

## Strengthening the Biological and Toxin Weapons Convention

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A four week meeting, the fifteenth session, 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 28 June to Friday 23 July 1999. As in the previous sessions, negotiations focussed on the rolling text of the Protocol.

55 States Parties and 4 Signatory States participated at the fourteenth session; a net total of two fewer State Parties than in April 1999 as 2 States (Bangladesh and Kenya) participated in June/July 1999 whilst 4 States (Lebanon, Mongolia, Saudi Arabia and The Former Yugoslav Republic of Macedonia) which had participated in April 1999 did not in June/July. The same 4 Signatory States participated in June/July 1999 as in April 1999.

31 new Working Papers (WP. 366 to WP.396 ) were presented in June/July 1999. As usual these were presented both by States Parties (Germany/Sweden 3, Russian Federation 3, South Africa 3, Finland on behalf of the EU 2, Iran 2, Switzerland 2, Ukraine 2, UK 2 with single papers by 9 states and 1 by the NAM) and by Friends of the Chair (2). A new list of States Parties was promulgated (BWC/AD HOC GROUP/INF.20) listing the 143 States Parties and 18 Signatory States as at July 1999: the two latest accessions were by Monaco and by Saint Vincent and the Grenadines.

A revised version of the Protocol was produced and attached to the procedural report of the July session (BWC/AD HOC GROUP/46 (Part I), 30 July 1999). This was thus the ninth version of the rolling text – previous versions having been produced in June 1997 (#35), July 1997(#36), October 1997 (#38), February 1998 (#39) and June/July 1998 (#41), September/October 1998 (#43), January 1999 (#44) and April 1999 (#45). This was slightly shorter (310 pages) than the April version (with previous versions having totalled 113, 167, 241, 241, 251, 278, 312 and 315 pages respectively), there was further progress.

As with previous procedural reports, a Part II containing an Annex IV was again produced containing papers prepared by the Friends of the Chair of proposals for further consideration in which the Part I draft Protocol text is modified in a transparent way (~~striketrough~~ showing deletions and **bold** proposed new text). For the first time, the 177 page Part II to the June/July session is structured so that the ~~striketrough~~ text reflects the structure of the Protocol with Friend of the Chair proposed language for the Articles, Annexes and Appendices of the Protocol. This therefore provides a 'vision' text showing how the Protocol may eventually appear. There is text for all Articles other than the Preamble and Articles I, VI, VIII, X as well as for Annexes A, B and E and for Appendix C. Such a 'vision' text is particularly valuable as the pace of the negotiations quicken as it enables delegations to consider both the current rolling text in Part I and the possible developments thereof in Part II.

Of the 40 meetings held, 14 1/3 were devoted to compliance measures, 9 2/3 to definitions, 7 to Article X measures, 4 to the investigations Annex, 1 1/6 to confidentiality, 5/6 to organization/implementation, 2/3 to preamble, 2/3 to national implementation and assistance, 2/3 to legal issues, 2/3 to seat of the organization and the remaining 1/3 to an AHG meeting. It

should be appreciated that many of the subjects shown as receiving about one meeting were actually addressed on two or more occasions as two or three of these subjects were frequently addressed in a single meeting. No new Friends of the Chair were appointed.

The AHG meeting as usual saw the presentation and distribution by the Department of Peace Studies at the University of Bradford of a further two Briefing Papers in its series: No 22 Article VII Measures: Optimizing the Benefits and No 23 BTWC Security Implications of Human, Animal and Plant Epidemiology. In addition, the first two in a new series of Evaluation Papers No 1 The BTWC Protocol: An Overall Evaluation and No 2 Article X: National Implementation Measures were presented and distributed (Copies of all of these together with the Executive Summaries of the Briefing Papers are available on the Bradford website <http://www.brad.ac.uk/acad/sbtwc>). In addition, two Quaker lunches were again hosted within the Palais des Nations to discuss key issues relating to Article VII of the Protocol and the BTWC Security Implications of Human, Animal and Plant Epidemiology respectively. The Federation of American Scientists (FAS) distributed further papers entitled "Views on Visits" and "on the Question of Outbreak Declarations under a Biological Weapons Convention Compliance Regime" (Copies are available on the FAS website <http://www.fas.org/bwc/papers.htm>).

