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Progress in Geneva

Quarterly Review no 15

Strengthening the Biological and Toxin Weapons Convention

A three week session, the twenty-third, of the Ad Hoc Group to consider a legally binding instrument to strengthen the Biological and Toxin Weapons Convention (BWC) was held in Geneva from Monday 23 April to Friday 11 May 2001. This session saw a distinct change in the pattern of the negotiations because the Chairman had on 30 March provided to capitals, as well as to delegations in Geneva, a composite Protocol text entirely based on the rolling text and containing compromises to bridge the remaining gaps based on the informal conceptual consultations that the Chairman had had with delegations and the Friends of the Chair over the previous nine months. The composite text retains the clean parts of the rolling text, while adopting a conservative approach with regard to any new ideas necessary for compromises. Consequently, the Ad Hoc Group met primarily in plenary session during the first two weeks of the session when the Chairman provided a detailed explanation of the composite text on an article-by-article basis. During the third week, the Chairman conducted both formal and informal discussions on the comments and feedback

provided both formally and informally on the composite text. The procedural report of the session (BWC/AD HOC GROUP/AHG/56) contains both the composite text (Annex B) and the rolling text (Annex A) and stated:

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.

In the April/May session, 56 states parties and 2 signatory states participated; two more states parties than in the February session as five states (Bangladesh, Jordan, Slovenia, Thailand and Tunisia) participated in April/May whilst three states (Portugal, Singapore and Yemen) did not. One fewer signatory state (Myanmar) participated than in February.

There was no change to the Friends of the Chair although the list of Friends of the Chair in the procedural report only showed one Friend — that for the Seat of the Organization — as this was the only Friend to hold a meeting. The list of the Facilitators to assist the Ad Hoc Group saw the omission

of the Australian and Pakistan names from the list of those assisting Ambassador Don Mahley as facilitator for the Headquarters Agreement with the Host Country which now read as follows:

The Headquarters Agreement with the Host Country — Ambassador Donald A. Mahley of the USA who will be assisted by Ambassador Krzysztof Jakubowski of Poland, Ms Katarina Rangnitt of Sweden, Sra. Anayansi Rodriguez Camejo of Cuba and Mr Reza Pourmand Tehrani of Iran as well as additional personnel as considered necessary.

There was a slight increase to 10 in the number of new Working Papers (WPs) — up from the 7 in February and the same as the 10 in November/December 2000. Of the 10 WPs (WP.445 to WP.454), 5 related to the Seat of the Organization with 3 being submitted by the Friend of the Chair (WP.445-7) and 2 (WP.448-9) by Switzerland, with single papers by the Netherlands (WP.450), China (WP.453) and Iran (WP.454) and 1 paper (WP.452) by China, Cuba, Iran, Indonesia, Libya, Pakistan and Sri Lanka and another (WP.451) by China, Cuba, India, Indonesia, Iran, Libya, Mexico, Pakistan and Sri Lanka. The latter 5 papers addressed a number of issues — a workshop on the practical aspects of the future organization (WP.450), 2 on export controls (WP.452-3), 1 on entry into force (WP.454) and 1 on the progress of the negotiations (WP.451).

Both the composite Protocol text and the rolling text are included as Annexes to the procedural report of the April/May session (BWC/AD HOC GROUP/56 — again issued in two pieces, 56-1 and 56-2, owing to length). This was thus the sixteenth issued version of the rolling text, although virtually identical to that of March 2001.

The April/May session had 13 AHG meetings of which 11 were plenary. There was 1/3 of a meeting on the seat of the organization and there were 1 1/2 meetings on decisions on the establishment of a Preparatory Commission and 1/6 of a meeting on the headquarters agreement with the host country. The remainder of the time available was used for informal consultations. During the three week session, three days (25-27 April) were used for the Preparatory Committee for the Fifth Review Conference.

Coinciding with the opening of the Session was an unprecedentedly high level of activity in Geneva by non-governmental organizations — such as Bradford University Department of Peace Studies, the Federation of American Scientists and the Sunshine Project — and other organs of international civil society. These are described in the *News Chronology* below at 23–26 April. In addition, representatives of the Stimson Center presented the findings of its latest study on 7 May.

Political Developments

As usual, a number of statements were made during the April session. On the opening day, Ambassador Tibor Tóth, Chairman of the Ad Hoc Group, in his opening remarks said that he believed that everyone was aware of the importance of this specific session of the Ad Hoc Group as it was the penultimate session for this year and secondly, all delegations had before them the composite Protocol text (BWC/AD HOC GROUP/CRP.8) in which the Chair had adopted compromises to the outstanding issues. He undertook to

walk the delegations through this text in detail explaining the main compromises and pointing out the changes.

Ambassador Tóth then gave his appreciation of the overall status of the negotiations noting that the rolling text had been under negotiation for almost four years since July 1997 and much progress had been made in developing the text with the draft Protocol now well developed with a large part of the text agreed by consensus and therefore free from square brackets. He pointed out that every delegation could point to parts of the rolling text where their specific preferences are reflected and likewise that every delegation could indicate parts of the rolling text where they have already made compromises. However, despite the fact that great progress had been made since mid-1997, quantifiable progress had come to a halt for more than a year even though there are still a number of issues that require resolution.

He recalled that the Ad Hoc Group had sought new ways of addressing the outstanding issues with one of the most visible outcomes being the circulation of building blocks which had, by the end of the February 2001 session, covered most of the draft Protocol. By the end of that session the Ad Hoc Group had become more and more aware that only a composite text to resolve the outstanding issues would help to move the Ad Hoc Group forward as the remaining issues were so interrelated that solutions simply are not possible if attention is focused on one issue at a time, or even on a cluster of issues at a time. Consequently, the challenge that had faced the Chairman was to provide a composite text while at the same time not endangering the efforts and great progress made by the Ad Hoc Group so far. The Ad Hoc Group had recognised that a more holistic approach is needed to complete its work and that it is necessary and timely to take the work of the Ad Hoc Group into its final stage. He had therefore presented both in states' capitals and to delegations in Geneva a composite text in which he had adopted compromises on the unresolved issues.

Ambassador Tóth pointed out that the composite Protocol text in CRP.8 should look very familiar to delegations “as it is in its entirety based on the rolling text”. In the composite Protocol text he had developed language to bridge the remaining gaps, drawing upon the Chairman's exploration of these issues in the informal consultations that had been conducted since July 2000 with all delegations and in very close cooperation with the Friends of the Chair and the Facilitators. He said that he had retained the clean parts of the rolling text, while remaining as conservative as possible with any new ideas needed for compromises. The composite text therefore would not contain any great surprises for delegations. It is, however, a composite text that would achieve the mandate of the Ad Hoc Group and will strengthen all the provisions of the Convention. However, the compromises would require compromises by all delegations as the compromises adopted represented a carefully judged balance of the views of all delegations. Consequently, Ambassador Tóth urged all delegations to take a holistic view of the composite text.

He went on to say that in circulating the composite text, his intention was to break the impasse of the negotiations and facilitate the work of the Ad Hoc Group so as to fulfil its mandate in a timely manner. He noted that the Ad Hoc Group had spent quite a number of years and expensive negotiation sessions on the development of a Protocol to the

Convention and said that “We cannot allow ourselves to now fall short of reaching agreement”.

He called on all delegations to give serious consideration to the composite text with the customary flexibility on the side of all delegations. He expected all delegations to consider and examine the text with a view to what benefits they are gaining. These benefits have two aspects: first, which compromises in the composite text originate from their favoured options; and, secondly, and more importantly, what is to be gained collectively by agreeing and, ultimately, becoming a state party to the Protocol. Conversely, delegations needed to recognise what will be lost if the Ad Hoc Group cannot agree to strengthen the BWC during a period when biological sciences become more and more important each day and important new moral, political and legal barriers have been raised in the way of other types of weapons of mass destruction during the past ten years when there have been negotiations to strengthen the Convention.

In the subsequent plenary session, a number of statements were made. Sweden spoke on behalf of the fifteen member states of the European Union (EU) as well as the Central and Eastern European countries associated with the EU — Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia — and the associated countries Cyprus, Malta and Turkey. It was noted that the negotiations had been ongoing since 1995 and the Ad Hoc Group is now within reach of a Protocol which will strengthen confidence in compliance with the Convention. A successful conclusion of these negotiations would not only strengthen the BWC, but will also be a demonstration that multilateral negotiations are capable of achieving progress towards disarmament and non-proliferation. Sweden went on to say that it was apparent that the negotiations had reached a point where compromises and solutions to critical issues have to be found. In respect of the composite text, the EU was looking forward during this session to the Chairman’s comments and explanations of the composite text to clarify understandings of the compromises. However, the EU already wished to underline that the text does not meet all EU expectations. The Chairman’s composite Protocol text constituted a new phase in the negotiations and it was the view of the EU and the associated countries that:

Your text, Mr Chairman, should be the platform for the political decisions that are needed now. Mr Chairman, at this point of the negotiations finalising a Protocol to strengthen the BTWC is within reach.

