

The apparent resolution of two major unresolved issues (costs of verification and a Schedule Two model facility agreement) during the period under review has given some extra momentum to the consideration of the remaining unresolved issues. Much attention will now focus, in particular, on the negotiation of a model facility agreement for Schedule One facilities.

Unresolved issues relating to Articles X and XI are often highly political and therefore finding consensus has proved difficult in the past. However, a new facilitator has been appointed, who has launched into consultations with states parties. Of immediate importance, is the agreement of guidelines on the submission of information on national protection programmes under Article X.4.

As reported in the last quarterly review, there are several unresolved issues relating to the chemical industry. In addition to the issues of low concentrations and AND, aspects of which are already being addressed by the Executive Council, the Committee of the Whole also has responsibility for facilitating the resolution of issues relating to the production of unscheduled discrete organic chemicals. The present facilitator is leaving The Hague, and has recently submitted his final report on the issues assigned to him.

Another round of consultations on the subject of the usability of OCW have been scheduled by the facilitator for later in September. A resolution of this issue is also particularly important as the Technical Secretariat has already undertaken 19 inspections of OCW facilities and, as reported in the previous quarterly review, the lack of a resolution could have budgetary implications for states parties.

In the time before the twelfth session of the Executive Council the Committee of the Whole is scheduled to meet twice, on 30 September and 5 October, in order to survey the progress of the facilitators. Any draft decisions which may have been prepared in informal consultations will be forwarded to the Council for immediate implementation and later confirmation by the third session of the CSP. At the third session of the CSP issues which have been resolved will be removed from the list of unresolved issues. A decision will also have to be taken on future arrangements for addressing any remaining unresolved issues. If the issues continue to remain unresolved they will not only impact on the practical implementation of the Convention, but might also undermine the Organization's credibility.

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Progress in Geneva

Quarterly Review no 4

Strengthening the Biological and Toxin Weapons Convention

A three week meeting, the eleventh session, of the Ad Hoc Group to consider a legally binding instrument, or protocol, to strengthen the Biological and Toxin Weapons Convention (BWC) was held in Geneva from 22 June to 10 July. As in the previous three-week sessions, negotiations focused on the rolling text of the Protocol.

Fifty states parties and 2 signatory states participated at the eleventh session; a net total of one more state party than in March 1998 as 3 States (Iraq, Peru and Sri Lanka) participated in June/July 1998 whilst 2 states (Mauritius and Slovenia) which had participated in the one-week session in March did not in June/July. One signatory state (Morocco) which had participated in March did not in June/July.

Twenty-two new Working Papers (WP. 275 to WP. 296) were presented in June/July 1998, some 11 less than in the previous three week meeting in January 1998. As usual these were presented both by states parties (South Africa 5, United Kingdom 4, Russia 3, United States 2, China 1, and a group of States Parties 1) and by the Friends of the Chair (4) or the Chairman (2).

Further progress was made in the June/July meeting with clear signs of engagement by all participants with serious negotiations seeking to resolve language currently within square brackets. A revised version of the Protocol was produced and attached to the procedural report of the June/July meeting (BWC/AD HOC GROUP/41, August 1998). This was thus the fifth version of the rolling text — previous versions having been produced in June 1997 (BWC/AD

HOC GROUP/35), July 1997 (36), October 1997 (38) and February 1998 (39). Although this was the longest version so far produced comprising 251 pages (with previous versions having totalled 113, 167, 241, and 241 pages), there was a clear sense that the AHG has turned the corner from adding reams of new text to reducing down and focusing on key issues. There was also evidence that text is now being consolidated and developed with a move towards production by the Friends of the Chair of clean texts in which language without square brackets was being prepared. An indication of this is provided by the working paper (WP.293) prepared by the Friend of the Chair on the Investigations Annex which noted that the Ad Hoc Group had concluded three readings of the General Provisions part of that Annex and that were only a few issues which could be identified as fundamental. The working paper proposes language changes to address those issues which could be resolved at this stage of the negotiations and thus moves forward this section of the Protocol towards a clean text with square brackets around the more fundamental issues. This shows a welcome step forward in a process that should lead to clean texts prepared by the Friends of the Chair which after a couple of readings could in turn lead to the preparation of a clean text prepared by the Chairman and thus to the final agreed text of the Protocol.

Of the 28 meetings held, 6 were devoted to compliance measures, 4.5 to Article X measures, 6 to definitions, 1.5 meetings to legal issues, 5 to the investigations Annex, 2 to

organization/implementational arrangements, 2 to confidentiality and 1 to national implementation and assistance. There was no change in the Friends of the Chair who were the same as in January and March 1998; the Chairman, Ambassador Tibor Toth, acted as Friend of the Chair for organization/implementational issues.

