

## Strengthening the Biological and Toxin Weapons Convention

Two three week sessions, the seventeenth and eighteenth, of the Ad Hoc Group (AHG) to consider a legally binding instrument to strengthen the Biological and Toxin Weapons Convention (BWC) were held in Geneva from Monday 22 November to Friday 10 December 1999 and from Monday 17 January to Friday 4 February 2000. As in the previous sessions, negotiations focused on the rolling text of the Protocol.

**Seventeenth AHG Session** In the November/December session, 54 states parties and 1 signatory state participated; a net total of 2 fewer states parties than in September/October as 1 (Iraq) participated in November/December whilst 3 (Guatemala, Kuwait and Luxembourg) which had participated in September/October did not in November/December. One fewer signatory state (Nepal) participated in November/December.

The sharp reduction in the number of new Working Papers continued — to 3 in November/December from 11 in September/October and 31 in June/July. The 3 WP (WP.408 to WP.410) were presented by single states. This continued reduction shows that everything that is needed is *already* in the draft Protocol and there is no need for additional Working Papers to add additional ideas or alternative language.

As the November/December session finished on 10 December and the January/February session started on 17 January, there was, because of the annual break, insufficient time for a complete update of the Protocol to be produced, translated into all the UN languages and circulated prior to the latter session. Consequently, the outcome of the November/December session was issued as a procedural report (BWC/AD HOC GROUP/49) together with three Addenda. Addenda 1 and 2 reported the outcome of the various discussions held by the various Friends of the Chair and Addendum 3 (Annex IV) provided text prepared by the Friends of the Chair of proposals for further consideration showing how the draft Protocol text might be taken forward. As in September/October, Annex IV (Part II text) reflected the structure of the Protocol with Friend of the Chair proposed language for the Articles, Annexes and Appendices of the Protocol.

The November/December session focused on compliance measures (8 meetings), definitions and objective criteria (4 1/3 meetings), Article X measures (4 1/3 meetings) and investigations (4 meetings) with one meeting on organization/implementation arrangements and 2/3 meeting on the preamble. The balance of the session was devoted to conceptual discussions on specific issues aimed at achieving further progress. In addition, a number of informal consultations were held to discuss issues prior to their consideration at formal meetings.

The AHG meeting as usual saw the presentation and distribution on 25 November 1999 by the Department of

Peace Studies at the University of Bradford of a further two Briefing Papers in its series: No 26 *Visits: An Essential Portfolio* and No 27 *The Emerging Protocol: A Quantified Evaluation of the Regime* as well as a further four in its series of Evaluation Papers: No 8 *Article V: Measures to Redress a Situation and to Ensure Compliance*, No 9 *Article XI: Relationship of the Protocol to the BTWC and Other International Agreements*, No 10 *Article XII: Settlement of Disputes*, No 11 *Article XIII: Review of the Protocol* (all are available at <http://www.brad.ac.uk/acad/sbtwc>).

**Eighteenth AHG Session** In the January/February 2000 session, 52 states parties and 1 signatory state participated; a net total of two fewer state parties than in November/December as 1 state (Albania) participated in January/February whilst 3 states (Ireland, Singapore and Viet Nam) which had participated in November/December did not in January/February. The same single signatory state (Morocco) participated in January/February 2000 as in November/December 1999.

The sharp reduction in the number of new Working Papers was continued with only 2 being submitted in this session (WP.411 & 412) presented by single states.

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

The January/February session spent most time on compliance measures (6 1/3 meetings), Article X measures (5 meetings), definitions and objective criteria (4 meetings) and investigations (4 meetings) with between 1/3 and 1 1/2 meetings on the other topics. Four meetings were devoted to informal consultations on declarations, on compliance measures and on declaration formats. In addition, a number of informal consultations were held to discuss issues prior to their consideration at formal meetings.

The January/February session saw various NGO activities. On 19 January, there was a lunchtime seminar at which further progress was reported with regard to the Alliance Against Infectious Diseases in which a representative of the WHO spoke. On 21 January, in Paris, the Fondation pour la Recherche Stratégique organized a

conference entitled *Biological Proliferation: Evaluation and Responses* in which over 70 individuals participated including the Chairman of the AHG and several of the Friends of the Chair. A number of panels addressed a range of topics:

- Biological weapons and threat evaluation;
- What response to biological proliferation: disarmament or non-proliferation?;
- Validity of the concept of verification: Looking towards an adequate and effective Protocol;
- Industry and setting up a system of control; and
- Epidemiological surveillance: Possible synergies between disarmament and development.

