



The Biological Weapons Convention: the protocol that almost was

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Reeling from the emphatic US rejection of the product of more than six years of negotiations, delegates to the Ad Hoc Group (AHG) charged with strengthening the Biological Weapons Convention (BWC) quarrelled until the early hours of 18 August 2001 over what to do. The group was unable to reach consensus even on a report on its work as the last negotiating session before the convention's November/December 2001 Review Conference drew to a close. It had been intended that the Review Conference, the fifth since the convention's entry into force in 1975, would be presented with a completed draft of a legally binding protocol containing verification and other measures to strengthen the effectiveness and improve the implementation of the convention.

Having met regularly since January 1995, the AHG held negotiating sessions in July and August 2000, November and December 2000, and February 2001 to resolve the substantive disagreements reflected in a Rolling Text of the protocol first compiled in July 1997. In July 2000 the format of the negotiations changed. Ambassador Tibor Tóth, chair of the Group, put forward 'building blocks' of a text which he was preparing to introduce and held informal discussions with delegations to gauge their reactions. Progress in the AHG to resolve outstanding disagreements sequentially was all but halted by the beginning of 2001. On 30 March 2001 Tóth released his Composite Text (CT) to governments in order to allow them to review it before the start of the 23rd session on 23 April. The CT represented the Chairman's best judgement of what an acceptable protocol would be if all states parties were willing to compromise and demonstrate political will to strengthen biological and toxin weapons (BW) arms control.

This chapter focuses on the verification and compliance measures of the draft protocol and analyses the ways in which the CT attempts to resolve some of the

most contentious issues in these areas in the Rolling Text. It goes on to discuss the preliminary reactions to the CT and what they might mean for the future of biological disarmament verification. It covers the period July 2000 to August 2001. Portions of the CT that concern other important issues, such as transfers of biological agents, equipment and material, export controls, technological exchanges and co-operation, are not dealt with in this chapter.

At its core, the 1972 BWC is a disarmament and nonproliferation treaty. All states parties agree to destroy existing weapons and not to acquire them in the future. The absence of verification provisions in the agreement has been a matter of concern since the treaty's inception. Each of the four BWC review conferences has taken steps to remedy the ensuing weaknesses. Indeed, the absence of a mechanism to investigate the 1979 outbreak of anthrax in the Soviet city of Sverdlovsk (now Yekaterinburg) provided much impetus for the exploration of verification measures by the group of experts known as VEREX from 1992 to 1994¹ and the AHG itself.

The table on the opposite page shows the milestones in efforts to strengthen the convention.²

The Composite Text

To enhance compliance with the BWC, the CT proposed a set of verification measures similar to that contained in the Chemical Weapons Convention (CWC)—declarations, non-challenge on-site measures at declared facilities and means to address suspicions of non-compliance through short-notice investigations conducted by a professional inspectorate. Innovative measures in the draft include provisions for follow-up after the submission of declarations, and steps to ensure that parties submit declarations completely and in a timely fashion. The text contains consultation and clarification procedures to resolve compliance questions and concerns, either as an adjunct or as an alternative to a potentially politically volatile investigation.³ Other provisions of the text, which are not described here, cover transfers of listed agents and toxins, confidentiality, scientific and technological exchange for peaceful purposes, and entry into force.

The document, more than 200 pages long, is a carefully crafted package of measures supported by a large majority of AHG delegations. Despite being rejected

Efforts to achieve a BWC protocol

December 1991

Third BWC Review Conference establishes VEREX.

1992–94

VEREX examines possible verification measures for the BWC. The final report of the group concludes that 'some potential verification measures, including both off-site and on-site measures, could provide information which could be useful for the main objective of the Biological Weapons Convention'.

September 1994

A Special Conference of BWC state parties mandates the AHG to draft a legally binding protocol to strengthen the effectiveness and improve implementation of convention.

January 1995

The AHG begins to meet in Geneva under the chairmanship of Hungarian Ambassador Tibor Tóth. Meetings are organised in four substantive areas, assisted by Friends of the Chair: definitions of terms and objective criteria; compliance measures; confidence-building and transparency measures; and effective and full implementation of Article x.

July 1997

At 7th session of the AHG, Chairman introduces 'Rolling Text' of draft protocol.