A further 21 political statements were then made on the first and second days by Switzerland, Iran, Chile, China, Pakistan, Japan, Libya, Cuba, South Africa, the Russian Federation, Australia, Brazil, the Republic of Korea, New Zealand, Argentina, the Netherlands, the Director General of the Agency of the Russian Federation for Munitions, Canada, Poland, Croatia, and the United Kingdom. These statements generally welcomed the Chairman’s composite text and in most cases expressed reservations about specific aspects. [They are reported in more detail in the “Report from Geneva — Friday 27 April 2001” available on the web at <http://www.brad.ac.uk/acad/sbtwc>.]

In the second week of the Ad Hoc Group session, New Zealand made a statement on behalf of Austria, Brazil, Chile, Guatemala, Ireland, the Netherlands, New Zealand, Norway,

Peru and South Africa that acknowledged that the composite text “establishes the basis to conclude the work of our negotiations in accordance with our mandate”. Three particular concerns were noted: entry into force, the visit regime and provisions for declarations. A simple numeric formula was argued for entry into force noting that this is gathering overwhelming support across all regional groups. In respect of the visit regime, randomly selected visits are regarded as an essential component in the toolbox of visits and their purpose, level of access and reporting arrangements should be strengthened. Declarations should encompass all the most relevant facilities, including biodefence with triggers that should apply in a uniform and non-discriminatory way. Finally, New Zealand noted that the wider benefits in capacity building terms of the measures in the composite text will provide an additional incentive for all countries to join the Protocol.

Later in the same week, a statement was made by China, Cuba, Indonesia, Iran, Libya, Pakistan and Sri Lanka which emphasised the great importance attached to the objective of strengthening the effectiveness of the BWC in a comprehensive manner. However, wide differences continue to exist on several issues and with less than 30 working days remaining for the Ad Hoc Group to conclude its negotiations, there was concern that the Ad Hoc Group may not be able to conclude its work as mandated. Accordingly, they firmly believed that the Ad Hoc Group should immediately resume substantive negotiations based on the rolling text to achieve consensus on outstanding issues.

Fifth Review Conference Preparatory Committee

The first week of the Ad Hoc Group session also saw the holding on Wednesday 25 to Friday 27 April of the Preparatory Committee for the Fifth Review Conference. This began on Wednesday morning when the Preparatory Committee elected by acclamation Ambassador Tibor Tóth of Hungary as Chairman of the Committee. The meeting moved rapidly through the substantive business of the Committee in accordance with the draft Provisional Agenda for the Preparatory Committee (BWC/CONF.V/PC/INF.1) unanimously electing Ambassador Munir Akram (Pakistan) and Ambassador Markku Reimaa (Finland) as Vice Chairmen of the Committee, adopting the agenda of the Preparatory Committee, addressing the organization of the work of the Preparatory Committee and then the organization of the Review Conference itself deciding that the Review Conference should take place in Geneva from 19 November to 7 December 2001 and agreed to recommend to the Fifth Review Conference the provisional agenda as contained in BWC/CONF.V/PC/INF.6 which, as expected, contained the following substantive items:

10. Review of the operation of the Convention as provided for in its article XII
 - (a) General debate
 - (b) Articles 1 - XV
 - (c) Preambular paragraphs and purposes of the Convention
11. Consideration of issues identified in the review of Article XII contained in the Final Declaration of the Fourth Review Conference, and possible follow-up action
12. Consideration of the work of the Ad Hoc Group established by the Special Conference in 1994.

The Preparatory Committee then turned to the consideration of the draft Rules of Procedure of the Fifth Review Conference, as in BWC/CONF.V/PC/INF.2, which were the same as those for the Fourth Review Conference. Ambassador Tóth reminded delegations that standard rules of procedure were usually adopted along with oral amendments. Oral amendments were proposed and accepted to Rule 5 so as to elect two Vice-Chairmen for the Drafting Committee and to Rule 8 so that the General Committee would include the two Vice-Chairmen of the Drafting Committee and also the three Regional Group Coordinators and the Depositaries.

The Preparatory Committee also agreed that the Secretariat would be called upon to provide background information documentation on the participation of the states parties in the agreed Confidence-Building Measures. In addition, states parties would be requested to provide information regarding their compliance with all the obligations and provisions of the BWC and the states parties together with the Depositaries would be invited to submit information on new scientific and technological developments of relevance to the Convention. Such background information would be circulated no later than four weeks prior to the opening of the Review Conference. It is to be noted that one of the papers issued for the Preparatory Committee meetings (BWC/CONF.V/PC/INF.5) provides a list of the BWC states parties and signatory states as of March 2001. The numbers of states parties and signatory states are unchanged at 143 and 18 respectively.

NGO participation in the Review Conference

In further consideration of the draft Rules of Procedure, Mexico made a proposal that Rule 44, para. 5 which states:

5. Non-governmental organizations

Representatives of non-governmental organizations who attend meetings of the Plenary will be entitled upon request to receive the documents of the Conference.

should be revised as Mexico noted that in fora such as the Committee on Human Rights, NGOs are practically equivalent to states parties. It was important to consider the civil society element and Mexico did not see why participation by NGOs might not be extended and they proposed the oral amendment to add at the end of paragraph 5 the words “and to submit material both orally and in writing”.

Chile then took the floor and supported the proposal made by Mexico. Canada said that they supported the proposal made by Mexico as Canada was in favour of an active role for NGOs referring to the useful role of NGOs in fora such as the NPT Review Conferences and the Small Arms and Light Weapons Conference. New Zealand said that they fully supported the active participation of NGOs and they supported the amendment proposed by Mexico. South Africa joined the support for the Mexican proposal as South Africa favoured stronger participation by NGOs.

The USA then spoke on the proposal by Mexico. The US also agreed that NGOs are very important and need to be taken into account. However, they had doubts about oral participation. A way should be found to allow NGOs to participate but not to speak.

India said that they were not clear about the proposed amendment put forward by Mexico and asked the Chairman

to repeat this for clarity. India referred to the very good work done by NGOs during the Protocol negotiations — some documentation, analysis, text — which was all very useful. India agreed that NGOs should attend at Plenary sessions and receive the documents of the Review Conference and wondered if NGOs might speak at a special session of the Review Conference but doubted participation beyond that. India also wondered how many NGOs might be involved — India recalled that there was an NGO Committee on Disarmament and felt that this should be the criterion for NGO participation. India would like to hear the voice of civil society — but there were NGOs and NGOs and NGOs. Given the time constraint on the Review Conference, perhaps one afternoon slot might be used for NGOs who have demonstrated a direct relevance on other occasions to the Biological Weapons Convention.

The Chairman then read out again the proposed Mexican oral amendment. Chile then spoke saying that they had not proposed that NGOs should take part in the making of decisions by the Review Conference. Chile had no problem whatever — like Canada — in listening to NGOs. Chile felt that listening to NGOs express their views was a healthy trend in the multilateral arena. Chile agreed with India that these should be NGOs who have some relevance with the subject matter dealt with by the Review Conference.

France then said that they agreed with the Mexican proposal that NGOs should be given the possibility of contributing in writing or orally within limits. NGOs play an important role as the public media do not appreciate the importance of the BWC and NGOs could be of assistance. Communication was a two way street.

The Chairman then suggested that the Review Conference should rely on practice as at the previous one. He recalled that Ambassador Sir Michael Weston as Chairman of the Fourth Review Conference had developed a solution which allowed NGOs to address delegations when on 27 November 1996 he had suspended the meeting and remained in the Chair whilst NGO statements had been made. Ambassador Tóth's recommendation was that this practice should be followed.

Mexico said that they had listened carefully to what had been said but felt that the practice as at the Fourth Review Conference was not effective as such a session isn't given the full attention by delegations — it is a second rate meeting. The thrust of the Mexican proposal was to keep pace with practice regarding NGOs in other multilateral fora. Mexico did not see why NGOs could not make a contribution when invited to do so by the Chairman. Mexico felt that further thought should be given to this issue and an extra effort should be made to progress this.

The Chairman said that the Preparatory Committee should come back to this issue. There would be consultations to see if a proposal could be made on ways and means for NGO participation.

Informal consultations with those NGOs present in regard to NGO participation resulted in the identification of the following: NGOs would ideally like to participate and contribute in the same way as in the environmental treaties, the Land Mine Ban Convention and the Commission on Human Rights; in addition, NGOs would like to be able to be present as observers in all sessions as they would thereby become much more aware of the real issues — rather than

just the fixes presented in Plenary sessions. NGOs were, however, realistic and recognised that evolutionary progress was more likely and were keen to contribute more effectively than at the Fourth Review Conference by making oral contributions during a formal session of the Review Conference thereby giving delegations more access to those contributions, and by circulating written submissions by relevant NGOs as CRP documents with the detailed arrangements being coordinated with the relevant NGOs by the NGO Committee on Disarmament.

Following further extensive consultations among the states parties, it was eventually decided that the same approach would be taken to NGO participation at the Fifth Review Conference as had been followed at the Fourth.