### **Political Developments**

The first week of the June/July AHG meeting saw on 29 June a formal statement to the AHG by State Secretary Wolfgang Ischinger of Germany on behalf of the German Presidency of the European Union. This encouraged all Ad Hoc Group participants:

Let us therefore double our efforts to strengthen the BTWC by concluding the negotiations on the Protocol in order to give the Convention the necessary "teeth".

and went on to present the EU Common Position agreed on 17 May 1999 (see *Quarterly Review no 7*) which he said "is intended to give this endeavour the EU's strongest support." He noted that the policy statement had been officially endorsed by 28 European Countries: the 15 EU member states and the associated and other States. His statement ended by saying that:

we firmly believe that unless we can achieve decisive progress now, we might risk stagnation or even retrogression. I believe that, all in all, the glass is more than half full and that we have grounds for optimism. By adopting this Common Position the EU has renewed its commitment to, and expresses its firm belief in, the success of these negotiations.

The second week saw on 8 July a formal statement by Jozias van Aartsen, the Minister of Foreign Affairs of the Netherlands, which emphasised the Netherlands government support for the Ad Hoc Group negotiations noting that:

Given the inherent difficulties of verifying the absence of biological weapons or biological weapons programmes, the compliance regime of the Convention should be at least as effective as that of the Chemical Weapons Convention.

He went on to outline the core elements of the regime observing that "there has to be a small but adequately staffed organisation, with a professional inspectorate to implement the protocol." He

then expressed the sincere hope that the Ad Hoc Group will give favourable consideration to the candidature of The Hague for the seat. He said that

We will put forward an offer that will ensure the efficient and cost-effective functioning of the future organisation. The international infrastructure and all necessary facilities are already in place in The Hague....One of the central elements in that bid will be the office building in which the future organisation will be housed. At present we are aiming at a highly suitable building in the immediate neighbourhood of the Organization for the Prohibition of Chemical Weapons.

Co-location of the OPCW and the biological weapons organisation would bring many benefits to both organisations, such as economies of scale. The BW organisation could draw on the extensive experience of the OPCW in setting up an international organisation and implementing the verification regime. For member states it would entail a cost-effective representation to the two organisations.

The lessons learned by the OPCW during the past years are invaluable and should in our view be used in the related field of biological weapons. Of course, the OPCW model should not be copied indiscriminately. But it would be a waste of time and resources to reinvent the wheel on the many issues that are similar to both regimes.

He concluded by providing a 12 page illustrated booklet entitled *The Hague Strengthening the Biological Weapons Convention* to enable delegations to acquaint themselves with

the city that one hundred years ago was chosen by Czar Nicholas II of Russia as venue for the first Peace Conference. The Hague seemed the logical choice for the czar, because of its political and economic stability, easy access from all parts of the world,....The Hague seemed a logical choice then. I hope you share my conviction that it is the logical choice again today, or maybe I should say, **the bio-logical choice** for the headquarters of the BW organisation.

## **The Emerging Regime**

The distribution of the meetings in the June/July session shows that most attention was paid to compliance measures, definitions, Article X measures and to the investigations Annex with about one meeting apiece to the other subjects.

**Compliance Measures.** The June/July session saw a complete reading of Article III *Compliance Measures* with the text being developed in a number of areas. A particular development, which clearly reflected the experience of the OPCW in respect of CWC declarations, was the addition of a new section in Article III D. *Declarations* entitled *III. Measures to ensure submission of declarations*. The provisions in this section require the Director-General as soon as possible after the deadline for the submission of initial or annual declarations has passed to issue a written request to States Parties which have not submitted all their declarations and that the Director-General shall report to each session of the Conference of States Parties on the implementation of the declaration obligations. In addition, currently within square brackets, should a State Party not submit its initial or annual declarations within the [6] month period following the relevant deadline, then one or more of the following measures may be applied:

- (a) *The State Party shall have no vote in the Conference of States Parties;*
- (b) *The State Party shall not be eligible for election as a member of the Executive Council or, if already a member of the Executive Council, shall be suspended from membership of the Executive Council;*
- (c) *The State party may not invoke the declaration clarification procedure...or a facility investigation;*
- (d) *The State party may not request the Technical [Secretariat][Body] for technical assistance under Article VII other than assistance in the preparation of declarations;*
- (e) *The State party may not have access to the declarations of other States Parties;*
- (f) *The State Party may not invoke those provisions on consultation, clarification and cooperation...;*

In respect of *III. D. Declarations I. Submission of Declarations*, the requirements for declarations were developed with some streamlining and with some language from WP. 395 (Republic of Korea) and WP.389 and 393 (Finland on behalf of the EU) being incorporated in square brackets without discussion. *II. Follow-up after submission of declarations* was also developed with the alternative title of transparency entering the heading (A) *[Randomly-Selected][Transparency] Visits*

with the text being clarified with headings such as *Benefits* being incorporated. Likewise in (B) *[Declaration Clarification Procedures][And Voluntary Visit]* the language was clarified with useful new sub-headings such as *Consultations* and *Visit* appearing in the text. Section (C) *Voluntary Visits* saw the heading emerge from square brackets with text for different procedures depending on whether the voluntary visits are on the one hand to obtain technical advice on the implementation of declarations obligations or to obtain technical assistance under Article VII or, on the other hand, to resolve an ambiguity etc concerning a declaration or to resolve a specific concern as provided for under the consultations, clarification and cooperation procedures. As might be expected the principal difference is in the mandate for the voluntary visit.