The Conference concluded with a presentation by Ambassador Tibor Tóth who pointed out that the draft Protocol already had 60 per cent fewer square brackets proportionally than had the CTBT text some 3.5 months before the CTBT negotiation had been completed. Consequently, a Protocol could be completed this year. He urged that the negotiators undertake more joint effort to successfully conclude the work on the Protocol.

On 27 January, the Department of Peace Studies at the University of Bradford presented and distributed a further Briefing Paper in its series: No 28 *The BTWC Protocol: Improving the Implementation of Article III of the Convention* together with three Evaluation Papers No 12 *Article XIV: Amendments*, No 13 *Article VI: Assistance and Protection Against Biological and Toxin Weapons*, No 14 *Article IX: The Organization* (all are available at <http://www.brad.ac.uk/acad/sbtwc>).

### **Political Developments**

On the opening day of the November/December session, Finland on behalf of the European Union and the eight Central and Eastern European countries associated with the European Union and the two associated countries made a statement saying that:

The EU continues to believe that...urgent completion of all stages of the negotiations is imperative so as to ensure the adoption of the Protocol by a Special Conference in 2000.

The statement went on to say:

The elements essential for an effective Protocol are already well-developed in the text in front of us.

After emphasizing the necessity for annual declarations, for the follow-up of declarations in the form of visits, appropriate clarification procedures, provisions for rapid and effective investigations and measures to further international cooperation and exchanges in the field of biotechnology, the statement says that the EU is ready to support initiatives that will provide catalysts for the final stages of the work of the AHG realistically noting that:

All of us must accept that not all shades of opinion or ideas can be accommodated.

It concludes by noting:

It is in all our interests to conclude these negotiations as soon as possible with a Protocol which is a meaningful addition to international arms control, disarmament and non-proliferation efforts.

During the January/February session, the Netherlands Foreign Ministry held a seminar in The Hague at the Netherlands Institute of International Relations, Clingendael during the weekend of 29–30 January 2000 entitled *Strengthening the BTWC: A Seminar on the Recruitment, Training and Operation of the Future Inspectorate*. An informative visit to the OPCW was included in the programme. The seminar was attended by 63 participants, almost entirely from the delegations of 37 states parties engaged in the AHG negotiations. The aim of the seminar was to draw practical conclusions from the experience of organizations in related fields (such as the IAEA and OPCW) which could be used in the final stages of the negotiation of the Protocol and in the early implementation phases of the Protocol. The presentations and discussions were informed and particularly valuable as all participants were fully aware of the detailed provisions in the draft Protocol.

At the beginning of the final week of the session, on 31 January, Federal Councillor Joseph Deiss, Head of the Federal Department of Foreign Affairs of Switzerland made a statement to the AHG in which he said that:

the possibility that the two great scourges of humanity — war and epidemic — might be used in combination remains a great concern. We must prevent life sciences being used against life

and went on to elaborate on what were seen as the minimum requirements for the Protocol. He then went on to set out the many advantages that Switzerland saw in establishing the new organization in Geneva including an offer that:

Adequate premises will be made available for a period of five years free of charge.

Further details of the Swiss offer were promised in the formal bid to submitted to the AHG at an appropriate moment.

### **The Emerging Regime**

The AHG meetings during the November/December session focused on a limited range of issues owing to the decision, noted earlier, not to produce a complete revised Protocol text before the January/February session. Most of the available time was devoted to definitions, compliance measures, Article X measures, and investigations. One meeting was devoted to organization/implementation arrangements and 2/3 of a meeting to the preamble. Useful progress was made with the removal of square brackets and the tidying up of the text in some areas.

A particular outcome of the November/December session was the agreement on the dates for sessions to be held in 2000 as follows:

- Eighteenth session — 17 January to 4 February
- Nineteenth session — 13 to 31 March
- Twentieth session — 10 July to 4 August
- Twenty-first session — 13 to 24 November

In addition, the AHG agreed:

to reserve two periods of two weeks each in the latter part of 2000, namely, from 25 September to 6 October and from 27 November to 8 December. The Ad Hoc Group would decide by the end of the twentieth session (10 July to 4

August) on whether, and in which of the reserved periods, a session would be convened.