Prospects

The attention of the April/May Ad Hoc Group session was very much focused on the Chairman's composite text and the compromises contained therein. It was evident that whilst all states parties had reservations about some of the compromises adopted, a number of states regarded the Chairman's composite Protocol text as the basis for further negotiation. Consequently, a description and analysis of the composite Protocol text appended to this progress report.

During the final two days of the Ad Hoc Group, a number of delegations made statements which expressed their appreciation for the hard work that the Chairman had put into the detailed explanations of the composite Protocol text. For example, on the final morning, the United States spoke to express thanks to the Chairman for his untiring efforts to guide the work of the Ad Hoc Group to a successful conclusion as most recently reflected in the production of the Chairman's composite text, CRP.8. The US was particularly appreciative of the hard work that went into the Chairman's extensive explanations and commentary regarding CRP.8. The US concluded by saying that its positions on the substance of this Protocol are well known and that many of those national positions are not reflected in the Chairman's text. Nonetheless, the US is carefully studying the text as a whole, recognizing the many views in the Group and that it can help move forward towards our objective of strengthening the BWC. Japan then spoke saying that detailed explanations by the Chairman on the composite text and expressions of views by delegations on the composite text, in both formal and informal meetings, have been very helpful to understand the background to the composite text and to consider it in a very serious manner. Japan went on to say that the interventions made by a number of delegations on the composite text have made it apparent that views still differ on a limited number of issues. However, it should not allow delegations to lose sight of the fact that there is a strong collective will to overcome such differences and conclude the negotiations by the time line set out by the mandate. The Chairman's text, which includes several innovative suggestions and compromises, is the valuable and practical vehicle which enables delegations to fulfill of the mandate. Japan concluded by appealing to all participating governments to demonstrate the political will to have the agreement of the Protocol in time so that delegations can come back in July with the determination to finish the negotiations by the end of the next session.

Although Ambassador Tóth did not make a concluding statement in the Ad Hoc Group session, he summarised the session in the Press Conference on the final day, Friday 11 May 2001, when he said that this session had concentrated on the composite text. During the first two weeks of the session, he had introduced the composite text and had provided explanations on a detailed article-by-article basis in which he had addressed the compromises in the composite text that were significant for the delegations. Delegations had had the chance to comment on the composite text.

Ambassador Tóth said that from the very beginning of the session, the delegations had welcomed this step which was not unusual in multilateral arms control negotiations when the end game was emerging. Delegations had welcomed the fact that it was possible to fulfill the mandate of the Ad Hoc Group, and quite a number of delegations had welcomed the balance of compromises which had been adopted. At the same time, it had to be recognized that a compromise text which was trying to fix 1,400 brackets had left many delegations unhappy. Many delegations had indicated that what was contained in the text was far away from their preferences. There were also a number of delegations which had not been in a position to comment formally on the proposals. These half a dozen delegations were able to share with him in informal meetings their perceptions about the composite text and where problems for them might lie. As a result of the formal comments in the meetings and these informal indications, he had been in a position to carry out focused discussions on a limited number of specific issues in six areas. Those areas were definitions, declarations, visits, investigations, transfer and entry into force.

Ambassador Tóth said that the delegations had ended up with a better understanding of the remaining divisions as a result of the general statements and the formal and informal comments. Numerically, the issues could be limited to half a dozen areas and one or two sub-elements in those areas. In comparison to 1,400 brackets, this was a major step forward in his judgement.

What was emerging as a climate in the negotiations was that the delegations which used to form a silent majority in the negotiations had spoken massively in the course of the session, Ambassador Toth said. They spoke in favour of the fulfilment of the mandate and concluding the negotiations in the next session. That element would have to be taken into account when delegations assessed the situation. How much flexibility and compromise they had to show in the last session to breach the gaps on those specific issues. Political maturity would be required. The issue now was not how to remove certain brackets in a text, but the question was whether delegations and capitals participating in these negotiations for practically seven plus three years would say a yes or no to a protocol, which in his judgement, would respect legitimate bio-defense, industrial and non-proliferation interests while providing for efficient, additional tools to strengthen the BWC. It had been a surprisingly constructive session notwithstanding the complexity.

The programme of work for the twenty-fourth session, the final one scheduled in 2001, to be held on 23 July to 17 August 2001 was agreed with the 40 meetings allocated primarily to the Ad Hoc Group with other meetings allocated to the Ad Hoc Group/informal consultations and to meetings on the Preparatory Commission including its programme

and budget, on the host country agreement and on the Seat of the Organization as follows:

Seat of Organization	1
Preparatory Commission	2
(programme and budget)	5
Host Country Agreement	2
Ad Hoc Group/Informal	15
Ad Hoc Group	15
Total	40

The allocation of essentially all the meetings to the Ad Hoc Group and the Ad Hoc Group/Informal confirms the indication that the Ad Hoc Group is close to the completion of its planned work.

The April/May session thus saw a significant step forward with the introduction of the Chairman's composite text and the recognition that while the rolling text was the underlying basis for the negotiations, delegations expressed their views with regard to the composite text.

There was a continuing commitment by all delegations in the April/May session to the completion of the negotiations by the Fifth Review Conference in November/December coupled with a recognition that the composite text could provide the basis to achieve this. Consideration of the composite Protocol text as a whole shows that this brings significant benefits to all states parties when compared to the existing regime based on the BWC alone. A comparison of the Protocol regime with that of the CWC shows the two regimes to be closely comparable with several elements elaborated in the Protocol regime that have no explicit counterpart in the CWC. It is evident that the Protocol negotiation can indeed be completed before the Fifth Review Conference and result in an effective and valuable strengthening of the prohibition regime against biological weapons.

The Composite Protocol Text

Table 1 provides a comparison between the composite Protocol text (BWC/AD HOC GROUP/AHG/56 (Annex B)) and the latest version of the rolling text (BWC/AD HOC GROUP/AHG/56(Annex A)).

It should be noted that there have been some editorial changes made in the composite Protocol text such as the replacement of "pursuant to" by "in accordance with" which have not changed the substance. Consequently the composite Protocol text is described as being identical to that in the rolling text any minor editorial changes that have no effect on the substance have been disregarded.

Preamble The composite text includes all the paragraphs in the rolling text that were out of overall square brackets and omitted five of the six that were in overall square brackets. The sixth one that had been within overall square brackets is included thus achieving a balance between paragraphs addressing the implementation of Article X of the Convention and a paragraph reaffirming the obligations under Article III of the Convention. There is no diminution in the overall thrust of the Preamble.

Article 1 General Provisions The composite text has taken all the paragraphs that were in the rolling text that were out of overall square brackets and omitted all but one of those

paragraphs that were within overall square brackets. A new opening paragraph stating the purpose of the Protocol has been added that draws upon some of the concepts within two of the paragraphs within overall square brackets and a new final paragraph has been added which usefully makes it clear that the definitions and objective criteria shall be used solely for the application of specific measures set out in the Protocol. The single paragraph that was within overall square brackets that has been included is the one which requires the states parties and the Director-General, as appropriate, to take into account existing agreements and competencies of other relevant international organisations and agencies in order to avoid duplication and to ensure an effective and co-ordinated use of resources. This paragraph had previously been included within Article VII of the rolling text and its inclusion in Article 1 General Provisions thereby makes it applicable to the entire Protocol.

Article 2 Definitions Article 2 is based on the language and definitions in *Article II Definitions* of the rolling text. The composite Protocol text has rightly concentrated as required by the mandate for the Ad Hoc Group on definitions of terms *where relevant for specific measures designed to strengthen the Convention*. Three basic definitions have been included in Article 2 for *Bacteriological (biological) and toxin weapons*, *Purposes not prohibited by the Convention*, and a new definition of *Biological materials* which is for use with the transparency threshold levels for facilities involved in national biological defence programmes and/or activities. The first two of these basic definitions are drawn directly from the relevant language in Article I of the Convention thereby ensuring that the definitions used in the Protocol in no way amend the basic prohibitions in the Convention. The compromise is the inclusion of these three basic definitions and the omission of three other basic definitions from the rolling text.

The remaining definitions in Article 2 are all based on the definitions in the rolling text; 15 of these have essentially identical language to that in the rolling text with the removal of square brackets and the adoption of appropriate compromises. The definition of facility has been clarified with one definition for the purposes of declarations and follow-up after declarations and another definition for the purpose of investigations. A useful definition has also been added for national biological defence programmes and/or activities. Three additional definitions are now included in Article 2 for Conference, Director-General and Organisation. The compromises in Article 2 ensure that there are no definitions in the Protocol which have the effect of amending the Convention itself and that the definitions in Article 2 are for the purpose of implementation of the Protocol alone.

Article 3 Lists and Criteria, Equipment and Thresholds Article 3 comprises three sections (A–C) based upon language previously contained in Annex A of the rolling text.

