

## Strengthening the Biological and Toxin Weapons Convention

A four week meeting, the sixteenth 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 13 September to Friday 8 October 1999. As in the previous sessions, negotiations focused on the rolling text of the Protocol.

Fifty-six states parties and two signatory states participated; a net total of one more state party than in June–July as 6 states (Jordan, Guatemala, Libya, Luxembourg, Panama and Venezuela) participated in September–October whilst 5 states (Bangladesh, Iraq, Kenya, Malta and Thailand) which had participated in June–July did not in September–October. A total of 2 fewer signatory states participated in September–October as Nepal participated whilst Egypt, Myanmar and Syria did not.

There was a sharp reduction — from 31 to 11 — in the number of new Working Papers (WP.397 to WP.407) presented in September–October. Three and a half were presented by South Africa, two by Friends of the Chair, two by NAM (Non-Aligned Movement) and other states and the remainder by single states. This reduction is another sign of progress as it indicates that everything needed is *already* in the draft Protocol and there is no requirement to add additional ideas or alternative language.

A new Friend of the Chair, Ambassador Hubert de La Fortelle of France, was appointed to consider General Provisions (Article I of the Protocol) whilst Ambassador Ian Soutar of the UK took over the Friend of the Chair for Compliance Measures from Richard Tauwhare and Antonio de Aguiar Patriota of Brazil took over the Friend of the Chair for Measures related to Article X from Carlos Simas. Another change saw Peter Goosen of South Africa who had previously been Friend of the Chair for the Investigations Annex now becoming Friend of the Chair for Investigations thereby enabling the Friend of the Chair for Compliance Measures to concentrate on Declarations and Declaration Follow-Up Procedures. The move towards more senior representatives — Ambassadors — being the Friend of the Chair is to be welcomed as it emphasises the importance of focusing the negotiations on achieving consensus text.

A revised version of the Protocol was produced and attached to the procedural report of the September–October session (BWC/AD HOC GROUP/47 (Part I), 15 October 1999). This was thus the tenth 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) and July 1999 (#46). This was again shorter (288 pages) than the previous (July) version (with previous versions having totalled 113, 167, 241, 241, 251, 278, 312, 315 and 310 pages

respectively) and there was also significant progress in the removal of square brackets.

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 (~~striking through~~ showing deletions and **bold** proposed new text). As in June–July, the 196 page Part II from the September–October session was structured so that the ~~striking through~~ 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 19 of the 23 Articles — only the Preamble and Articles IV, VI, VIII, X are missing — as well as for Annexes A and D and for Appendices C and E. 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. As the Part II text is a transparent development from the Part I text, it can, and is, used by the Friends of the Chair as the basis for discussion in the subsequent Ad Hoc Group session.

Of the 40 meetings held, 13 1/3 were devoted to compliance measures, 8 1/3 to definitions, 6 2/3 to Article X measures, 5 5/6 to the investigations, 1 to preamble, 2/3 to general provisions, 1/3 to confidentiality, 2/3 to organization/ implementation, 1/2 to national implementation and assistance, 2/3 to legal issues, and the remaining time to AHG meetings. 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. 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 24 September by the Department of Peace Studies at the University of Bradford of a further two Briefing Papers in its series: No 24 *Outbreaks of Disease: Current European Reporting* by Philip van Dalen of TNO, the Netherlands, and No 25 *The Emerging Protocol: An Integrated Reliable and Effective Regime* as well as a further five in its new series of Evaluation Papers No 3 *Articles XVI, XVII, XVIII, XIX and XXIII: Status of the Annexes and Appendices, Signature, Ratification, Accession and Authentic Texts*, No 4 *Article XV: Duration and Withdrawal*, No 5 *Article XX: Entry into Force*, No 6 *Article XXI: Reservations*, and No 7 *Article XXII: Depositary/ies* (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 the overall

effectiveness, reliability and efficiency of the Protocol regime. The Federation of American Scientists (FAS) distributed a further paper entitled "On BWC Protocol Article VII". In addition, presentations entitled "Proposals for Scientific/Technical Cooperation through International Organization" were made on two days from 2 to 3 pm by representatives from the WHO (on 30 September) and from INCLEN (International Clinical Epidemiology Network), Program for Appropriate Technology in Health (PATH) and the International Centre for Genetic Engineering and Biotechnology (ICGEB) (on 1 October). A Pugwash/HSP Workshop entitled "The BWC Protocol: Entering the Endgame" was held during the weekend of 25–26 September 1999 and attended by 51 individuals, in their personal capacity, from 18 states.