Consequently, the AHG in 2000 will have four sessions together with one or two more further sessions.

All sections of the Protocol were addressed during the January/February session with most time being spent on compliance measures, investigations, Article X measures and definitions and objective criteria. In respect of compliance measures, particular attention has been paid to Article III. D. Declarations which has seen a reduction of 25 per cent in the number of remaining square brackets. Declaration formats have also made a significant step forward with language in Appendix C for a single declaration format for a declared facility in which any facility would be required to provide information detailed in sections A and B and, according to the trigger involved, certain information detailed in section C. This information largely requires responses to Yes/No questions or the checking of one of a number of options thereby simplifying the provision of the required information.

Article VII of the Protocol which addresses *Scientific and Technical Exchange for Peaceful Purposes and Technical Cooperation* has developed significantly and now comprises some 12 pages. Good progress has been made with a reduction of by one third in the number of remaining square brackets. A particular step forward came with the removal from square brackets of the provisions for the establishment of a Cooperation Committee as a forum for consultation aimed at promoting the effective and full implementation among the States Parties to the Protocol of the provisions of Article X of the Convention.

Insofar as definitions and objective criteria are concerned, this has long been a contentious subject. However, even here, progress is being made with a reduction of 20 per cent in the number of square brackets. There is greater appreciation between delegations of the arguments for certain definitions and mutually acceptable compromises are being explored.

### **Detailed Developments**

In this Progress in Geneva, attention is focused on the developments in the Protocol issued in February 2000 (BWC/AD HOC GROUP/50 (Part I) compared to that issued in October 1999 (BWC/AD HOC GROUP/47 (Part I)). The distribution of the meetings in the November/December and the January/February sessions shows that most attention was paid to compliance measures, definitions, Article X measures and to investigations with about one meeting apiece to the other subjects.

**Compliance Measures** The two sessions under review saw further development of both Article III *Compliance Measures* and progress in the declaration formats, notably in Appendix C *Facilities*. In Section *D Declarations I Submission of Declarations* there was a reordering of paragraphs and extended language relating to facilities located on the territory of one state party but under the jurisdiction of another state which is either not a party to the Protocol or is a party. A new section of Article III entitled *[(H) Additional Provisions* provides a more clearly

elaborated statement on such responsibilities in regard to declarations, visits and investigations. Within the main body of *I. Submission of Declarations*, progress was achieved with the removal of another category of declarations (*G) Work with Listed Agents and Toxins* from within square brackets. A further declaration category, within square brackets, was added *[(F) Plant Pathogen Containment]* under which states parties would be required to declare any laboratory or building:

specifically designed and used to handle and work with plant pathogens and pests that are of economic importance to a specific area endangered thereby, and not yet present there, or present but not widely distributed and which are also being controlled by official regulatory measures.

One category of initial declarations *[(B) National Legislation and Regulations* has been moved into the Notifications section. Language within this section has also seen a cleaning up of the text and removal of some square brackets. Overall there has been a reduction of close to one third in the number of square brackets in *D Declarations I Submission of Declarations*

In Section *[(II. Follow-up after Submission of Declarations)]* the text has been further developed with the removal of alternatives and a cleaning up of the text by the removal of square brackets. Text relating to the selection of facilities for visits continues to emerge from square brackets with language now requiring the selection mechanism to ensure that:

- (a) Such visits shall be spread among the [broadest possible range of][two types of] facilities subject to the provisions of this section, in terms of their scientific and technical characteristics;
- [(b) Such visits shall be selected on the basis of proportionality;]
- (c) No State Party shall receive more than ... such visits in a five year period;
- (d) No facility shall be subject to more than ... such visits in a five year period;
- (e) No State Party shall receive more than ... such visit per year;
- [(f) Such visits are distributed as widely and equitably as possible among States Parties submitting declarations;]
- (g) The prediction of when any particular facility will be subjected to such a visit shall be precluded.

Much of the language within the body of section II is also emerging from square brackets although the question of whether visits should be to all declared facilities or just to two types, biodefence and BL-4, as proposed by the NAM has yet to be resolved. It is also encouraging that the United States appears to be moving towards an acceptance of transparency visits although still having concerns about some of the details. Text for *(B) Declaration Clarification Procedures* and for *(C) Voluntary Assistance Visits* are also being developed with clean text emerging. Overall, there has been a reduction of about one-third in the number of square brackets in Section II.