A. List of Agents and Toxins. This section of Article 3 now contains the chapeau text which had previously appeared in *Annex A I. Lists and Criteria (Agents and Toxins)* whilst the list of agents and toxins is retained in Annex A of the composite Protocol text. The first paragraph makes it clear that the list of agents is for use with the declaration trigger for work with listed agents and toxins as

Table 1

Composite Protocol text — AHG 56–Annex B	Rolling text — AHG/56–Annex A
Preamble	Preamble
Article 1 General Provisions	Article I General Provisions
Article 2 Definitions	Article II Definitions
Article 3 Lists and Criteria, Equipment and Thresholds	Article III A, B, C Lists and Criteria, Equipment and Thresholds
Article 4 Declarations	Article III D I Declarations
Article 5 Measures to ensure submission of declarations	Article III D III Measures to ensure submission of declarations
Article 6 Follow-up after submission of declarations	Article III D II Follow-up after submission of declarations
Article 7 Measures to strengthen implementation of Article III of the Convention	Article III F Measures to strengthen implementation of Article III (of the Convention)
Article 8 Consultation, Clarification and Cooperation	Article III E Consultation, Clarification and Cooperation
Article 9 Investigations	Article III G Investigations
Article 10 Additional provisions on declarations, visits and investigations	Article III H Additional provisions on declarations, visits and investigations
Article 11 Confidentiality provisions	Article IV Confidentiality provisions
Article 12 Measures to redress a situation and to ensure compliance	Article V Measures to redress a situation and to ensure compliance
Article 13 Assistance and protection against bacteriological (biological) weapons	Article VI Assistance and protection against bacteriological (biological) weapons
Article 14 Scientific and technological exchange for peaceful purposes and technical co-operation	Article VII Scientific and technological exchange for peaceful purposes and technical co-operation
Article 15 Confidence-building measures	Article VIII Confidence-building measures
Article 16 The Organization	Article IX The Organization
Article 17 National implementation measures	Article X National implementation measures
Article 18 Relationship of the Protocol to the Convention	Article XI Relationship of the Protocol to the Convention
Article 19 Settlement of disputes	Article XII Settlement of disputes
Article 20 Review of the Protocol	Article XIII Review of the Protocol
Article 21 Amendments	Article XIV Amendments
Article 22 Duration and Withdrawal	Article XV Duration and Withdrawal
Article 23 Status of the Annexes and Appendices	Article XVI Status of the Annexes and Appendices
Article 24 Signature	Article XVII Signature
Article 25 Ratification	Article XVIII Ratification
Article 26 Accession	Article XIX Accession
Article 27 Entry into Force	Article XX Entry into Force
Article 28 Reservations	Article XXI Reservations
Article 29 Depositary	Article XXII Depositary
Article 30 Authentic Texts	Article XXIII Authentic Texts
Annex on Lists (Annex A)	Annex A Declarations
Annex on Investigations (Annex B)	Annex C Investigations
Annex on Confidentiality Provisions (Annex C)	Annex D Confidentiality Provisions
Appendix A Declarations of Offensive and/or Defensive Biological and Toxin Programmes and/or Activities conducted prior to Entry into Force of the Convention/Protocol for each State Party	Appendix A Declarations of Offensive and/or Defensive Biological and Toxin Programmes and/or Activities conducted prior to Entry into Force of the Protocol for each State Party
Appendix B Declaration of Current National Biological Defence Programmes and/or Activities	Appendix B Declaration of Defensive Biological and Toxin Programmes and/or Activities conducted during the Previous Year
Appendix C Declaration Format for Facilities declared in accordance with Article 4 (6)	
Appendix D Declaration Format for Facilities declared in accordance with Article 4 (8) to (14)	Appendix C Facilities
Appendix E Listing of Facilities in accordance with Article 4 (7)	Appendix D Listing of Facilities participating in Biological Defensive Activities
Appendix F Listing of Facilities in accordance with Article 4 (15)	
Appendix G Facilities existing on the Territory of a State Party but falling under the jurisdiction or control of another State Party/State	Appendix E Facilities existing on the Territory of a State Party but falling under the jurisdiction or control of another State Party/State
Appendix H Information to be provided in the Declarations required under Article 14 (33)	Appendix F Information to be provided in the Declarations required under ... Article VII
Appendix I Format for Reporting International Transfers of Equipment	Appendix H Standardized Formats for Reporting International Transfers of Equipment

well as for the declaration formats for national biodefence programmes and for declared facilities. The second paragraph usefully emphasises that the list of agents and toxins in Annex A is not exhaustive and does not exclude the relevance of unlisted microbial or other biological agents or toxins. The third and fourth paragraphs set out the procedure for review and modification of the list of agents which requires that the Executive Council shall consider the same criteria which had previously appeared out of square brackets in *Annex A. I* of the rolling text.

The list of agents and toxins appears in the composite Protocol text in the *Annex on Lists (Annex A) A. Lists of Agents and Toxins*. This is essentially identical to the list in Annex A of the rolling text with compromises adopted where there had been agents still within square brackets in the rolling text; in respect of the human and zoonotic pathogens list the composite Protocol text includes *Brucella suis* but not *Brucella abortus*, *Nagleria fowleri* but not *Nagleria australiensis*. For the animal pathogen list which was less developed in the rolling text, the composite Protocol text has adopted a compromise list of six animal pathogens. The plant pathogen list contains the same eight plant pathogens listed in the rolling text and the list of toxins is also the same as in the rolling text.

B. List of Equipment. This section consists of three paragraphs which set out which declaration triggers and declaration formats apply to the list of equipment and also provides for the use of the list of equipment during a facility investigation. Finally the provisions for the review and amendment of the list are stated.

The list of equipment appears in the composite Protocol text in the *Annex on Lists (Annex A) B. Lists of Equipment* and is essentially identical to that in *Annex A.II* of the rolling text which was largely out of square brackets. The requirement in square brackets in the rolling text to provide information on biological safety cabinets Class II has been removed.

C. Annual and Current Transparency Threshold Levels. This section of some nine paragraphs has been developed from *Article III. C. Thresholds* of the rolling text. The compromise adopted in the composite text recognises the long debate about thresholds during the VEREX process, at the Special Conference which established the mandate for the Ad Hoc Group and during the Ad Hoc Group negotiations. This section makes it clear that the transparency thresholds set out are to provide additional transparency for national biological defence programmes and/or activities through the provision of information on the aggregate quantities, expressed in ranges, for all biological materials, defined as in Article 2, present at such a facility during the previous year. This information is to be provided in the declaration formats for such facilities in Appendix C.

Article 4 Declarations Article 4 which sets out the declaration triggers is closely based on the language in *Article III. D. Declarations I. Submission of Declarations* in the rolling text. It is subdivided into three sections (A–C).

A. Submission of Declarations consists of two paragraphs which set out first the requirement for states parties to declare all activities and facilities listed in this Article and for the appropriate declaration format in the Appendices to be submitted not later than 180 days after the entry into force of the Protocol for initial declarations and no

later than 30 April each year for annual declarations. This language is essentially identical to that in the two paragraphs out of square brackets in the initial section of *Article III. D. I* of the rolling text. The other paragraphs which had been in square brackets in the initial section of *Article III. D. I* are now addressed in Articles 10 and 21 of the composite Protocol text and are therefore removed from Article 4.

B. Initial Declarations requires two initial declarations — first of offensive biological weapons programmes and/or activities conducted in the period between 1 January 1946 and entry into force of the Convention for that state party and secondly of defensive biological weapons programmes and/or activities conducted during the 10 years prior to the entry into force of the Protocol for that state party. These provisions are based on the language in *Article III. D. I* of the rolling text and have adopted the same date for the start of past offensive programmes and/or activities as in the Confidence-Building Measure F agreed by the states parties at the Third Review Conference in 1991. Any information on past offensive programmes that subsequently comes to light has also to be declared within a specified time period. The information required in these initial declarations is to be provided as specified in the declaration format in Appendix A and seeks additional detail for the 10 years prior to entry into force of the Convention or of the Protocol.

C. Annual Declarations sets out the requirements for annual declarations of national biological defence programmes and/or activities, maximum biological containment facilities, high biological containment facilities which exceed 100 m² and have produced vaccines or other specified production or have carried out genetic modification of any agent or toxin listed in Annex A, plant pathogen containment, specified work with listed agents and toxins and specified production facilities. These provisions are based on the language in *Article III. D. I* of the rolling text. The compromises adopted in respect of these various declaration triggers ensure that facilities of very little relevance are excluded. Consequently, biodefence programmes/activities involving perhaps a single person monitoring developments in the literature are excluded as are high biological containment facilities with a working area of less than 100 m² and similarly plant pathogen containment facilities with a working area of less than 100 m².

The compromise adopted for biological defence programmes/activities requires a summary of the objectives and elements of the programme — rightly including research and development, testing, evaluation and production — as well as a summary of the research and development carried out in accordance with Appendix B. The requirements for the declaration of national biodefence facilities in accordance with Appendix C strikes a balance between the requirements for states parties with large programmes and many facilities and those states parties with much smaller programmes and fewer facilities.