**Political Developments** In the March–April 1999 AHG session, Iran had submitted a Working Paper (WP.361) entitled *Lessons to be learned from the OPCW*. The procedural report of the June–July session reported that the AHG had decided to invite the Director-General of the Organization for the Prohibition of Chemical Weapons (OPCW) to address a formal meeting of the AHG about his assessment of experiences and lessons learned in establishment of the OPCW and in particular those relevant to the AHG's endeavour to conclude an effective Protocol.

Consequently, during the first week of the AHG September/October session, on 16 September, Mr Ron Manley, Special Adviser to the OPCW Director-General made a presentation to the AHG entitled "Establishing the OPCW: Experiences and Lessons Learned". In this he addressed a number of key points:

- the growth in membership of the OPCW;
- problems associated with the short timelines after entry into force written into the CWC for provision of declarations (30 days) and the start of inspections (60 days);
- the current status of declarations and inspections;
- planning for challenge inspections;
- assistance under the CWC;
- international cooperation under the CWC; and
- organization of the OPCW

One of the greatest difficulties encountered by the OPCW was the need to have the Organization in operation 180 days after the deposit of the instrument of ratification by the 65th state. The requirement to do this in 180 days also posed problems for the member states who encountered difficulties in enacting and implementing their own legislation and preparing their declarations. Thus at entry into force, the OPCW had 87 member states but had only received initial declarations from 31 of them. This is a continuing problem as at September 1999, the OPCW had 126 member states but had yet to receive initial declarations from 32 of them.

It is evident that the regime of greatest relevance to the BWC Protocol is undoubtedly that of the CWC and consequently there are important lessons to be learnt from the OPCW experience relating to all aspects of the Protocol. Nevertheless, there are differences and the Protocol regime needs to be, and indeed is being, tailored to reflect and address these differences.

## **The Emerging Regime**

It will be recalled that, in the March 1998 AHG session, the language for Article VII of the Protocol entitled Scientific and Technical Exchange for Peaceful Purposes and Technical Cooperation, which addresses the implementation of Article X of the BWC, had been amended by some members of the Western Group in such a way as to imply that this Article was limited to implementation assistance. This had provoked an immediate negative response by the NAM and other countries as implementation of Article X of the BWC has long been regarded by the developing countries as an important element of the work of the AHG. These changes to Article VII of the Protocol were seen as retrograde steps as there had been a failure to recognise that measures can be devised to both aid the implementation of Article X of the Convention *and* directly contribute to the enhancement of transparency and the building of confidence in compliance with the Convention. Furthermore, such Article X measures can also promote trade and serve as a powerful incentive to encourage states to become parties to the Protocol (and to the Convention). A more positive approach was adopted at the June–July 1998 AHG session when the UK Minister, on behalf of the EU, recognised that "it will be important to ensure that agreement is reached between the divergent positions on this crucial element of the eventual regime." and went on to say that "I feel sure that it will be possible to identify measures that will address real needs." The subsequent sessions of the AHG have seen real progress made in the development of Article VII with the active engagement of all the delegations at the AHG. The Netherlands–New Zealand Working Paper WP.362 in March–April addressed BWC Article X measures and offered several options for consideration and by June–July 1999 there was a real sense that Article VII of the Protocol was successfully moving forward.