September 1997–July 2000

In 13 negotiating sessions delegations develop language in Rolling Text.

July 2000

Negotiating format changes to informal consultations. Chairman introduces 'building blocks' of Composite Text.

30 March 2001

Chairman presents Composite Text to governments.

23 April 2001

Chairman tables Composite Text at opening of 23rd session of AHG.

25 July 2001

US formally rejects Composite Text.

18 August 2001

AHG is unable to reach consensus on report on its work.

outright by the Bush administration, the CT is a significant reference document and proponents of multilateral arms control are likely to use it as a basis for future discussions and proposals.⁴

Definitions, lists, criteria and thresholds

The AHG's mandate required it to consider definitions of terms and objectives 'where relevant for specific measures designed to strengthen the convention'.⁵ Some delegations resisted any definition of key terms contained in the convention,

such as biological and toxin weapons, hostile purposes and purposes not prohibited by the treaty. They were concerned that any definition of these terms could undermine the ‘general purpose criterion’ of the BWC.⁶ The CT addresses this concern by defining these terms using language lifted word for word from the convention and defining other terms relevant only to obligations under the protocol.

Similarly, the role that lists, objective criteria and thresholds play in the CT is strictly limited to the purposes of the protocol. The CT emphasises that threshold quantities are for transparency purposes and not to establish a cut-off quantity of biological agents below which possession would be presumed to be for peaceful purposes.⁷ The thresholds define ranges of quantities that must be declared along with the possession of agents and toxins contained in a list in an annex to the protocol. The smallest range is typically up to 10 grams for agents and up to five grams for toxins. The list of agents and toxins is explicitly not exhaustive, and can be modified relatively easily.

Declarations

Initial declarations

Implementation of the CT would require parties to make initial and annual declarations of specific relevant activities and facilities. In initial declarations states parties would provide information on any offensive weapon programmes after 1945 and prior to entry into force of the convention for that state party. Such a provision would allow Russia to be silent about the past offensive programme of the Soviet Union.⁸ Any defensive programmes or activities conducted during the 10 years prior to entry into force of the protocol would also have to be declared in the initial declaration.

Annual declarations

Facilities and activities whose characteristics would ‘trigger’ their inclusion in annual declarations fall into four broad categories:

- activities and facilities involved in national programmes to defend against biological or toxin weapons;
- facilities designed to prevent the release of biological agents into the surrounding environment—termed containment;

- facilities involved in certain types of work with particularly relevant agents or toxins; and
- facilities that produce various kinds of biologically-based products.

Each of these categories is discussed in greater detail below.

The trigger for national biological defence programmes

Under the BWC and the proposed protocol states may maintain biodefence programmes. Because such activities are an area of concern for many countries and many are inherently dual-use in nature, they have to be declared. One of the controversies during the AHG negotiations concerned whether all such national programmes and activities should be declared in annual declarations, or only some of them.

According to the Chairman's draft, every state with a biodefence programme would be required to declare its largest facilities—a proxy for the most relevant ones. The CT contains a formula whereby countries with extensive biological defence programmes would be required to declare only those facilities that employ the equivalent of 15 or more scientific and technical personnel. If a country's biodefence programme has fewer than 10 facilities that fall into the first category, it must declare 80 percent of all facilities related to research and development on pathogenicity, virulence, aerobiology or toxinology. Programmes that are even smaller would be subject to other criteria. The formulation contained in the CT was based on a US proposal.⁹

The effect of this declaration provision would be to exempt countries with many biodefence activities from declaring their small-scale activities. In contrast, countries that conducted only small-scale activities would have to make comprehensive declarations. Such an arrangement would limit the amount of declaration information that a future Organisation for the Prohibition of Biological Weapons (OPBW) would have to handle. Yet certain biodefence programmes would be subject to declaration only in some states. Moreover, states could manipulate the declaration trigger. The number of full-time personnel associated with a certain biodefence programme could be exaggerated or under-stated. There is also a worrisome loophole in such a provision: the most relevant defensive programmes could be secret, small-scale research programmes that employed few people. A government could

construct a larger-scale defensive programme in order to shield its most sensitive, and perhaps relevant, programmes from declaration—and possible on-site ‘visits’.