The AHG meeting also saw various NGO meetings at which briefings were given for the AHG delegations. The Federation of American Scientists had two presentations — one on the cost and structure of a BWC Organization which provided a spreadsheet model enabling costs of various options to be estimated using a baseline organization of 236 staff and costing \$30 million a year and the other on the development by the WHO of a network of early warning sites (NEWS) for monitoring emerging infectious diseases which might be supported by the states parties to the BWC. The University of Bradford Department of Peace Studies presented and distributed copies of a further four Briefing Papers [see *News Chronology*, 2 July, Geneva].

There was much uncertainty during the June/July AHG meeting about the precise dates for the Sept/Oct AHG because the UN General Assembly (UNGA) has decided to bring forward the date of its meeting by a week. This meant that much political and diplomatic capital had to be spent in addressing when the next AHG should be. The three alternatives were four weeks starting a week earlier than originally planned (on 14 September), four weeks in November/December after the UNGA and two weeks before and two weeks after the UNGA. The decision on this went, as always, right to the wire with agreement being reached on the last day, 10 July, of the AHG that their next meeting would be for four weeks starting 14 September ending 9 October. Further progress in developing and removing square brackets from the Protocol text can be expected at that meeting.

Away from Geneva there have been further political developments including statements by world leaders recognizing the importance of the early strengthening of the BWC, notably the G-8 foreign ministers [see *News Chronology* 8–9 May], the Non-Aligned Movement foreign ministers [19–20 May], President Clinton [22 May], and from the US–China summit [27 June] and the US–Russia summit of 2 September urging completion at the earliest possible date.

The Eleventh Session of the AHG

The opening day saw an address by UK Foreign Minister Tony Lloyd speaking on behalf of the EU entitled “Time to Accept the Realities of the Control of Biological Weapons” which stressed that the reality is that such a regime can be achieved. The minister went on to urge that the impetus towards the early and successful conclusion of the negotiations should be sustained. He noted:

the great importance attached by many Delegations to the provisions foreseen under Article VII of the Protocol [Measures to implement Article X of the BWC]. I recognise that it will be important to ensure that agreement be reached between the divergent positions on this *crucial* element of the eventual regime. I feel sure that it will be possible to identify measures that will address real needs. [Emphasis added].

That *crucial* echoed the May NAM foreign ministers’ statement. He also offered London as the venue for the eventual signing ceremony of the Protocol at a date which he trusted would not be too distant.

The final day of the AHG meeting, 10 July, saw two political statements. One by Argentina, Brazil, Chile, Colombia, Mexico and Peru as the signatories of the 1991 Mendoza Commitment or of the Cartagena Declaration, stated:

they attach great importance to and remain fully committed to participate constructively in the negotiations of the Ad Hoc Group of States Parties to the BTWC.

They went on to say:

They share the view that efforts should be intensified in order to bring to a satisfactory conclusion, at the earliest possible date, negotiations of a legally binding instrument aimed at strengthening the effectiveness and improving the implementation of the BTWC.

The other statement by some 29 Western and Eastern States (ranging from Argentina to Canada, the Czech Republic, the EU States, Japan and the United States) stated that:

the international community must pursue the early and successful conclusion of the Ad Hoc Group negotiations as a matter of urgency. The above States Parties *reaffirm their commitment to redouble their efforts* in order to achieve this goal. [Emphasis added]

Furthermore, they considered that :

measures to strengthen compliance should include, inter alia, the following elements ...

- Declarations of a range of facilities and activities of potential relevance ...
- Provisions for visits to facilities in order to promote accurate and complete declarations ...
- Provision for rapid and effective investigations into concerns over non-compliance ...
- A cost-effective and independent organisation, including a small permanent staff ...

In addition they reaffirmed their commitment:

to actively promote and engage in international cooperation and exchanges in the field of biotechnology for peaceful purposes under the BWC ... Further, they look forward to the development of specific measures in Article VII of the Protocol to take full advantage of the opportunities for cooperation, which the Protocol will create among its States Parties. Such measures should also address needs for assistance to ensure the protocol’s implementation.

This statement both endorses the central elements of the future Protocol as being declarations, visits, investigations and an independent organization and addresses the concerns understandably expressed by the NAM at the end of the March AHG meeting following the moves taken at that meeting to constrain the scope of Article VII of the draft Protocol. The reference in both the Sino–US Joint Presidential Statement and the statement by 29 States to further accelerating the AHG efforts to complete the negotiation of the Protocol further demonstrates the growing political will to achieve a strengthened BWC.