This sense of positive engagement now appears to have transferred to other areas of the negotiations which had been making slow progress. There has long been considerable debate about what declarations should be made under the Protocol and what declaration follow-up procedures there should be to ensure that declarations are both complete and accurate. The draft Protocol emerging from the June–July session had a new section, which clearly reflected the experience of the OPCW in respect of CWC declarations, entitled *III. Measures to ensure submission of declarations*. These provisions require the Director-General to report to each session of the Conference of the States Parties on the implementation of the declaration obligations and identify a number of punitive measures that might be applied should a state party not submit its initial or annual declarations within the [6] month period following the relevant deadline.

In the July Rolling Text, the follow-up after submission of declarations included provisions, albeit still in square brackets, for infrequent (less than two per state per year) randomly-selected visits to declared sites and for declaration clarification procedures to address any ambiguity, anomaly, or omission in declarations as well as for voluntary visits to obtain technical advice on the

implementation of declarations obligations or to obtain technical assistance under Article VII. Progress was made earlier in 1999 by the inclusion of provision for the infrequent randomly-selected visits to be extended, if so requested by the state being visited, for up to two days in order to address technical advice and cooperation issues. Declaration clarification procedures would initially involve correspondence with the state party which could where necessary be followed up by consultations with the National Authority within the state. If the matter was still unresolved then a clarification visit might be made. Much debate has focused on whether such clarification procedures should be limited to declared sites or should also apply to sites that should have been declared. It is clear that a much stronger regime will result from clarification procedures applying to both declared facilities and to facilities that should have been declared as this will ensure that all states will be subject to comparable obligations.

An important step forward was made in the September–October session through the submission of a NAM and other States working paper (WP.402) entitled *Proposed Text for Visits* which accepted the idea of a package of declaration follow-up procedures that include infrequent randomly-selected visits, declaration clarification procedures comprising a written request which could be followed up, if necessary, by consultations and then, if the matter was still unresolved, by a voluntary clarification visit, and voluntary assistance visits. It is thus apparent that there is broad consensus among the majority of the negotiators for the concept of a package of declaration follow-up procedures including visits to ensure that declarations are both accurate and complete. However, as always, the detail needs further consideration and discussion as there are a number of points in the NAM proposals that require examination to ensure an effective and efficient regime:

- the NAM text proposes infrequent randomly-selected visits to declared facilities **or** limited to biodefence and BL 4 containment facilities;
- the NAM language for declaration clarification procedures makes it clear that these could only be initiated by the Technical Secretariat in respect of an ambiguity, anomaly or omission of a *purely technical* nature;
- the NAM proposal for voluntary clarification visits needs to be examined in regard to the differences between this and the draft Protocol language in which a State Party can decline a proposed clarification visit should the State Party consider that it has made every reasonable effort to resolve the matter; and
- The NAM visits schedule would have a certain number of each of the three types of visits in a year *but* would require the number of randomly-scheduled visits to be *reduced* to accommodate any invitations for additional voluntary assistance or voluntary clarification visits. There is no safeguard in the NAM working paper to prevent the annual number of randomly-selected visits from being reduced to zero should the number of requests for clarification and voluntary assistance visits be increased.

Although these points have yet to be addressed, it is overall very encouraging to see the concept of a package of visits accepted by the majority of the negotiators.

**Detailed Developments** The distribution of the meetings in the September–October session shows that most attention was paid to compliance measures, definitions, BWC Article X measures and to investigations with about one meeting apiece to the other subjects.

**Compliance Measures** The September/October session saw a further development of Article III *Compliance Measures* in a number of areas. In Section *D Declarations I Submission of Declarations* there was a new provision for the Executive Council to periodically review the structure and contents of declaration formats *to ensure the effective implementation and operation of Article III, section D*. Within the main body of *I. Submission of Declarations*, progress was achieved with the removal of three categories of declarations from within square brackets. A further notification requirement, within square brackets, was added [(M) Current Exceeding of Threshold] under which States Parties would be required to notify the Organization should the quantity of any listed agent or toxin which is, or is planned to be, stored at a declared facility is in excess of the threshold quantity. The declaration and notification categories are currently as follows (those removed in September–October from within square brackets are indicated by †):

