convention at the earliest possible date” — UN Secretary-General;
- “There is a need to act upon the 1996 consensus expectation, which mandates you to conclude the negotiations at any time before the 2001 Review Conference” — Hungary;
- “... the shared objective of concluding a viable Protocol of universal acceptability can be achieved before the next Review Conference in 2001” — India;
- “Let us comply with our mandate and conclude the verification Protocol before the Fifth Review Conference of the Convention on the Prohibition of Biological Weapons” — Mexico; and
- “...never have the reasons for concluding the protocol been so acute. Ultimately, the choice is about what kind of world we want to live in. The wrong choice, or even the right choice made too late, too grudgingly, could be devastating” — Australia

There was thus widespread recognition of the maturity of the text, of the importance of addressing both development and security, and a readiness to engage in consideration of the contentious issue of transfers and export controls so as to move ahead to complete the Protocol. Overall, there was a sense that the Ad Hoc Group should indeed complete the Protocol before the Fifth Review Conference with Brazil usefully reminding the AHG:

Pessimism is often expressed under the guise of realism. But pessimism, however intelligent and reasonable it might sometimes sound is always a self-fulfilling prophecy.

The Emerging Regime

All sections of the Protocol were addressed during the March session with most time being spent on compliance measures with particular attention being paid to declaration formats in both formal and informal meetings, investigations, definitions and objective criteria and Article X measures.

Compliance Measures The March session saw further development of both Article III *Compliance Measures* and progress in the declaration formats. In Section D *Declarations I Submission of Declarations Initial Declarations* there was a division of the previous (A) *Past Offensive and/or Defensive Biological and Toxin Programmes and/or Activities* into a new (A) *Offensive Biological and Toxin Programmes and/or Activities Conducted Prior to Entry into Force of the Protocol for Each State Party* and (B) *Defensive Biological and Toxin Programmes and/or Activities Conducted Prior to Entry into Force of the Protocol for Each State Party* although the square brackets under these headings are essentially unchanged. The heading for the first of the Annual Declarations changed from (B) *Current Defensive Biological and Toxin Programmes [and/or Activities]* to (C) *Defensive Biological and Toxin Programmes and/or Activities Conducted During the Previous Year* and in so doing emerged from square brackets although yet another form of alternative language appeared under this heading. There was some further alternative language proposed under the other headings for declarations in this section. The US proposal made in the statement by John Holum on 29 March, two days before the end of the session, to eliminate four declaration elements — outbreaks of disease, national legislation and regulations, other facilities and BL-3 laboratory facilities, the first two of which were favoured by the US and the latter two of which were objected to by the US — from further consideration came too late to make any change in the draft Protocol. Overall, there was a useful further reduction of over 15 per cent in the number of square brackets in the section on declarations.

There was some further elaboration of alternatives for the text in III. *Measures to Ensure Submission of Declarations* and further development of the text for E. *Consultation, Clarification and Cooperation*. Additional language was proposed for the section F. *[Measures to Strengthen the Implementation of Article III]* from which the original outer square brackets had been removed following the US statement. This language within square brackets includes proposals for states parties to notify the Technical Secretariat annually of any imports or exports of fermenters or bioreactors with a total internal volume of 100 litres or more and of aerosol challenge testing chambers with a capacity of one cubic metre or more. Other new language proposes the requirement for each state party to establish the legislation, regulatory and/or administrative provisions for controls to regulate the transfer of agents, toxins, equipment and technologies relevant to the BWC in accordance with its obligations under the Convention.

Investigations The language in Article III section G *Investigations* and Annex D *Investigations* continues to

develop with further square brackets being removed. A significant step forward occurred in respect of field investigations where language emerged from square brackets so that field investigations can be requested in order to address a concern about possible non-compliance under Article I of the Convention or alleged use of biological weapons. Useful attention was directed to the procedure to be followed following submission of a request for an investigation with progress being made on the procedures to be used to assess the basis for the request and the Executive Council consideration of the request. New language, out of square brackets, states that *The Executive Council, if it deems it appropriate for its [consideration][authorization] of the above request shall also request from the most relevant international organization(s) such as, but not limited to, the WHO, OIE, FAO, all available information in its/their possession, that may be relevant to the outbreak.* Further elaboration has emerged from square brackets in regard to the transition from a field investigation to a facility investigation with language that makes it clear that following a field investigation indicating that a facility is directly relevant to the alleged non-compliance concern, then a factual statement shall be submitted to the Executive Council who shall then provide it to the receiving State Party, the requesting State Party, and, if appropriate, the State Party on whose territory... the facility in question is located. Only these States Parties may submit a request for a facility investigation. Agreement has been reached on most of the time lines making it clear that a rapid investigation process is necessary although the mechanism for deciding on whether an investigation should take place (the 'red light'/'green light' debate) has yet to be resolved.