The Emerging Regime

Compliance Measures The June/July meeting focused on Declarations as well as taking forward the language relating to Investigations.

Declarations Three working papers (by China, South Africa and the UK on behalf of the EU) addressed declarations and declaration formats demonstrating a useful focusing on the detail of a key element of the future regime. The UK/EU paper proposed language for the following declaration triggers — past offensive/defensive programmes, current defensive programmes, vaccine production facilities, maximum biological containment laboratories (BL4), work with listed agents (production, modification, transfer of sequences, aerosolisation), non-vaccine production facilities, and national legislation and regulations — whilst the Chinese paper proposed declaration formats for Appendices A to D (biological defence programmes, biological defence facilities, past offensive/defensive programmes and other triggered facilities) and the South African paper (WP.292) proposed a detailed format for declarations by non biological defence facilities. The latest draft of the Protocol in *Article III Compliance Measures D. Declarations* has incorporated much more detail both on the triggers for declarations and on what should be declared. This elaboration has occurred particularly in respect of past offensive/defensive programmes, vaccine production facilities, maximum biological containment facilities, work with listed agents, non-vaccine production facilities and national legislation and regulations.

Investigations The March meeting had developed replacement language for paragraphs 1 to 19 of *Article III Compliance Measures F Visits and Investigations III Investigations*. The June/July meeting took forward the language of paragraphs 16 to 30 and reordered much of the remaining material of III Investigations.

A working paper by the US issued on the penultimate day of the AHG meeting addressed clarification visits proposing that such visits to declared sites would be initiated by the future Technical Secretariat and visits to undeclared facilities by the future Technical Secretariat or by a state party. The US proposes that clarification visits to undeclared facilities should be reviewed by the Executive Council under “a red light silence procedure”.

Annex D on Investigations As already mentioned, the Friend of the Chair on the Investigations Annex had provided a working paper which noted that the Ad Hoc Group had concluded three readings of the General Provisions part of this Annex and that were only a few issues which could be identified as fundamental: these included the characterization of the Technical Secretariat; Privileges and Immunities; Confidentiality; Access and Conduct of Investigations involving States other than the State Party to be investigated; National Authority; Approved inspection equipment and its accessibility; and how an investigation is to be initiated. The working paper proposes language changes to address those issues which could be resolved at this stage of the negotiations and thus moves forward this

section of the Protocol towards a clean text with square brackets around the more fundamental issues.

The language in *Section II [Field] Investigations [of Alleged Use of BW] (A) Investigation Request* was further developed and reordered and various elements in *(D) Conduct of Investigation* from “visual observation” onwards to the end of Section II have been developed with the removal of most of the previous square brackets. Similar progress towards a clean text has been made in the first two paragraphs of *Section III [Facility Investigations][Investigations of any other breach of obligations under the provisions of the Convention]*.

Definitions The language in Article II Definitions was taken forward by the addition of additional alternative definitions for high biological containment (Biosafety level 3), diagnostic facility, facility, genetic modification, and site). Two introductory paragraphs were introduced onto the previously blank pages dealing with *A. Lists and Criteria (Agents and Toxins)* and *B. List of Equipment in Article III Compliance Measures*.

Likewise in *Annex A Declarations I. Definitions*, the same additional alternative definitions that were added to Article II have also been added to this section. In section II *Lists and Criteria (Agents and Toxins)* of Annex A, the chapeau paragraph preceding the lists of human, animal and plant pathogens has been modified to read:

The following list of human pathogens and toxins was discussed by the Group and recognized to be relevant for developing a list or lists of bacteriological (biological) agents and toxins [for specific measures in particular][for initiating or triggering declarations and to supply information in declaration formats]to strengthen the Convention.

The animal and plant chapeaux have closely similar wording although both include the word “future” in front of “list or lists”. The lists of human, animal and plant pathogens were all developed with the addition of new agents and the removal of some square brackets; thus, for example, the list of human pathogens now includes [Sin Nombre virus], [Hantaan virus] and monkeypox virus, *Brucella abortus*, *melitensis* and *suis* are listed instead of *Brucella* spp. and the list of toxins has been reordered and seven new toxins added.

Section III Lists of Equipment of Annex A had the detailed language added from a UK/EU working paper proposing information on equipment to be provided in declaration formats and relating to 18 types of equipment ranging from aerosol chambers through to cabinets/chambers designed, intended or used for rearing insects; this language now appears within square brackets throughout Section III.