*Initial Declarations*

- †(A) Past Offensive and/or defensive [programmes] [activities]
- [(B) National legislation and Regulations]

*Annual Declarations*

- †(C) Current Defensive [Programmes][Activities]
- (D) Vaccine Production Facilities
- †(E) Maximum Biological Containment (BL-4 - WHO [and OIE] Classification) Facilities
- [(F) High Biological Containment (BL-3 - WHO [and OIE] Classification) Facilities]
- [(G) Work with Listed Agents and/or Toxins]
- [(H) Other Production Facilities]
- [(I) Other Facilities]
- [(J) Transfers]
- [(K) Declarations on the Implementation of Article X of the Convention]
- [(L) Outbreaks of Disease]
- [(M) Current Exceeding of Threshold]

In Section *[II. Follow-up after Submission of Declarations]* the text has been developed to incorporate the language from WP.402. In addition, there has been a cleaning up of the text by the removal of square brackets and the additions of new material. A particular development has been the deletion of the text in *Annex B [Visits]*, which insofar as substance is concerned has been incorporated into Section *[II. Follow-up after Submission of Declarations]* thereby enabling negotiations to concentrate on a single text without prejudging whether at a later stage some detail on procedures for visits might be placed in an Annex. This section on *Follow-up after Submission of Declarations* has

long been one of the most difficult ones and has been slow to reach a stage at which there is broad agreement about the provisions. Nevertheless, although the heading remains in square brackets, the section itself is no longer in overall square brackets and there is now text that has emerged from square brackets. A new paragraph out of square brackets is entitled *Visit schedule* and states that:

5. The total number of all visits conducted pursuant to this Article shall not exceed [30][75] [140] [...] in each calendar year. At the end of each year, the Director-General shall prepare a visits schedule for the following year which shall make initial provision for [the conduct of ... [randomly-selected visits] [transparency visits], ... voluntary assistance visits and ... [[voluntary] clarification visits]] [two-thirds of the total to be allocated to [randomly-selected visits] [transparency visits] and one-third to be allocated to other visits pursuant to this Article]. The Director-General shall submit the schedule containing the details for voluntary assistance visits and [[voluntary] clarification visits] already known, to the Executive Council at its first session of each year.

Whilst the square brackets indicate that there are still divergent views about the terminology for the different types of visits, the *Visit schedule* and the paragraph itself are out of square brackets.

Within the subsections addressing the different types of visits, the internal language has developed with the removal of square brackets even if the overall section is still within brackets. Section (B) *Declaration Clarification Procedures* has itself emerged from within square brackets. Likewise (C) *Voluntary Assistance Visits* continues outside of square brackets and the purpose of such visits has been simplified to:

- [(a) To obtain relevant technical assistance and information;]
- (b) [To obtain technical assistance and information on the subjects specified in Article VII, paragraphs ..., and, as appropriate,] [to implement the technical cooperation and assistance programmes of the Organization];
- (c) To obtain from the Technical Secretariat technical advice or information on the implementation of the declaration obligations of this Protocol with respect to specific facilities.

Two previous purposes for such voluntary visits have been deleted:

- (c) To resolve an ambiguity, uncertainty, anomaly or omission ... concerning the declaration (s)
- (d) To resolve a specific concern, as provided for in ... section E of this Article on consultation, clarification and cooperation.

These deletions reflect the perception that an ambiguity, uncertainty, anomaly or omission in a declaration should be addressed either through the *Declaration Clarification Procedures* or through section E *Consultation, Clarification and Cooperation*.

The current language relating to declaration clarification procedures is considerably convoluted in respect of *any facility which is believed to meet the criteria for declaration and that facility has not been declared*. Another convoluted area is in new text relating the circumstances under which the Executive Council may review the declaration clarification issue. In this text, there is bracketed language that if the requested state party declines to offer a clarification visit the Executive Council may decide:

- (g) By a [two-thirds][simple] majority of all its members, to initiate a clarification visit.