The requirements in Article 4 for maximum biological containment facilities and for plant pathogen containment facilities are closely similar to those in *Article III. D. I* of the rolling text. In respect of high biological containment, the requirement in Article 4 has usefully been more sharply focused onto relevant production facilities and facilities in which genetic engineering of listed agents and toxins than the previous language in the rolling text. The requirements

for facilities which have engaged in work with listed agents and/or toxins is based on the language in *Article III. D. I* of the rolling text with the removal of square brackets and the adoption of reasonable compromises in respect of the various capacities that had previously been in square brackets. The requirement is that a declaration is necessary if work with the listed agent and/or toxin is associated with specified production and recovery features, certain forms of genetic engineering or certain types of aerosolisation activities.

The requirements for the declaration of production facilities have usefully been brought together requiring the declaration of vaccine, microorganism and biological control agent production under specified circumstances. A final paragraph additionally requires general information to be provided on certain facilities producing for public sale microbially produced substances. Provision is made for the First Review Conference of the Protocol to consider whether such facilities should become subject to randomly-selected transparency visits in the light of the experience that will then have been gained on the implementation of the Protocol.

It is evident that Article 4 has focused on requiring states parties to declare those facilities and activities of the greatest relevance to the Convention.

Article 5 Measures to ensure submission of

declarations Article 5 follows closely the language in *Article III. D. III. Measures to ensure the submission of declarations* in the rolling text. The first three paragraphs are identical to those in the rolling text. In the subsequent six paragraphs, a balance has been struck in relation to the options within square brackets in the rolling text relating to the consequences should a state party not have submitted its initial declarations within one year or its annual declarations within six months after the deadlines specified in Article 4. It has adopted a three tier approach which combines some automatic measures with some conditional measures which have to be considered by the Executive Council:

- If the state party has not submitted its initial declarations within one year or its annual declarations within six months after the Article 4 deadlines then it shall not have access to the declarations of other states parties.
- In addition, the Executive Council shall consider whether to apply one or more of three further measures until the declarations are received.
- If the state party has not submitted its initial declarations within **two** years or its annual declarations within a **year** after the deadlines specified in Article 4, then two further measures shall apply until the declarations are received.

Article 6 Follow-up after submission of declarations

Article 6 is developed from and is based on the provisions and language in *Article III. Declarations II. Follow-up after the submission of declarations* in the rolling text. Article 6 is subdivided into four sections (A–D).

A. The role of the Technical Secretariat starts with paragraphs identical to the first two in Article III. D. II of the rolling text. Its third paragraph states what the Technical Secretariat is to do to promote the fulfilment of the declaration obligations under the Protocol — to process and make a technical analysis of the declarations, conduct a limited number of randomly-selected transparency visits to facilities declared in accordance with certain paragraphs in Article 4,

seek clarification should any ambiguity, uncertainty, anomaly or omission be identified in the content of a declaration, provide technical assistance to states parties and help them compile their declarations including a voluntary assistance visit, if requested. The fourth paragraph relates to the procedures whereby a state party may seek a clarification regarding the declaration of another state party; the state party seeking clarification can do so either using the provisions of *Article 8 Consultation, Clarification and Cooperation* or by using the clarification process in this Article.

The next ten paragraphs relate to the allocation of the different types of visits, the selection of facilities for randomly-selected transparency visits, the limitations on such visits and on voluntary clarification visits, the review of these provisions by the first and subsequent Review Conferences and the annual programme of visits and its review by the Executive Council. The key elements are:

- An overall limit for the total number of all visits in any calendar year of 120 — with provision for the Director-General to conduct less in the light of declarations submitted and visits requested.
 - Limits for the number of randomly-selected transparency visits of not more than 75% and not less than 50% of the total number of visits — i.e. between 60 and 90 such visits.
 - Limits for the number of voluntary assistance visits of not more than 25% and not less than 5% of the total number of visits — i.e. between 6 and 30 such visits.
 - Any clarification visits are deducted successively from the number of randomly-selected transparency visits and the number of voluntary assistance visits whilst ensuring that the minimum numbers of such visits are conducted.
- Provision is also made for the first and subsequent Review Conferences to revise the total number of visits and their allocation between the different categories in the light of the experience gained in the implementation of the Protocol.

In addition limits are placed on the numbers of visits so that they are distributed equably among the states parties:

- No state party shall receive more than seven randomly-selected transparency visits in any calendar year.
- Each state party which declares facilities shall receive at least two randomly-selected transparency visits in any five-year period.
- No individual facility shall receive more than three randomly-selected transparency visits in any five year period.
- The probability of a state party receiving a visit shall be proportional to the number of declared facilities in that state party taking into account the limits detailed in the preceding bullets.

Insofar as voluntary clarification visits are concerned, no state party shall receive more than five such visits in any five-year period.

It is thus evident that the composite Protocol text has adopted a number of compromises which together ensure an effective follow-up after the submission of declarations with an equable spread of visits between states parties and across the range of facilities subject to this Article.

B. Randomly-selected transparency visits is closely based on the provisions and language in *Article III. D. II (A) Randomly-selected Visits* in the rolling text. The purpose of randomly-selected transparency visits is clearly set out as:

- Increasing confidence in the consistency of declarations with the activities of the facility and encouraging submission of complete and consistent declarations;
- Enhancing transparency of facilities subject to the provisions of this section;
- Helping the Technical Secretariat to acquire and retain a comprehensive and up-to-date understanding of the facilities and activities declared globally.

In addition, randomly-selected transparency visits can be extended by up to two days if requested in order for the visiting team to provide assistance on any of the subjects or programmes listed in the relevant paragraphs of Article 14.

The detailed provisions for carrying out such randomly-selected transparency visits are essentially the same as in the rolling text. It is made clear that the visited state party shall provide access to the visiting team within the facility sufficient to fulfil its mandate whilst leaving the nature and extent of all access inside the facility, and to the information it contains, to the discretion of the visited state party.

C. Voluntary assistance visits contains essentially the same provisions as in *Article III. D. II (A) Voluntary Assistance Visits* in the rolling text.

D. Declaration clarification procedures is closely based on the provisions and language in *Article III. D. II (A) Declaration Clarification Procedures* in the rolling text. The composite Protocol text has adopted a compromise in that it provides an option as to whether such clarification is carried out using the procedures set out in Article 6 or by the consultation, clarification and cooperation procedures set out in Article 8. In the particular case of clarification requests relating to a facility which is believed to meet the criteria for declaration and which has not been declared, then the state party from whom clarification is requested may at its discretion respond either using the procedures in Article 8 or the procedures in Article 6.

Insofar as the Director-General is concerned, a compromise has been adopted under which the Director-General can initiate the declaration clarification procedure in regard to the content of a declaration submitted by a state party but in respect of a facility which is believed to meet the criteria for declaration and which has not been declared, the Director-General may request the state party to submit a declaration for the facility concerned.

The detailed procedures are closely similar to those in the rolling text. However, should the declaration clarification procedure not resolve the issue and if a suggested voluntary clarification visit is not offered, then the Director-General shall make a report to the Executive Council. The composite text sets out a range of decisions that might be taken by the Executive Council including the decision initiate a clarification visit. It is clear that the composite text has taken care to strike a balance between the interests of all delegations.

Article 7 Measures to strengthen implementation of Article III of the Convention Article 7 has been developed from *Article III. F. Measures to strengthen the implementation of Article III*. The title has been modified to make it clear that these are measures related to BWC Article III. Article 7 has been restructured, thereby improving clarity, into five sections (A–E).

A. Implementing Legislation contains language from Article III. F of the rolling text requiring states parties to

review, amend or establish any legislation, regulatory or administrative provisions to regulate the transfer of agents, toxins, equipment and technologies relevant to the BWC, providing assistance from the Technical Secretariat in this respect and requiring states parties to report any legislative, regulatory or administrative provisions or other measures it has taken to implement Article III of the Convention.

B. Transfer Guidelines draws upon language from Article III. F of the rolling text and requires states parties to take all measures they deem necessary to ensure that BWC Article III obligations are implemented fully and effectively. Measures are also required to ensure that transfers to any recipient whatsoever of dual-use items are only used for prophylactic, protective or other peaceful purposes; these may include four measures which are set out. Four particular dual-use items are identified to which such measures are to be applied to ensure that their use is only for prophylactic, protective or other peaceful purposes are to be taken.

C. Notifications requires states parties to use the reporting format in Appendix I to notify the Director-General annually of aggregate data on exports of the four particular dual-use items identified in Section B.

D. Consultations provides for states parties to consult among themselves on the implementation of the provisions of this Article and also with a view to specifying the context of a request for a transfer. It also provides for a state party, which has a concern that an authorised transfer could be in violation of Article III of the Convention, to consult directly with the transferring state party. Additional supporting information that might be provided during these consultations is elaborated.

E. Review provides for the first Conference of States Parties held after the first Review Conference of the Protocol to review the operation of the provisions of this Article and to consider whether the introduction of restrictions or prohibitions on transfer to states not party to the Protocol or the *Convention* of the four particular dual-use items identified in Section B would further universal adherence to the Protocol. Subsequent Review Conferences shall keep under review the provisions of this Article.

Article 7 has struck a balance between the range of different views as to how the implementation of Article III of the BWC should be improved. It has addressed the difficult issue of how to improve the implementation of BWC Article III through requiring states parties to take necessary implementing legislation; setting out transfer guidelines; requiring annual notifications of aggregate data for four particular dual-use items; providing for consultations; and requiring the implementation of these provisions to be kept under review.