BWC Article X Measures A little progress was made in respect of the language for Article VII of the Protocol with the removal of some square brackets, notably from those previously surrounding the whole of *Section E Cooperative Relationships with Other International Organizations*, the cleaning up of some subparagraphs and the insertion of some new language and some new square brackets. A point of contention related to whether the benefits of these measures to implement Article X of the Con-

vention should be available only to the states parties to the Protocol or to all states parties to the Convention; the general view is that only states parties to the Protocol could benefit from the Protocol. The progress did not yet appear to reflect the political recognition given to the importance of identifying specific measures for Article VII of the Protocol. A working paper by the Friend of the Chair sets out some proposals for moving the language of Article VII forward.

Confidentiality A few changes were made to the language in Article IV. *Annex E Confidentiality Provisions* saw a development of the language and the removal of square brackets in Sections I General principles, II Conditions of staff employment, IV Procedures in case of breaches and V Procedures to protect confidential information.

National Implementation & Assistance The language for both *Article X National Implementation Measures* and for *Article VI Assistance and Protection against Biological and Toxin Weapons* progressed with the removal of several square brackets. None of the paragraphs in Article X are within square brackets and in Article VI the number of paragraphs within square brackets reduced from 7 to 3. The outstanding point of substance in Article X that remains within square brackets is that relating to the requirement for the enactment of penal legislation.

Organization/Implementational Aspects The language in *Article IX The Organization and Implementational Arrangements* was further developed with the removal of some square brackets as well as the reordering of some of the text. Language has been introduced for a new option for the composition of the Executive/Consultative Council which is based on:

States Parties from [Africa, Asia, Eastern Europe, Latin America and Western European and Other States] to be designated by States Parties located in this region. As a basis for designation from ... it is understood that, out of these ... States Parties, ... members shall, as a rule, be the States Parties with the most significant national pharmaceutical and biotechnology in the region as determined by internationally reported and published data; in addition, the regional group shall agree also to take into account other regional factors in designating these ... members.

Prospects

The June/July meeting also saw the agreement of the programme of work for the four week twelfth session to be held on 14 September to 9 October. This made the following allocation of the 40 meetings to the various topics:

Compliance measures	9.5
Legal issues	1
Definitions	7.5
Organization	1
Investigations annex	10
National implementation	1
Article X	6
Ad Hoc Group	2.5
Confidentiality	1.5
<i>Total</i>	<i>40</i>

During the period under review, there have been further meetings at which the importance of the strengthening of the BWC has been emphasised. A conference entitled “Peaceful Uses of Biotechnology and the Convention on Biological Weapons” was held in Trieste on 26–27 June 1998 by the International Centre for Genetic Engineering and Biotechnology (ICGEB) and the Landau Network–Centro Volta (LCNV) with the support of the Italian Ministry of Foreign Affairs. The Conference involved over 70 participants from 25 countries and addressed a wide range of issues relating to the BWC with particular emphasis on the implementation of Article X of the Convention. It became clear that measures can indeed be identified which will both implement Article X and contribute to increasing transparency and building confidence in compliance with the BWC. Such measures could assist states parties in their national implementation of the Protocol, in strengthening national elements of the WHO, FAO and OIE disease surveillance networks and in establishing national health and safety and medicinal product regulatory systems. It was also recognized that in order to achieve universality, States need to perceive that they will receive particular benefits over a long period of time through acceding to the Protocol (and the Convention). A short document of conclusions and recommendations from the Conference was subsequently circulated to the AHG [see pages 4–5, above].

A rather different Conference which addressed broader philosophical and ethical issues rather than issues directly related to the Protocol organised by United Nations Institute for Disarmament Research (UNIDIR) was held in Geneva from 5 to 8 July. This brought together some 39 individuals from some 12 countries to consider a wide range of topics which fell within the title of “Biological Warfare and Disarmament: Problems, Perspectives and Possible Solutions”. A benefit came from bringing together those with disparate views and widely different knowledge of the biological weapons arms control scene — on the one side those concerned with the realities of strengthening the BWC through a legally binding Protocol in the current window of opportunity, and on the other those whose concern was much more philosophical. The significant level of participation from India, Iran and Pakistan provided the greatest benefit of the Conference as it enabled the perceptions and concerns of both the South and the North to be better appreciated and understood. It was heartening in the two sessions related to the strengthening of the BWC through a Protocol to find both South and North advocating an integrated regime based on declarations, on-sites visits, investigations, information sharing, notification of transfers, cooperation and enactment of strong domestic laws to implement the BWC and its Protocol.

The continuing attention being given to the strengthening of the BWC in international meetings is welcomed as it extends the debate about how best to achieve an effective Protocol and underpins the increased political attention being given to achieving this.

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