Definitions Further progress was made in developing definitions related to specific measures in the Protocol. There was also some development in the structure and categorization of the lists of agents within *Annex A Declarations I Lists and Criteria (Agents and Toxins)* with the previous list of "Human Pathogens" becoming "Human and Zoonotic Pathogens" and within that list "Bacteria" now including the previous separately listed "Rickettsiae". The list of "Animal Pathogens" which previously had no sub categories now has five sub categories: Bovine, Ovine, Swine, Avian and Equine Pathogens and the list of Plant Pathogens which also previously had no sub categories now has four sub categories: Cereal, Sugar cane, Cash crop and Forest Pathogens. There was no change to the square brackets in regard to the individual pathogens apart from the emergence of one cash crop pathogen, *Colletotrichum coffeanum* var. *virulans*, from square brackets.

BWC Article X Measures Article VII continued to make some progress with the deletion in Section (B) Measures to Promote Scientific and Technological Exchange of a paragraph previously in square brackets on biodefence which is more appropriate to Article VI Assistance and Protection. Progress was also made on partially bringing the title of Section E out of square brackets; this developed from (E) *[Implementation Follow-Up][Review of Implementation of Article X of the Convention and this Article]* to (E) *[Review of][Consideration of Concerns related*

to] the Implementation of Article X of the Convention and this Article. A number of conceptual discussions were also held on the few remaining difficult areas of this Article.

Other Issues

Preamble The text was streamlined and shortened with a number of clauses emerging from square brackets. The Preamble is now more focused on setting the Protocol within the wider scene.

Article I General Provisions There has been a useful addition of shorter alternative language which makes it clear that the Protocol is aimed at strengthening the effectiveness and improving the implementation of the BWC which is preferable to the previous language which extends the Convention and is thus beyond the mandate of the AHG.

Confidentiality Provisions Article IV and the associated Annex E are both largely out of square brackets and further progress was made in streamlining some of the text.

Organization Attention was focussed on section (E) addressing *Privileges and Immunities* with particular attention to immunity of the Organization and its staff. Alternative language within square brackets proposes that *The Organization shall not be held liable for any breach of confidentiality committed by members of the Technical Secretariat unless otherwise decided in accordance with the provisions of this Protocol.* Further language elaborates how any such waiver shall be decided. The number of square brackets remaining in *Article IX The Organization* was significantly reduced by over 50 per cent from 54 to 24.

National Implementation Measures Further reduction in square brackets from eight to five was achieved.

Prospects

The March session also saw the agreement of the programme of work for the four week twentieth session to be held on 10 July to 4 August 2000. The 40 meetings were allocated as follows:

Compliance measures	6
Declaration formats	4
Investigations	5.5
Article X	5
Definitions	6
Ad Hoc Group	9.5
General Provisions	0.5
Preamble	1
Legal Issues	1
National Implementation	0.5
Confidentiality	0.5
Seat of Organization	0.5
<hr/> Total	<hr/> 40

Another useful development in the March session was the categorization for all delegations by the Friends of the Chair of the remaining square brackets within the draft protocol into one of the three categories: "Little controversy,

relatively easy to resolve”, “*Medium level of disagreement*”, or “*Strong conceptual differences in views*”. During the 14 weeks between the March and the July/August session, delegations can be expected to review with their respective governments their national positions on these remaining issues so as to develop approaches to reaching compromises on the outstanding issues. There were also useful indications in the political statements made to the Ad Hoc Group in March of a flexibility and willingness to explore new methods of work as there is a sense that the Friends of the Chair have to an increasing extent taken issues as far as they can.

The March session saw further progress in the reduction of the total number of square brackets in the Protocol and a useful reinforcement of the political will to complete the

Protocol expressed in the political statements made both in Geneva and elsewhere to mark the 25th anniversary of the entry into force of the BWC. There are indications of engagement on the most contentious remaining issue — measures to improve the implementation of Article III of the Convention which places obligations on states parties not to transfer materials and equipment to anyone whatsoever for prohibited purposes. There continues to be real engagement between the delegations who are addressing how to find solutions to the differences of views, which augurs well for the future. There is real impetus to complete the Protocol before the Fifth Review Conference.

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