Biological containment triggers

Many facilities that work with dangerous pathogens are designed and contain equipment to prevent the release of biological agents into the surrounding environment. This is termed containment. Under a regime based on the CT, all facilities working under maximum containment and certain facilities with high containment—those involved in the production of vaccines or other specified biological material, or performing specified genetic modifications of listed agents or toxins—would have to be declared.¹⁰ In addition, plant pathogen containment facilities over a specified size would be subject to declaration.

Triggers for facilities that work with listed agents or toxins

Facilities that do specified work with agents or toxins listed in an annex to the protocol would have to be declared. The annex lists 26 agents that cause disease in humans, six that cause disease in animals, eight that attack plants and 11 toxins. The declaration of facilities involved in three different types of activities would be triggered:

- those that produce or recover any agents or toxins using equipment with a capacity over a minimum level or using more than a minimum quantity of growth media;
- those that conduct certain types of genetic modification of listed agents or toxins; and
- those that intentionally produce aerosols of a listed agent or toxin.

Production facility triggers

There are several categories of biological production facilities that would have to be declared in addition to those that would be triggered by containment or work with listed agents or toxins: facilities producing vaccines for humans or animals; and relatively large-scale facilities that produce or recover microorganisms, biocontrol agents, plant inoculants or microbially-produced substances.

Food and beverage production facilities would not have to be declared. The declaration triggers for facilities and activities would be mutually reinforcing.

Measures to ensure submission of declarations

The negotiators learned from the experience of the CWC, for which the late submission of declarations by states parties caused considerable implementation difficulties. The CT proposes severe penalties for such behaviour. These range from depriving states of access to the declarations of other states parties to losing their vote in the Conference of State Parties and the possibility of suspension of membership of the Executive Council (EC) of the OPBW.

Follow-up after submission of declarations

The declaration follow-up procedures are designed to contribute to verifying compliance with the declaration obligations. These measures are not intended to monitor compliance with the prohibition of BW contained in Article I of the BWC. The overall purpose of these measures is to ensure that declared information is reliable and complete.¹¹

The second 'pillar' of the protocol as proposed by the Chairman is non-challenge, on-site measures at facilities that meet declaration criteria (these activities are called 'visits').¹² There would be three different types: randomly-selected transparency visits; clarification visits; and assistance visits.

A formula would distribute randomly-selected visits among geographic regions and to different types of declared facilities. Clarification visits could occur at the culmination of a process to resolve questions about declarations. States parties could request an assistance visit to help them implement their obligations under the protocol.

Randomly-selected transparency visits

Randomly-selected transparency visits differ in many respects from routine inspections under the CWC, including in their number, purpose and duration, and in the extent of access afforded to international inspectors. The CT proposed a maximum of 90 transparency visits in any year, with no state party receiving more than seven per year and no facility more than three in any five-year period.

Many delegations favoured visits that would 'confirm that declarations are consistent with' obligations under the protocol.¹³ In contrast, the US insisted that it would not agree to visits to confirm the accuracy of declaration information. Instead, Washington wanted to limit the purpose of randomly-selected transparency

visits to promoting accuracy in declarations and transparency.¹⁴ The CT strikes a compromise. Under the draft protocol, random visits would not be used to check the accuracy of declarations; however, the CT does not separate the purpose of visits from the information declared. The proposed language links such visits to the facility declaration. Among the purposes of visits would be to 'increase confidence in the consistency of declarations with the activities of the facility' and to 'enhance transparency' at facilities subject to visits.¹⁵

The CT also states that 'the nature and extent of all access . . . [for transparency visits] shall be at the discretion of the visited State Party'.¹⁶ This departs from the established concept of managed access. Under the CWC and the Comprehensive Nuclear Test Ban Treaty, the inspectors and those inspected negotiate access. While the CT obliges the visited state party to give the inspection team access, the ultimate decision about access is left to the host. The visited state party can also censor the inspection team's report in some aspects. The visiting team is barred from commenting on access or information that was not provided by the visited party. The visited party also has the right to make extensive comments on the draft report of the visiting team and to expect that those comments will be included in the final report. Finally, the visited party can restrict distribution of the final report.