Section *F [Measures to strengthen the implementation of Article III]* also was revised with some development of language. Section *G Investigations* made further progress with the language for the types of investigations beginning to emerge from square brackets:

*[(a) Investigations to be carried out in geographic areas where the [release of, or] exposure of humans, animals or plants to microbial or other agents and/or toxins has given rise to a concern about a possible [non-compliance under Article I of the Convention][use of biological weapons], hereinafter referred to as "field investigations".]*

*(b) Investigations of alleged breaches of obligations under Article I of the Convention, to be conducted inside the perimeter of a particular facility(ies) at which there is a substantiated concern that it is involved in activities prohibited by Article I of the Convention, hereinafter referred to as "facility investigations".*

As will be seen below, in Annex D on Investigations the terms Field Investigation and Facility Investigations are both clear of square brackets. In Section *G Investigations*, a new part [(B) *Outbreaks of Disease*] has been introduced. A WP.369 by the NAM led to new text in this part which states that *If a State has a concern that an outbreak of disease is directly related to activities prohibited by the Convention, it shall provide in its request for an investigation, detailed information, reasons and evidence to demonstrate why, in its view, it considers the disease not to be naturally occurring*'.

Another development came in the contentious area of the Executive Council consideration of whether an investigation should proceed with language, heavily square bracketed, that has a different provision for facility and field investigations:

*22. The investigation shall proceed [in the case of a request for a facility investigation][if formally approved by at least a [two-thirds][three-quarters] majority [present and voting] of the Executive Council][unless the Executive Council decides by a three-quarters majority of [all] its members [present and voting] against carrying out the investigation][and, in the case of a request for a field investigation, if formally approved by a simple majority of the Executive Council members present and voting].*

The final section of *G. Investigations* which addresses (I) [*Adoption of a decision on the basis*][*Consideration*] of the findings of the investigation saw development of the text with clarification of actions that the Executive Council might take if it decides that there has been abuse which now includes not only that *the requesting State Party should bear some or all of the final implications of the investigation* but also [*as well as indemnities to the receiving State Party*].

***Annex D on Investigations.*** Further progress was made on the Investigations Annex with the simple terms *Field Investigations* and *Facility Investigations* emerging from square brackets and replacing the previous terms [*Field*] *Investigations [of alleged use of BW]* and [*Facility*] *Investigations [of any other alleged breach of obligations under the provisions of the Convention]*. Particular attention being paid to *III Facility Investigations* with good progress being made in removing square brackets and streamlining the text. Timelines for carrying out the investigation were discussed and alternatives introduced into the text. Language for (D) *Conduct of Investigation* was developed with new provisions, heavily square bracketed, for the investigation team to determine the quantity of biological agents and toxins located at the facility. The previous term *Auditing* has now been replaced by *Examination of documentation and records*.

***Definitions.*** The title of Article II which continued to be the only Article with its title still in square brackets was modified to become [*Definitions [And Criteria]*]. The language in Article II was reworked although many of the terms continue to be in square brackets reflecting the divergent views on whether or not such terms **need** to be defined for the Protocol. In Annex A *Declarations I Lists and Criteria (Agents and Toxins)* alternative language is provided for some new introductory paragraphs which address the review of the lists of agents and toxins by the Executive Council. The lists of agents are now preceded by a new paragraph which usefully states that *pathogens causing zoonotic diseases appearing in one section of the list shall also apply to other sections*. The human pathogens list has been modified with *Burkholderia (Pseudomonas) pseudomallei* and *Rickettsia rickettsii* emerging from square brackets, four toxins being dropped from the list and the trichothecene mycotoxins being put into square

brackets. In the animal pathogens list, African swine fever virus has emerged from square brackets whilst a new pathogen, Nipah virus, has been added in square brackets. The plant pathogens list has seen two pathogens, *Tilletia indica* and *Xanthomonas albilineans*, emerge from square brackets with two animal pathogens being dropped from the list. Annex A *Declarations II List of Equipment* has seen some removal of square brackets and tidying up and streamlining of the text. Additional tighter criteria have been added in square brackets in a number of cases.