Article 8 Consultation, Clarification and Cooperation

Article 8 sets out the provision that states parties should consult and cooperate directly among themselves on any matter relating to the purpose and objective of the Convention, or the implementation of the provisions of the Protocol, and clarify and resolve any matter which may raise concern about possible non-compliance with the obligations of this Protocol or the Convention. It follows closely the language in *Article III. E Consultation, Clarification and Cooperation* of the rolling text. Article 8 has in some paragraphs simplified the rolling text by removing unnecessary

duplication or repetition and striking a balance between the options within square brackets in the rolling text; for example, the time within which clarification shall be provided is set at 20 days after receipt of the request.

Article 9 Investigations Article 9 is largely based on the provisions and language in *Article III. G. Investigations* of the rolling text. It is subdivided into nine subsections (A–I).

A. Types of Investigations sets out the two types of investigation: field and facility investigations using language that is essentially identical to that in the rolling text.

B. Outbreaks of Disease has language that is essentially identical to that in the rolling text with some small variations in the titles of subheadings and of the language. This section deals with outbreaks of disease and the circumstances under which a field investigation of an outbreak of disease can be requested to address a non-compliance concern. It is also made clear that reports coming exclusively from the mass media cannot be regarded as evidence.

C. Consultation, Clarification and Cooperation has language that is closely based on that in the rolling text and requires that states parties should, whenever possible, consult between themselves in accordance with Article 8 about any matter that causes concern about compliance with the Convention.

D. Initiation of Investigations and **E. Information to be Submitted with a Request for an Investigation to Address a Concern of Non-compliance with the Convention** have language that is essentially identical to that in the rolling text.

F. Follow-up after Submission of an Investigation Request and Executive Council Decision-making is based upon and developed from the language in the rolling text. Section F has adopted a compromise in respect of the Executive Council decision making in which different decision-making procedures are to be followed depending on the particular circumstances relating to the investigation:

- A request for a field investigation of alleged use of biological weapons on the territory or other place under the control of the requesting state party shall proceed unless a three-quarters majority of members present and voting decide otherwise.
- A request for a field investigation of alleged use of biological weapons on the territory or other place under the control of another state party shall proceed unless a simple majority of members present and voting decide otherwise.
- A request for a field investigation on the territory or other place under the control of a requesting state party where there is a concern that an outbreak of disease is related to prohibited activities shall proceed unless two-thirds of members present and voting decide otherwise.
- A request for a field investigation on the territory or other place under the control of another state party when there is a concern that an outbreak of disease is related to prohibited activities shall proceed only if approved by a simple majority of members present and voting.
- A request for a facility investigation should proceed only if approved by a simple majority of members present and voting.

The key thing is that in all these cases an investigation will take place if the Executive Council so decides thereby

providing the Protocol with the essential ultimate measure to address concerns about non-compliance with the BWC.

G. Access and Measures to Guard Against Abuse During the Conduct of Investigations is closely based on the language in the rolling text. Essentially the receiving state party is obliged to make every reasonable effort to demonstrate its compliance with the Convention and to enable the investigation team complete its mandate. However, the nature and extent of access shall be negotiated between the investigation team and the receiving state party with the receiving state party having the right to make the final decision on the nature and extent of access, taking into account its rights and obligations under the Protocol. The composite Protocol text has thus struck a reasonable balance to ensure that investigations can be carried out effectively whilst safeguarding the interests of the receiving state party.

H. Final Report is essentially identical to the language in the rolling text.

I. Review and Consideration of the Final Report is essentially identical to the language in the rolling text with the addition of a new paragraph which usefully specifies that, in the event of non-compliance being determined, the Executive Council shall circulate the final report to all state parties before the meeting of the Conference of State Parties.

Article 10 Additional provisions on declarations, visits and investigations Article 10, addressing declarations, visits and investigations on the territory of a state party but falling under the control of another state party/party, closely follows the language in *Article III H. Additional Provisions* of the rolling text. Article 10 has struck a balance between the alternative language in the rolling text and has also introduced a new *Appendix G Facilities existing in the territory of a State Party but falling under the control of another State Party/Party* which is to be completed by the state party on whose territory the facility exists; this simply requires answers to some yes/no questions. The overall thrust of Article 10 is not substantively different from that in the rolling text; Article 10 provides a useful complement to the regime in regard to declarations, visits and investigations under such circumstances.

Article 11 Confidentiality provisions The six paragraphs of Article 11 are essentially identical to the first six of *Article IV Confidentiality Provisions* in the rolling text. The other paragraphs in Article IV which were within square brackets and which reproduced the language of Annex D which was out of square brackets apart from a single paragraph are included in the composite text in the *Annex on Confidentiality Provisions (Annex C)*. The square brackets have been removed from the only paragraph in Annex D which had been within them — this obliges observers and states parties sending observers to an investigation to protect confidential information should such information be disclosed to or acquired by such observers during an investigation.

Article 13 Assistance and protection against bacteriological (biological) weapons Article 13 is largely unchanged from *Article VI Assistance and Protection against Biological and Toxin Weapons* in the rolling text. There are a number of small changes relating to text that had been within square brackets in the rolling text:

- Paragraph 1. The phrase “including biosensors” which had been in square brackets is included in the composite Protocol text. Given that biosensors are frequently an integral part of detection equipment, the inclusion of the words “including biosensors” provides a useful clarification which does not significantly amend the substance.
- Paragraph 3. This has been simplified by the removal of the clauses in square brackets making it identical to the corresponding paragraph in Article X of the CWC.
- Paragraph 9. The square brackets around the word “serious” have been removed making it identical to the corresponding language in Article X of the CWC.
- Paragraph 10. The rolling text had alternative forms of words within square brackets. The composite text requires requests for assistance when a state party considers that biological or toxin weapons have been used against them to be accompanied, either simultaneously or within 24 hours by a request for an investigation.
- Paragraph 11. The rolling text had various times within square brackets. The composite Protocol text has these square brackets removed and the time during which the Director-General shall initiate an examination of the request has been increased from 12 to 24 hours — the same time as the corresponding requirement in Article X of the CWC. The final sentence of paragraph 11 which had several square bracketed alternatives has been simplified without any change of substance.
- Paragraph 12. The rolling text had various times within square brackets. The composite Protocol text has these brackets removed. The times are identical to those in the corresponding paragraph in Article X of the CWC.

Article 14 Scientific and technological exchange for peaceful purposes and technical co-operation

Article 14 is largely unchanged from *Article VII Scientific and Technological Exchange for Peaceful Purposes and Technical Cooperation* in the rolling text. Article 14 is subdivided into seven subsections (A–G).

A. General Provisions is closely based on the language in *Article VII (A) General Provisions*. In paragraph 1 (c) the composite Protocol text has simplified the text and has struck a balance by adopting the word “through” and in the second paragraph it has simplified the language so that the Organization shall provide a forum for the review of the implementation of Article X of the Convention.

B. Measures to Promote Scientific and Technological Exchanges is closely based on that in *Article VII (B) Measures to Promote Scientific and Technological Exchanges*. The composite Protocol text contains a different formulation in paragraph 3 — and elsewhere in the text — using “microbial and other biological agents” instead of the formulation “bacteriological (biological) agents” in the rolling text. This formulation reflects the language in BWC Article I. In paragraph 4, the composite Protocol text has removed the square brackets around “where appropriate” in the rolling text and has given the names of the various international organizations and agencies in full instead of using their abbreviations as in the rolling text. There are a number of changes to the subparagraphs in paragraph 4:

- (a) — “microbial or other biological agents” replaces the more limited “microorganisms” in the rolling text. This change has also been made in various other paragraphs

of this Article. The phrase “prophylactics and protection” has replaced the term “biodefence” which had been in square brackets in the rolling text.

- (c) and (d) — The composite text contains a simpler and broader form of words — “including laboratories” and “including research institutes” — than the more limited language in square brackets in the rolling text.
- (h) — The composite text contains a simple solution to the alternatives in square brackets in the rolling text.
- (i) — The composite text contains the broader language of “prophylactics and protection” instead of “biodefence” which had resulted in this subparagraph being within square brackets. The broader language makes the subparagraph entirely appropriate to this Article.
- (k) — The composite text has removed the square brackets from this subparagraph in the rolling text thereby making provision for this Article to address whatever future specific measures might be approved by the Conference of the States Parties to improve the implementation of Article X of the BWC and this Article.

C. Measures to Avoid Hampering the Economic and Technological Development of States Parties strikes a balance in paragraph 6 between the different alternatives within square brackets within the rolling text. It also removes the paragraph in the rolling text which had stated the obvious that states parties have the right to seek measures in accordance with Article V of the Protocol.