In other words, a “green” light process in which there is no presumption that the clarification visit will take place — a weaker regime than one with a red light process. In further developments, the duration of a clarification visit will now not exceed two days — the previous provision for an extension of up to 48 hours should this be agreed between the visiting team and the visited state party having been deleted.

This tightening up of the declaration clarification visit provisions reflects the generally much tighter specification of the provisions relating to many aspects of the BWC Protocol than in the comparable CWC regime provisions. This is illustrated in the table below.

However, despite these outstanding issues in the overall area of visits, it is noteworthy that the Protocol text following the September–October session saw a reduction by half in the number of square brackets in the text on visits.

Comparison of limitations on duration and team size for visits under the draft BWC Protocol and routine inspections under the CWC					
Draft BWC Protocol regime			CWC regime		
	Duration	Team size		Duration	Team size
Randomly-selected visit	2 days†	4 max	Schedule 1 chemicals	Not limited	Not limited
Clarification visit	2 days	4 max	Schedule 2 chemicals	96 hours	Not limited
Voluntary assistance visit	As agreed	As agreed	Schedule 3 chemicals	24 hours	Not limited
			Discrete organic chemicals (DOCs)	24 hours	Not limited
† Extension can be agreed between the inspection team and the inspected state party.			Extensions can be agreed between the inspection team and the inspected state party.		

**Consultation, Clarification and Cooperation** Section E has been developed by the addition of further language, which has yet to be discussed by the Ad Hoc Group, relating primarily to a facility that is believed to meet the criteria for declaration yet has not been declared.

**Investigations** The language in Article III section *G Investigations* had been further streamlined with further square brackets being removed. The two principal types of investigation — “field investigations” and “facility investigations” are both out of square brackets; investigations of concerns that transfers have taken place in violation of Article III of the Convention remain in square brackets. In regard to field investigations, the language, now out of square brackets, provides that:

If a State Party has a concern that an outbreak of disease is directly related to activities prohibited by the Convention, it shall have the right to request a [field] investigation to address the non-compliance concern. In accordance with the requirements of [Annex D, section II, paragraphs 1 and 2], such request shall contain detailed evidence, and other information, and analysis *substantiating* why, in its view, it considers the outbreak of disease *not to be naturally occurring* and directly related to activities prohibited by the Convention. [Emphasis added].

**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*. There has been streamlining of the text relating to those definitions needed for an effective Protocol. The lists and criteria in Annex A have also been developed with new simplified consolidated paragraphs, which although still with numerous square brackets, replaces the previous *separate* lists of criteria for human, animal and plant pathogens.

[1. The list of agents and toxins [following below] is for use with [specific measures in particular] [Article III, section D, subsection I, paragraphs 10 and 15] [and section F]. [In this context the following criteria were used as a basis to establish the list of agents and toxins during the discussions of the Ad Hoc Group:

- Agents or toxins known to have been developed, produced or used as weapons;
- Agents or toxins which have severe public health and/or socio-economic effects;
- High morbidity, incapacity and/or mortality rates;
- Low infective/toxic dose;
- High level of transmissibility and/or contagiousness;
- Low effective or cost-effective prophylaxis, protection or treatment available;
- Ease of production and/or dissemination;
- Stability in the environment;
- Short incubation period and/or difficult to diagnose/identify at an early stage.]

[2. The Executive Council may review the list of agents and toxins to ensure it remains effective and operational. Any State Party may propose modifications to the list. The Executive Council shall review such proposed modifications to the list of agents and toxins. Any changes to the list shall be made in accordance with Article XIV.]