***BTWC Article X Measures.*** Particular progress was made on Article VII of the Protocol at the June/July 1999 meeting. There was a streamlining and development of the text together with the removal of square brackets throughout much of the Article. (A) *General Provisions* and (B) *Measures to Promote Scientific and Technological Exchange* saw useful progress. Following an Italian WP. 383 advocating the potential role of ICGEB, there has been the insertion, in square brackets, in virtually every clause of a reference to ICGEB. In (D) *Institutional Mechanisms for International Cooperation and Protocol Implementation Assistance [and its Review]*, additional language from a Swiss WP. 388 addressing the establishment by the Executive Council and the functions of what is called a *Scientific and Technical Cooperation Committee*, which is clearly an alternative name for the earlier "Cooperation Committee), has been incorporated. In Section (E) *Cooperative Relationships with other International Organizations and among States Parties* the title has emerged from square brackets and progress has been made in the language with the removal of square brackets and the streamlining of the text. Section [(F) *Safeguards and Limitations* was reduced from six to two paragraphs. It is clear that the negotiators are engaged on Article VII and progress is indeed being made.

***Organization/Implementational Aspects.*** There was streamlining of the text in Article IX. Progress was made on the composition of the Executive Council with the options reduced to three relating to Asia -- whether the area is to be called "Asia", "East Asia and the Pacific" or "West and South Asia". The final section on (E) *Privileges and Immunities* was reordered and streamlined.

***National Implementation and Assistance.*** There was streamlining and removal of square brackets in Article VI on Assistance and Protection. In Article X on National Implementation Measures the start of the second sentence which had been [*In particular, it shall:* became much more complex [*In particular,*][*it[shall][may][where appropriate and necessary]*]: indicating a surprising, given the OPCW experience, lack of agreement on the status of the obligations to implement the Protocol nationally.

***Confidentiality.*** Article IV saw removal of further square brackets and streamlining. Likewise Annex E also saw the removal of square brackets from a number of paragraphs.

***Legal Issues.*** There was again some progress with the removal of square brackets from some of the text. In Article XX *Entry into Force* a second option was added to the previously bracketed option for a simple numerical formula for entry into force which was elaborated in July to language for entry into force 180 days after the deposit of the 50th instrument of ratification. The second option is for entry into force 180 days after the deposit of instruments of ratification by [45][75] States, including the Governments of the Depositaries of the Convention.

***Seat of Organization.*** The Friend of the Chair produced a revised draft questionnaire which is included as the final section of Part II of the procedural report.

**Preamble.** Progress was made with consideration of the first 16 paragraphs which emerged from an overall square bracket so that some are now within individual square brackets whilst the first and sixteenth paragraphs emerged from square brackets.

## Prospects

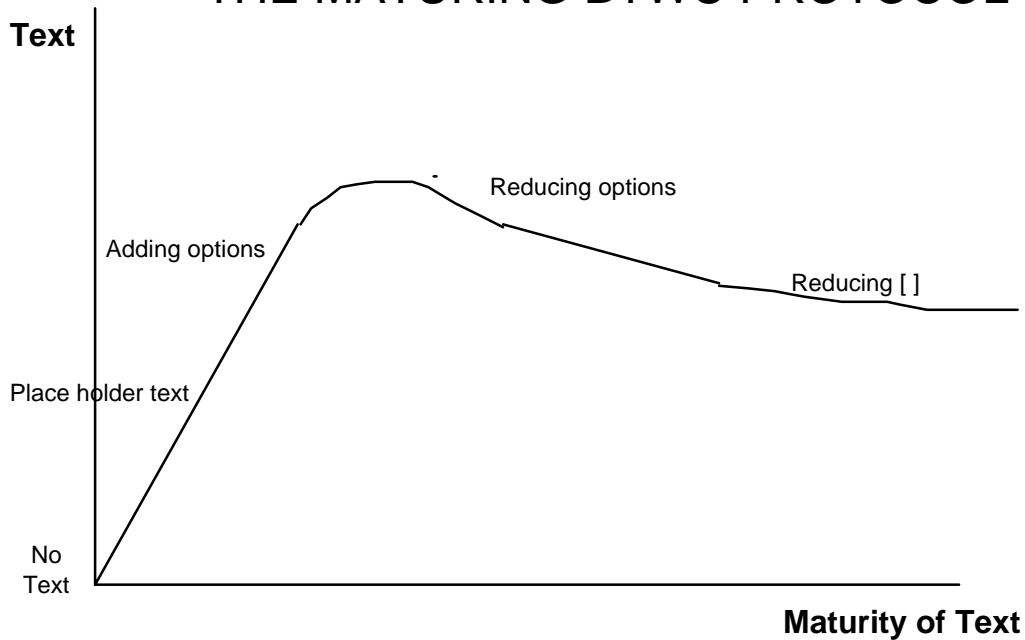
The June/July meeting also saw the agreement of the programme of work for the four week sixteenth session to be held on 13 September to 8 October 1999. The 40 meetings were allocated as follows:

Compliance measures	13	Preamble	1
Investigations annex	6	Legal issues	0.67
Article X	8	National implementation	0.67
Definitions	9	Organization	0.33
Confidentiality	0.67	General Provisions	0.67
		Total	40

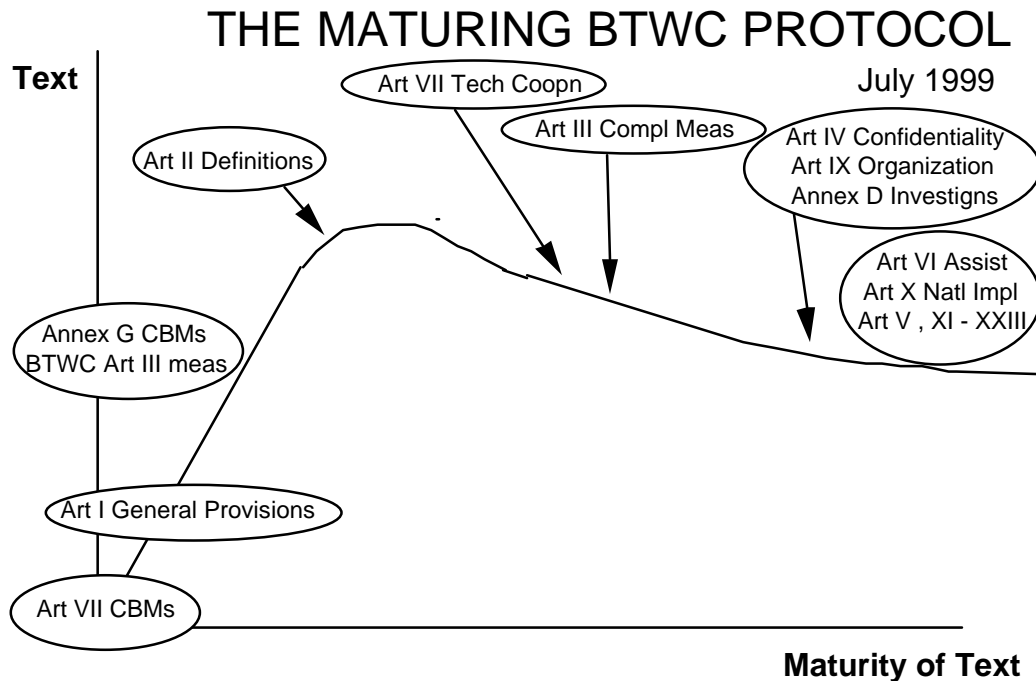
Overall, the June/July meeting saw further progress in the areas of the draft Protocol addressed in the meeting with particular progress being made in Article VII. In most areas of the Protocol, the FOCs have had three or four complete readings of the part of the rolling text for which they have responsibility. The last six months has seen the engagement of all delegations in serious negotiation. It is evident that the language for 18 of the 23 Articles is now very well developed. The other five are Articles I General Provisions, II Definitions, III Compliance Measures, VII Scientific and Technical Cooperation, and VIII Confidence-Building Measures. Article VII is making excellent progress as is Article III Compliance Measures which comprises with its Annexes well over 100 pages and therefore presents the major task facing the AHG. Nevertheless, all the essential elements for an effective regime are there. Article II on [Definitions] is the only Article with its title in square brackets and much time and energy is devoted to arguments about the potential implications of definitions on the Convention. The AHG need to focus their attention on the definitions **needed** to ensure that the measures such as declarations in the Protocol are unambiguous and hence that the information provided to the future BTWC Organization is comparable.

The development of the Protocol can be shown graphically by first considering the phases through which the text for the individual Articles and the Annexes proceed as they mature. This is shown below:

## THE MATURING BTWC PROTOCOL



The actual development of the various elements of the Protocol can then be shown against this illustration.



This shows that a great deal has already been achieved especially in respect of Article VI Assistance, Article X National Implementation and the various legal issues Articles V and XI through XXIII. The Articles on Confidentiality (IV), Organization (IX) and the Annex D on Investigations are also well advanced. Good progress is being made on Article III Compliance Measures and, in the last three sessions, on Article VII Technical Cooperation. Overall, an effective Protocol can be achieved within the next 12 months.

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