D. Institutional Mechanisms for International Cooperation and Protocol Implementation Assistance is closely based on the language in *Article VII (D) Institutional Mechanisms for International Cooperation and Protocol Implementation Assistance* in the rolling text. In respect of the Cooperation Committee, paragraph 7 of the composite text in the first sentence has added a formulation that links this paragraph back to paragraph 2 of this Article. In the second sentence it has removed from square brackets the word “monitor” in the rolling text and removed the additional wording in square brackets in the rolling text. The final sentence has been streamlined through a further reference back to paragraph 2 of this Article. The composite text has in paragraph 8 adopted language on the size of the Cooperation Committee and its distribution amongst the regional groups. The size of 57 is six larger than the Executive Council with each regional group having one more representative than in the Executive Council. The remaining paragraphs relating to the Cooperation Committee set out more clearly the provisions already agreed in the rolling text.

In respect of the role of the Technical Secretariat the composite text in paragraph 21 (a) has adopted a compromise drawing upon language and ideas in the three options in the rolling text. In subparagraphs (h) and (i), the composite text has removed language within square brackets in the rolling text. The composite text then includes at this point a paragraph which occurred later in the rolling text and requires the Technical Secretariat to contain a department devoted to implementation of this Article thereby underlining the importance to the regime of the contribution coming from the implementation of BWC Article X.

E. Review and Consideration of Concerns Related to the Implementation of Article X of the Convention and this Article adopts streamlined language in paragraph 28 which addresses the concepts relating to the actions that may

be taken by the Executive Council in considering concerns about the implementation of Article X of the Convention and this Article which has been contained in two paragraphs within square brackets in the rolling text.

F. Co-operative Relationships with Other International Organizations and Among States Parties.

The composite text in paragraph 29 has added an introductory phrase outlining the objectives of such co-operative relationships. It has also given the names of the various international organizations and agencies in full instead of using their abbreviations as in the rolling text. In paragraph 30 it has removed this paragraph from the square brackets in the rolling text thereby including possible ad hoc collaborative arrangements with non-governmental organisations as it is not possible to predict what future NGOs might exist and be appropriate to enter into such arrangements.

G. Declarations is essentially identical to the language in the rolling text apart from the removal of the paragraph within square brackets.

Article 15 Confidence-building measures Article 15 has identical language to that previously within overall square brackets in Article VIII of the rolling text.

Article 16 The Organization Article 16 is essentially identical to the language in *Article IX The Organization* in the rolling text apart from a few areas where compromises have been adopted. One such area relates to the size of the Executive Council in which the composite Protocol text has a membership of 51 comprising of 11 states parties from Africa, 7 from East Asia and the Pacific, 7 from Eastern Europe, 9 from Latin America and the Caribbean, 12 from the Western European and other States and 5 from West and South Asia. A second area is in Section E. Privileges and Immunities where language providing for the concept of the waiving of the immunity of the Organization or of the Director-General has not been included. This exclusion parallels the situation that applies under the CWC to the Organization for the Prohibition of Chemical Weapons.

Legal Issues

The term *legal issues* is used in this description and analysis to refer to those Articles in the composite text that in the rolling text had been developed by the Friend of the Chair on Legal Issues together with *Article 17 National Implementation Measures* which in the rolling text had been developed by the Friend of the Chair on national implementation/assistance. As most of these Articles had already reached the stage of clean text, free from square brackets, the composite text is identical in many Articles to that in the rolling text. The following table indicates which Articles have essentially identical text to that in the rolling text.

Composite Protocol text (AHG/56 (Annex B))	Rolling text (AHG/56 (Annex A))
<i>Article 12 Measures to redress a situation and to ensure compliance</i>	As <i>Article V Measures to redress a situation and to ensure compliance</i> with removal of brackets from final para so that the issue can be brought to the attention of both the General Assembly and the Security Council.

<i>Article 17 National implementation measures</i>	As <i>Article X National implementation measures</i> with removal in para 1 (a) of words within square brackets and in para 4 of words <i>inter alia</i>
<i>Article 18 Relationship of the Protocol to the Convention</i>	Identical to <i>Article XI Relationship of the Protocol to the Convention</i>
<i>Article 19 Settlement of disputes</i>	As <i>Article XII Settlement of disputes</i> with removal of overall square brackets from fifth para
<i>Article 20 Review of the Protocol</i>	As <i>Article XIII Review of the Protocol</i> with removal of a non-essential explanatory phrase in parentheses from the first para
<i>Article 21 Amendments</i>	As <i>Article XIV Amendments</i> with requirement in para 2 being for one third or more states to support the holding of an Amendment Conference
<i>Article 22 Duration and Withdrawal</i>	Identical to <i>Article XV Duration and Withdrawal</i>
<i>Article 23 Status of the Annexes and Appendices</i>	Identical to <i>Article XVI Status of the Annexes and Appendices</i>
<i>Article 24 Signature</i>	Identical to <i>Article XVII Signature</i>
<i>Article 25 Ratification</i>	Identical to <i>Article XVIII Ratification</i>
<i>Article 26 Accession</i>	Identical to <i>Article XIX Accession</i>
<i>Article 27 Entry into Force</i>	Paragraphs 2 & 3 identical to <i>Article XX Entry into Force</i>
<i>Article 28 Reservations</i>	Square brackets in <i>Article XXI Reservations</i> removed and one clause in square brackets removed
<i>Article 29 Depositary</i>	Identical to <i>Article XXII Depositary</i>
<i>Article 30 Authentic Texts</i>	Identical to <i>Article XXIII Authentic Texts</i>

Those Articles for which there have been changes from the rolling text are considered briefly:

Article 12 Measures to redress a situation and to ensure compliance is identical to Article V in the rolling text with the removal of the square brackets from the final paragraph so that the issue can be brought to the attention of both the General Assembly and the Security Council. This provision is identical to the provision in the corresponding Article XII in the Chemical Weapons Convention.

Article 17 National implementation measures is identical to Article X in the rolling text with the removal in para 1 (a) of the words within square brackets. The words in square brackets in Article X referred to Article I of the Protocol; no such cross-reference is necessary to the provisions in Article 1 General Provisions of the composite Protocol text. This is because Article 1 does not add further prohibitions. Instead, it reaffirms the obligations already contained in the Convention. Linkage with Article 1 of the Protocol is already ensured by the similarity of Article 1 paragraph 8 with Article 17 paragraph 1.

Article 19 Settlement of disputes is identical to Article XII in the rolling text with the removal of overall square brackets from the fifth paragraph which states that this Article is without prejudice to Articles 3 to 12. It is essentially the same as the provisions in the final paragraph of the corresponding Article XIV in the CWC.

Article 20 Review of the Protocol is identical to Article XIII in the rolling text with the removal of an explanatory phrase “(hereinafter referred to as a “Review Conference”)” from the first paragraph.

Article 21 Amendments is identical to Article XIV in the rolling text apart from the second sentence of paragraph 1 which states that any state party may propose changes, in accordance with paragraph 4, to specified parts of this Protocol or its Annexes or its Appendices and the requirement in the second paragraph being for one third or more states to support the holding of an Amendment Conference. This latter provision is identical to the provision in the corresponding Article XV in the CWC.

Article 27 Entry into Force consists of three paragraphs; the second and third paragraphs are identical to those in Article XX in the rolling text. The first paragraph contains language stating that:

This Protocol shall enter into force 180 days after the deposit of instruments of ratification by 65 States, which shall include seven States from Africa, four States from East Asia and the Pacific, four States from Eastern Europe, six States from Latin America and the Caribbean, nine States from among Western European and other States and three States from West and South Asia, but not earlier than two years after its opening for signature.

The number of states required to deposit their instruments of ratification broadly reflect the composition of the Executive Council which is specified in Article 16. This formulation avoids the situation in which a single state can effectively veto the entry into force of the Protocol through withholding its instrument of ratification.

Article 27 provides for entry into force to occur 180 days after the deposit of the 65th instrument of ratification — an identical provision to that of Article XXI of the CWC.

Article 28 Reservations is developed from Article XXI in the rolling text. The provision in Article 28 is that the Articles and Annexes in the Protocol shall not be subject to reservations and the Appendices shall not be subject to reservations incompatible with the object and purpose of the Protocol. It is essentially the same as the provision in the corresponding Article XXII in the CWC.

Article 29 Depositary is identical to Article XXII in the rolling text with the UN Secretary-General designated as Depositary and the other alternative deleted. This provision is identical to the provision in the corresponding Article XXIII in the CWC. A consequential deletion of the alternative has occurred in Article 22, paragraph 2 and Article 30.

Article 30 Authentic Texts is identical to Article XXIII in the rolling text with the UN Secretary-General as depositary and with London shown as the location at which the Protocol is signed. This provision is identical to the provision in the corresponding Article XXIV in the CWC apart from London appearing instead of Paris.

It is thus evident that for these 15 Articles in the Chairman’s composite Protocol text that the language is essentially identical to that in the rolling text; the single Article in which new language has usefully been introduced is in relation to *Article 27 Entry into Force*. The provisions in the Chairman’s composite Protocol text are essentially identical to those in the corresponding Articles of the CWC.