Section *[F. [Measures to Strengthen the Implementation of Article III]]* although still within square brackets throughout has been developed from two to over three pages indicating that the AHG is turning its attention to one of the more controversial elements of the Protocol, the

provisions relating to transfers of dual-use microbial and other biological agents, toxins and equipment.

The Protocol regime on transfers has not yet developed to reach a parallel to that brought about within the 1993 Chemical Weapons Convention (CWC). Under the CWC, the requirements concerning transfers within states parties, to other states parties and to states not party to the CWC are different depending on whether the chemicals concerned belong to Schedule 1, 2 or 3, as defined within the Convention. For example, transfers to non-states parties of Schedule 1 chemicals, which are covered by the most stringent controls, were banned upon the entry into force of the CWC on 29 April 1997. Transfers to non-states parties of Schedule 2 chemicals are prohibited from three years after entry into force, i.e., 29 April 2000 — a current focus of attention in that Convention's organization, the OPCW. The text within the draft Protocol has some similar elements the CWC regime.

**Investigations** The language in Article III section *G Investigations* and *Annex D Investigations* continues to develop with further square brackets being removed. The number removed in *G Investigations* is close to one-third. The provisions in Annex D for the analysis of samples from field investigations usefully states:

when off-site analysis is to be performed, samples shall be analysed in two designated and certified laboratories [in different States Parties].

The corresponding provisions for analysis of samples from facility investigations is still within square brackets stating:

when off-site analysis is to be performed, samples shall be analysed in [a][at least two] designated and certified laborator[y][ies].

In the event of an investigation, it is important to recognize the importance of analyses being carried out blind in duplicate in two designated and certified laboratories thereby reducing the risk of ambiguous results.

**Definitions** Although the basic divergence of view continues between those who oppose any attempt to define terms such as “biological and toxin weapons” which might well result in an unwanted reinterpretation of the basic Convention and those who recognise the need to define terms such as “vaccine” and “perimeter” that are necessary for an effective Protocol with uniform obligations on all States Parties, there has been some progress in respect of both *Article II Definitions* and *Annex A Declarations I Lists and Criteria (Agents and Toxins)* and *II List of Equipment*. The opening paragraph of the lists and criteria in Annex A has started to emerge from square brackets as a clearer view is reached of the purpose of this list:

1. The list of agents and toxins following below is for use with [specific measures in particular] Article III, section D, subsection I, paragraphs ... [and section F]. [In accordance with Article XI, this list shall not be interpreted as in any way modifying or amending the Convention.]

Insofar as the lists of agents themselves are concerned, the lists of human viruses and rickettsiae and the list of toxins are now entirely free from square brackets. The list of human bacteria still has square brackets around *Brucella*

*abortus* and *suis* whilst the lists of animal and plant pathogens are largely still within square brackets with in both lists, only two pathogens out of square brackets. The text for the List of Equipment continues to include several questions intended to be a component of the reporting format. The numbers of square brackets in the list of agents and in the list of equipment have been reduced by over one-third.

**BWC Article X Measures** Article VII has made good progress with both streamlining of the text and removal of square brackets. Section (A) *General Provisions* is now out of square brackets apart from three remaining pairs. Section (B) *Measures to Promote Scientific and Technical Exchanges* is also almost clear of square brackets apart from square brackets around any references to biodefence as there is a view that biodefence has no place in a Protocol Article addressing the implementation of Article X of the BWC. Biodefence is appropriate in Article VI *Assistance and Protection against Biological and Toxin Weapons*.

Section (D) *Institutional Mechanisms for International Cooperation and Protocol Implementation Assistance* has also developed with the Cooperation Committee emerging from square brackets and much of the section having paragraphs clear of square brackets although there are still paragraphs and subparagraphs within overall square brackets. A new Section (E) *[Implementation Follow-Up] [Review of Implementation of Article X of the Convention and This Article]* has appeared with text that is largely free from square brackets. Section (F) *Cooperative Relationships with other International Organizations and among States Parties* in its opening paragraph has lost the reference, which had been in square brackets, to non-governmental organizations which now appears in a separate paragraph within square brackets stating that the:

Conference of the States Parties may consider and decide on possible ad hoc relationships with relevant non-governmental organizations.