[3. In reviewing the list of agents and toxins the Executive Council shall consider, inter alia, [the above mentioned criteria as well as] the following [factors]:

[(a) The potential of individual agents and toxins for use as weapons, for example, whether they are known to have been developed, produced, stockpiled or used as weapons; would have severe adverse socio-economic and/or public health effects; are difficult to diagnose and identify; have short incubation and high morbidity, incapacity and/or mortality rates; have a lack or limited availability of effective and economical prophylaxis and/or treatment; have a low infective or toxic dose; are easily produced and/or disseminated; are stable in the environment; and/or are highly contagious or easily transmissible;]

(b) Scientific and technological developments that may affect the potential of individual agents or toxins for use as weapons;

(c) Effects of potential inclusion or exclusion of an agent or toxin in the list on [peaceful] scientific and technical research and development.]

Insofar as the lists of agents themselves are concerned, there continue to be amendments with the removal of [*Chlamydia psittaci*] from the list of bacterial human pathogens, of [*Modeccin*] from the list of toxins, and [*Camel pox virus*] from the list of animal pathogens. In addition, a number of toxins — *Abrin*, *Anatoxin A*, *Bungarotoxins* and *Ciguatoxin* have emerged from square brackets, whilst one plant pathogen — *Tilletia indica* — has reverted into square brackets. The text for the List of Equipment has also been developed with some streamlining although many items of equipment remain in square brackets.

**BWC Article X Measures** There was further development in Article VII with both streamlining of the text and removal of square brackets. Section (A) *General Provisions* is now largely out of square brackets with none of the paragraphs now being within overall square brackets and the number of remaining square brackets within this section reduced from 16 to 10. Section (B) *Measures to Promote Scientific and Technical Exchanges* has two of its three paragraphs out of overall square brackets and a significant reduction in the remaining square brackets.

Section (C) *Measures to Avoid Hampering the Economic and Technological Development of States Parties* addressing regulatory aspects has also developed although understandably to a lesser extent than the other Sections. A positive step forward came with the circulation of a non-paper which outlined some ideas regarding measures to avoid hampering the economic and technological development of states parties under which states parties would review any national regulations governing exchanges and transfers of biological agents and toxins, scientific knowledge, equipment and materials to ensure their consistency with the provisions of the

Convention and the Protocol. In addition, the Director-General would collate on an annual basis a report on the implementation of this national review by states parties which would then be considered by the Conference of the States Parties. This non-paper appeared to receive a favourable response indicating that progress can be made in this potentially contentious area. Insofar as the language in Section (C) is concerned two of the three paragraphs are out of overall square brackets and one provision for States Parties to review any national regulations is emerging from square brackets and currently reads that:

Each State Party shall:

...

(c) Undertake to review [periodically] [, and amend or adopt as necessary,] any existing national regulations governing exchanges and transfers of bacteriological (biological) agents and toxins, and equipment, materials and scientific and technological information for the use of such agents and toxins in order to ensure their consistency with the objectives of [the Convention] [Articles III and X of the Convention and the provisions of this Article [and Article III, section F]] [, within ... days of the entry into force of this Protocol for it. The Director-General shall collate on an

annual basis and, for the information of States Parties, report on the implementation of this subparagraph].]

Section (D) *Institutional Mechanisms for International Cooperation and Protocol Implementation Assistance [and Review]* has also developed with the addition of new material. Section (D) now has subsections on The Cooperation Committee, Role of the Technical Secretariat, and Cooperation and Assistance in the Context of Visits. Several paragraphs have emerged from square paragraphs. Section (E) *Cooperative Relationships with other International Organizations and among States Parties* now has an essentially clean opening paragraph which states that:

22. The Organization may, where appropriate, conclude agreements and arrangements pursuant to paragraphs 22 (j), 32 (k) and 36 (h) of Article IX with relevant international organizations and agencies, including, but not limited to the FAO, ICGEB, IVI, OIE, OPCW, UNEP, UNIDO, WHO [, and non-governmental organizations,] [taking into account their relevant competences and existing agreements,] [to enhance compliance and ensure effective and full implementation of Article X of the Convention and this

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Article] [in order to] [These agreements may have the following objectives]:

Interestingly, this language, for the first time includes, albeit in square brackets, reference to non-governmental organizations. Section (F) *Safeguards* remains within overall square brackets although a new paragraph has been added to require the taking into account of existing agreements and competences of other relevant international organizations and agencies in order to avoid duplication as well as ensuring effective and coordinated use of resources. The final section of Article VII, section (G) *Report [Submission of Declarations]* and the related *Appendix E Information to be Provided [in the Declaration of Implementation of Article X of the Convention and Article VII of the Protocol]* [under Section G of Article VII] is still heavily square-bracketed reflecting the divergence of views between those who favour the submission by states parties of summary reports and those who favour submission of declarations. This argument appears to be based on concerns that a declaration requirement might result in either the initiation of declaration clarification procedures or, if the declaration was not submitted, the implementation of the measures to ensure the submission of declarations. On the other hand, a reporting requirement could be regarded as being comparable to the existing obligations under the 1986 and the 1991 confidence-building measures and result in patchy and variable submissions. However, given the importance of the Article VII measures to the overall Protocol, a possible way forward would be to devise a declaration obligation along the lines of the current requirement in Appendix E in which the obligation is on states parties to provide a number of general descriptions — and is thus not unduly onerous a declaration obligation — as follows:

1. A general description of [the] [any] measures taken to facilitate the fullest possible exchange of equipment, materials and scientific and technological information for the use of the bacteriological (biological) agents, toxins for peaceful purposes.
2. A general description of [the] [any] measures taken to the further development and application of scientific discoveries in the field of bacteriology (biology) for the prevention of disease or for other peaceful purposes.
3. A general description of [the status of] [any specific measures on] the implementation of Article X of the Convention.]
4. [A general description of] [any] [specific] measures undertaken to review the existing national trade legislation or regulations, to promote transfers of bacteriological (biological) materials, equipment and technology for peaceful purposes.]

**Organization** Although less than a meeting was spent on Article IX *The Organization*, the number of square brackets was significantly reduced from over 200 to under 100. A number throughout the Protocol were removed through agreement of the term “Technical Secretariat” which replaced the previous “Technical [Secretariat][Body]”. An important paragraph concerning the relationship of the future Organization with other international organizations emerged completely from square brackets:

6. The Organization, as an independent body, shall seek to utilize existing expertise and facilities, as appropriate, and to maximize cost efficiencies, through cooperative arrangements with other international organizations as referred to in Article VII, section E, including, but not limited to, FAO, ICGEB, IVI, OIE, OPCW, UNEP, UNIDO, WHO. Such arrangements, excluding those of a minor and normal commercial and contractual nature, shall be set out in agreements to be submitted to the Conference of the States Parties for approval.

The heading for Section (D) *The Technical Secretariat* saw the deletion of previous language [(including *International Epidemiological Network*)] which now appears, in square brackets, within two of the square bracketed sub-paragraphs addressing the functions of the Technical Secretariat. The principal remaining issues within Article IX relate to the composition of the Executive Council and whether Asia should be a single grouping or divided into “East Asia and the Pacific” and “West and South Asia” and to the procedure for the initiation of investigations (“red” light or “green” light).

**National Implementation Measures** Article X also developed with a reduction by half in the number of square brackets from 14 to 7. The text is now largely clean although the requirement to enact penal legislation is still within square brackets with the language now stating that:

1. In addition to its obligations under the Convention, including Article IV, each State Party shall, in accordance with its constitutional processes, take any measures required to implement its obligations under this Protocol. In particular, it shall where appropriate and necessary:
  - (a) Prohibit natural and legal persons anywhere on its territory or in any other place under its jurisdiction as recognized by international law from undertaking any activity prohibited to a State Party under the Convention [and Article I of this Protocol], including enacting penal legislation with respect to such activity];

## Prospects

The September–October session also saw the agreement of the programme of work for the three-week seventeenth session to be held from 22 November to 10 December. The 30 meetings were allocated as follows:

Compliance measures	7
Investigations annex	5
Article X	4
Definitions	4
Ad Hoc Group	10
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Total	30

The unusually large allocation of time to the Ad Hoc Group meetings reflected the necessity, because of the proximity of the seasonal break, to complete the L. series reports on the outcome of the negotiations sufficiently far in advance of the end of the session to enable translation into the official languages and to thus make copies available for delegations by the last day of the session.