Annexes and Appendices The composite Protocol text has three Annexes:

- Annex on Lists (Annex A)
- Annex on Investigations (Annex B)
- Annex on Confidentiality Provisions (Annex C)

The Annex on Lists (Annex A) is, as already discussed under Article 3, closely related to the language in *Annex A Declarations I Lists and Criteria (Agents and Toxins)* and *Annex A Declarations II List of Equipment* of the rolling text. The Annex on Investigations (Annex B) is largely based on the language in *Annex C Investigations* of the rolling text although compromises have been adopted to resolve issues previously within square brackets in the rolling text. The Annex on Confidentiality Provisions (Annex C) is, as already discussed under Article 11, essentially identical to *Annex D Confidentiality Provisions* in the rolling text.

The composite Protocol text has nine Appendices:

- Appendix A Declarations of Offensive and/or Defensive Biological and Toxin Programmes and/or Activities Conducted Prior to Entry into Force of the Convention/Protocol for Each State Party
- Appendix B Declaration of Current National Biological Defence Programmes and/or Activities
- Appendix C Declaration Format for Facilities Declared in Accordance with Article 4 (6)
- Appendix D Declaration Format for Facilities Declared in Accordance with Article 4 (8) to (14)
- Appendix E Listing of Facilities in Accordance with Article 4 (7)
- Appendix F Listing of Facilities in Accordance with Article 4 (15)
- Appendix G Facilities Existing on the Territory of a State Party but Falling under the Jurisdiction or Control of Another State Party/State
- Appendix H Information to be provided in the Declarations Required under Article 14 (33)
- Appendix I Format for Reporting International Transfers of Equipment

These provide the formats for the various declarations and listing of facilities required under the Protocol.

Analysis of the composite Protocol text

The composite Protocol text 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 successfully ensure that the composite text achieves its mandate of strengthening the effectiveness and improving the implementation of the Convention. The composite text may be regarded as retaining 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.

In considering the composite Protocol text, it is important to remember that the BWC 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 makes **no** changes to the basic prohibitions and obligations. The Protocol regime is supplementary and additional to the Convention.

The key comparison is thus between the Protocol regime and the BWC alone, including the procedures devolved from its provisions. A tabulation of the principal measures in the regime, compared with the procedures of the BWC alone, brings out the significant benefits from the Protocol:

BWC and its Protocol Regime	BWC alone
Mandatory declarations — measures to ensure submission	Confidence-Building Measures — patchy and variable (if made)
Declaration follow-up procedures — analysis of declarations — randomly-selected transparency visits	None — none — none
Declaration clarification procedures — clarification visits	None — none
Voluntary assistance visits	None
Non-compliance concerns — Consultations >>> Investigations	Art V consultation procedures Art VI complaint to UN Security Council
Field investigation	Possible UN Secretary-General investigation if invited by State Party concerned
Facility investigation	None
Transfer procedures	None
Assistance — provisions detailed	Art VII assistance if UN Security Council decides a Party has been exposed to danger
International Cooperation — elaborated in detail — Cooperation Committee	Art X provisions — no implementation procedures — none
Organization — CoSP, ExC & Technical Secretariat	None
National implementation — Penal legislation required — National Authority	Art IV National implementation — No penal legislation requirement — None

Considering all of the elements of the BWC Protocol regime as a whole, there are overall three particularly significant benefits that will accrue from the BWC Protocol regime and which are not available with the Convention alone:

BWC and its Protocol Regime	BWC alone
Measures to increase transparency and build confidence	Suspicions not addressed — and over time reduce international confidence in the regime
Procedures to address non-compliance concerns	Art V consultations (no teeth) Art VI complaints to UN SC (not used)
International cooperation and assistance provisions	No action despite aspirations at successive Review Conferences

The Protocol regime thus brings significant and worthwhile benefits to all states parties — both developed and

developing — over and above the procedures to uphold the basic prohibitions and obligations of the BWC, which remain unchanged. In addition, the Protocol will be effective, over time, in building confidence between states parties that other states parties are indeed in compliance with the BWC, thereby reinforcing the norm that work on biological weapons, whether directed against humans, animals or plants, is totally prohibited. The Protocol thus brings improved health, safety, security and prosperity to all states parties.

It is also appropriate to compare the BWC Protocol regime with the CWC regime. The CWC regime is of considerable relevance to the BWC Protocol regime for a number of reasons. First, there is a close relationship between chemical and biological weapons with the two regimes overlapping for the materials of biological origin such as toxins. Both regimes address dual-use materials and technology and both have general purpose criteria which embrace all possible agents, past, present and future. Indeed the CWC regime is the one of greatest relevance to the BWC Protocol regime and it is already evident that National Authorities for the two regimes are likely to be colocated in a number of countries.

It is hardly surprising that the BWC Protocol regime has been largely developed from the CWC regime; it is, however, much more elaborated than the CWC and has been finely tailored to address those biological agents and facilities of greatest relevance to the BWC. There are, however, some particular differences between the CWC regime and the BWC Protocol regime largely arising from the fact that the CWC came into force in 1997 with a number of states known to be possessors of chemical weapons and chemical weapon production facilities whilst the BWC came into force over 25 years ago. These differences are summarised in the Table:

BWC and its Protocol Regime	CWC Regime
No biological weapon stockpiles	Declaration of chemical weapon (CW) stockpiles
Declaration of past offensive biological weapon programmes	Declaration of chemical weapon production facilities (CWPFs)
No destruction of biological weapon stockpiles	Destruction of chemical weapon stockpiles
No destruction of biological weapon production facilities	Destruction of chemical weapon production facilities
No tight timeline	Tight timelines for declaration and inspection of CW and CWPFs
List of agents and toxins — No SSSF equivalent — Declaration trigger	Scheduled chemicals — Single small scale facility (SSSF) — Varying regime according to Schedule

If the CW and CWPF elements of the CWC are ignored, then the basic architecture of the BWC Protocol regime and the CWC regime is the **same**. The differences between them are in the details. The BWC Protocol regime is built upon the confidence-building measures agreed at the Second Review Conference in 1986, and extended at the Third in 1991, as well as the CWC regime. 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 focused burden in respect of declarations

and visits whilst the international cooperation provisions are much more extensive than those of the CWC. In comparing the BWC Protocol regime with that of the CWC, the fact that the BWC is **already** in force needs to be remembered.

The two regimes are compared in the following Table:

BWC and its Protocol Regime	CWC Regime
Mandatory declarations — range of facilities (BL-4, BL-3, genetic modification, work with listed agents, production) — requires declaration of biological defence — measures to ensure submission	Mandatory declarations — focused on production of chemicals — no declaration of chemical defence — no measures to ensure submission
Declaration follow-up procedures — analysis of declarations — randomly-selected transparency visits	Routine inspections of Scheduled chemical facilities and DOC (discrete organic chemical) facilities
Declaration clarification procedures — clarification visits	No declaration clarification procedures — implicit not elaborated
Voluntary assistance visits	No provision for voluntary assistance visits — implicit not elaborated
Non-compliance concerns — Consultations >>> Investigations	Non-compliance concerns — Consultations >>> Investigations
Field investigation — includes investigation of releases	Investigation of alleged use — no investigation of releases
Facility investigation — team size and duration limited	Challenge inspection — duration limited
Transfer procedures	Transfer controls
Assistance — provisions similar to CWC	Assistance
International Cooperation — elaborated in detail — Cooperation Committee	International Cooperation — not elaborated in detail — no provision for Cooperation Committee
Organization — CoSP, ExC & Technical Secretariat — TS has role to analyse epidemiological information	Organization — CoSP, ExC & Technical Secretariat — no parallel role

National implementation — Penal legislation required — National Authority	National implementation — Penal legislation required — National Authority
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The similarities between the two regimes are apparent. It is evident that the BWC Protocol regime is considerably more elaborated, with limitations on the overall number of visits, team sizes and durations, than the CWC regime. There are, however, *de facto* limitations within the CWC regime through the annual scrutiny of the OPCW's programme and budget by the Executive Council and the Conference of the States Parties. On the other hand, there are several areas where the BWC Protocol regime has additional provisions that are not specifically included in the CWC regime.

In making an overall comparison of these two regimes, consideration also has to be given to the intensity of the visits/inspections of the facilities declared under the two regimes (and ignoring the CWC inspection regime for chemical weapon, CWPFs and CW destruction facilities). It needs to be recalled also that the numbers of facilities declared under the BWC Protocol regime has been estimated by several European countries as being of the order of tens of facilities per European country; this can be compared to the UK declaration (Department of Trade and Industry, *1997 Annual Report on the Operation of the Chemical Weapons Act 1996 by the Secretary of State for Trade and Industry*, February 1998) under the CWC of over 550 plants at over 150 sites. Consequently, it can be expected that the number of declared facilities under the BWC Protocol regime will be smaller by a factor of ten. The CWC regime has an intensity that varies depending on which Scheduled chemical is produced or used in a facility and reflects the risk to the Convention with Discrete Organic Chemical (DOC) facilities having a much smaller intensity of routine inspection. The BWC Protocol regime has an intensity of visits that is not dependent on the type of declared facility and should therefore ensure that all declared facilities that are subject to randomly-selected visits will over time receive such visits.

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