The final section of Article VII, section (H) *Declarations* and the related *Appendix E Information to be Provided in the Declarations Required under paragraphs ... of Article VII* has completely emerged from square brackets with the exception of a single paragraph stating:

each State Party shall have the right to declare any restrictions on the transfer of biological materials and technology for peaceful purposes.

The number of square brackets in Article VII has been reduced by one-third.

**Preamble** This has also progressed even though at 29 paragraphs, it is far longer than the Preamble of the BWC (10 paragraphs) or of the CWC (10 paragraphs). Eight paragraphs are completely clear of square brackets and a further 6 paragraphs are out of overall square brackets although with square brackets within them.

**General Provisions** The Friend of the Chair for Article I was appointed during the September/October 1999 session. This Article now has eight paragraphs, all within square brackets. The key issue that is whether Article I of the

Protocol should contain prohibitions additional to those in the Convention and whether any such additional prohibitions would be outside the mandate of the AHG.

**Confidentiality Provisions** Article IV and the associated Annex E are both largely out of square brackets.

**Organization** The number of square brackets in Article IX *The Organization* was further reduced by one-third. Language relating to the Cooperation Committee and to the Scientific Advisory Board emerged from square brackets.

**National Implementation Measures** Article X is now largely clean with the requirement to enact penal legislation having emerged from square brackets.

**Prospects**

The January/February session also saw the agreement of the programme of work for the three week nineteenth session to be held on 13 to 31 March 2000. The 28 meetings were allocated as follows:

Compliance measures	5.50
Investigations	4
Article X	4
Definitions	4
Preamble	1
Ad Hoc Group	2.50
Informal	3
General Provisions	1
Organization	1
Legal Issues	0.83
National Implementation	0.50
Confidentiality	0.33
<u>Seat of Organization</u>	<u>0.33</u>
Total	28

The March session began on Monday 13 with a statement by Portugal on behalf of the European Union noting that the current session of the AHG marked the 25th anniversary of the entry into force of the BWC and stating:

the EU believes the most appropriate manner in which to mark this anniversary year would be the early and successful conclusion of the negotiations on a Protocol to strengthen the implementation of the Convention.

The statement sets out the crucial elements of the Protocol regime including a paragraph that:

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

As language in the Protocol for measures to improve the implementation of Article III of the Convention has been thus far little developed, the EU statement suggests that progress can be made in this area in the current session.

The November/December and January/February sessions have seen further steady progress with an overall reduction of 25 per cent in the total number of square brackets in the Protocol. Particular progress has been made in regard to compliance measures and to Article X measures. There is also real engagement between the delegations who are addressing how to find solutions to the differences of views which augurs well for the future. There is little doubt that the Ad Hoc Group is in the endgame of the Protocol negotiations.

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*This review was written by Graham S Pearson, HSP Advisory Board*

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**News Chronology**

**November 1999 through January 2000**

*What follows is taken from issue 47 of the Harvard Sussex Program CBW Chronicle, which provides a fuller coverage of events during the period under report here and also identifies the sources of information used for each record. All such sources are held in hard copy in the Sussex Harvard Information Bank, which is open to visitors by prior arrangement. For access to the CBW Chronicle or to the electronic CBW Events Database from which it is derived, please apply to its compiler, Julian Perry Robinson.*

**1 November** In South Korea, the Ministry of Defence has just announced that the 600,000 soldiers of the country's army are to be vaccinated against anthrax and smallpox [see also 1 Oct], so *Der Spiegel* reports.

**1 November** In Pretoria High Court the Basson trial [see 29 Oct] continues. The following report and commentary on the day's proceedings has been provided from the Chemical and Biological Warfare Project of the Centre for Conflict Resolution, an independent institute associated with the University of Cape Town:

"Jerry Brandt, the first of the State's secret witnesses [testifies today]. Brandt was the managing director of

Organochem, the front company responsible for procurement for Delta G Scientific. Brandt was tasked by Basson to procure the formula for the manufacture of Ecstasy. All substances supplied to Delta G by Brand for making Ecstasy were delivered to a basement room at Medchem's offices in Centurion during 1992. Brandt spoke at length about the relationship between Basson and Solly Pienaar [see 29 Oct]. He claimed that Pienaar was a friend of Nelson Mandela, Graça Machel and Joachim Chissano. He spoke of a trip undertaken by Pienaar, Basson and himself to establish a bank in Mozambique.

"As the trial progresses it becomes increasingly clear that Basson was involved in a number of business deals through a