Overall, the September–October session saw solid progress with the removal of over 700 square brackets, continuing the downward trend towards a text essentially free from square brackets. Representing the maturing of the Protocol graphically (see facing page), more and more Articles are arriving at the right hand side of the figure with either no, or only a very few, remaining square brackets. Over half of the Articles in the Protocol are now essentially complete.

It is becoming ever more apparent that the completion of the Protocol within 2000 is entirely achievable given the political will. This continued political will is evident in a NATO Parliamentary Assembly resolution adopted in Amsterdam on 15 November in which the Assembly:

urges member governments and parliaments of the North Atlantic Alliance:

a. to conclude the negotiations on a legally binding protocol to strengthen the BWC within the coming year; ...

A further manifestation came with a Finnish declaration, on behalf of the European Union and the Central and Eastern European countries associated with the European Union, on the opening day of the November–December Ad Hoc Group. This declaration stated that “the European Union

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 pace of negotiations this year indicates that this goal is attainable. But we must maintain the continuity and momentum we have all worked hard to achieve in 1999, and allocate appropriate time for negotiations in the first half of the year 2000.” The declaration also states that “The elements essential for an effective Protocol are already well-developed in the text in front of us.”

The September–October session thus saw real progress with the closing of the divergence of views on the concept of a package of visits to ensure that declarations are complete and accurate. The preliminary soundings on possible language to address national regulations governing exchanges and transfers augur well for the future. The Protocol negotiations can, given the necessary political will, indeed be completed during 2000 — and achieve an effective Protocol.

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

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*Progress in The Hague*

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## **Developments in the Organization for the Prohibition of Chemical Weapons**

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The period under review, from mid-September to early December, saw two regular sessions of the Executive Council. Attention also focused on improving the operational capabilities of the OPCW with a challenge inspection exercise being held in Brazil and an investigation of alleged use exercise in the Czech Republic. During the period under review the first change to the text of the Convention came into effect. On 31 October a new paragraph was added to Part VI of the Verification Annex using the simplified amendment procedure for technical and administrative changes to the annexes. The change details the revised notification procedure for transfers of the Schedule 1 chemical saxitoxin. The United Nations Secretary-General, as depositary, has updated the text of the Convention and the new version will be made available by the OPCW.

Two new states, Nicaragua and Liechtenstein, joined the Convention during the period under review. Activities aimed at increasing the universality of membership continued on all levels. The Director-General travelled to the fifty-fourth session of the United Nations General Assembly to meet with representatives of signatory and non-signatory states and also wrote to many of their foreign ministers. The Secretariat also arranged a regional seminar in Kenya to encourage ratifications from Africa where only 31 out of 51 states are parties to the Convention. A delegation from the Secretariat travelled to Kazakhstan to

provide technical assistance in advance of their becoming a state party. Another technical visit was made to Chad for the same purpose. Discussions were also held between the Secretariat and officials in Belgrade on Yugoslavia's possible accession to the Convention.

Much attention during the period under review has been focused on the destruction of chemical weapons and the destruction or conversion of Chemical Weapons Production Facilities (CWPFs). Russia requested an extension to its deadline to destroy one per cent of its Category 1 chemical weapons by 29 April 2000 due primarily to the adverse economic climate in Russia. The request was viewed with concern by some states parties although Russia also submitted more detailed information on its programme for the destruction or conversion of its 24 CWPFs. The Council has also been examining the destruction plans of the three other declared chemical weapons possessors. The USA has still not submitted its Article VI declaration which is continuing to cause difficulties for the Secretariat with regard to the planning of chemical industry inspections in 2000.

### ***Executive Council***

During the period under review, the Executive Council met for two regular sessions, its sixteenth and seventeenth, during 21–24 September and 30 November–3 December