Declaration clarification procedures

Declaration clarification procedures were included in the CT to create a formal but relatively low-key method of resolving any 'ambiguity, uncertainty, anomaly or omission' in an annual declaration of a state party, including the omission of a facility from a state party's declaration that meets declaration criteria.¹⁷ The Technical Secretariat or a concerned state party could initiate declaration clarification procedures. Covering more than 10 pages in the CT, these foresee a procedure that would begin with a written request for clarification and response, possibly leading to a consultative meeting among concerned parties, and culminating in a clarification visit. Such a visit could be offered voluntarily by the requested state party or be initiated by the EC. Access during clarification visits would be negotiated between the inspectors and the visited state party, but in contrast to randomly-selected transparency visits the host state would not have the final say about access.

Declaration clarification procedures would fill an important gap between transparency visits and investigations. Although derided as 'challenge lite' in private

conversations, clarification procedures are in fact a clever way to deal with the fact that not all declared facilities would be visited on a routine basis. Clarification procedures could focus the organisation's attention on, and heighten transparency in, facilities whose declarations raise concerns or other activities where concerns, if not resolved, could give rise to serious suspicions of non-compliance with the convention. The procedures would significantly reinforce obligations to declare all relevant activities and facilities accurately.

Consultation, clarification and co-operation

The CT includes a mechanism for states parties to consult, clarify and co-operate in resolving any concerns regarding the implementation of the convention or the protocol. Importantly, the OPBW is envisaged as an alternative forum to the UN for dealing with such concerns. Some delegations sought to make consultation mandatory before an investigation can be launched. But the CT rejected that approach.

Investigations

International inspectors' ability to investigate allegations of non-compliance on-site is an essential verification tool in most arms control regimes. The investigations provisions of the CT, contained in Article 9, are broadly comparable to those governing challenge inspections under the CWC. The CT requires quick decision-making in the launching of an investigation. The Director-General of the OPBW must decide within six hours whether an investigation request should proceed to the EC, and that body must make its decision on an investigation within 24 hours.

The CT differentiates between field and facility investigations. The former are intended to investigate alleged use of BW and disease outbreaks relevant to the convention; the latter would be used to investigate allegations of violations of the convention relevant to facilities including, for example, development or production of weapons. The EC's decision-making procedures for investigations are a mixture of so-called 'red light' and 'green light'. They are designed to filter investigation requests according to type of investigation and whether or not it would be on the requesting state's territory or not. The following table shows the different types of investigations and the EC 'filters' for launching each type.

Under the red light procedure the investigation would proceed unless the EC voted to halt it. Under the green light procedure an affirmative vote of the members

Red light and green light procedures for investigations

Type	Sub-type	Place	Filter
Field	Alleged use	On one's own territory or territory under one's control	3/4 majority red light
Field	Alleged use	On another country's territory	2/3 majority red light
Field	Disease outbreak	On one's own territory or territory under one's control	simple majority red light
Field	Disease outbreak	On another country's territory	simple majority green light
Facility			simple majority green light

of the EC would be required in order for the investigation to proceed.¹⁸ This decision-making process makes it somewhat less likely than under the CWC that certain investigations would take place. On the other hand, it would be harder for countries to retaliate against perceived abuses of the right to request an investigation by launching their own frivolous requests for one.

An investigation team would arrive on-site quickly, as soon as 12 hours after the EC decision. Once on-site, a wide array of activities would be open to the team, including interviewing relevant personnel, visual observation, examination of documents and records, including medical records, sampling and identification. Access to a particular facility, places and information and the activities of the investigation team would be negotiated between the investigation team and the receiving state party. The receiving state party would be able to take measures to protect national security and confidential information and data, but would be obliged to provide the greatest degree of access possible. If the requested party did not provide full access it would have to provide alternative means to demonstrate compliance. Refusal to provide access or to conduct activities could be noted in the investigation report. Other details concern, for example, monitoring of traffic leaving the site of an investigation, approved equipment, observers from the requesting state party, and post-investigation activities, including investigation reports.

Praise for the investigation provisions has come even from those most critical of the CT.¹⁹ Procedurally, the need for approval by the EC before launching a facility investigation weakens the verification aspect of these measures. In addition, whether states parties would seek investigations and with what frequency is a

serious political question. If underused, this important aspect of verification would be weakened.

The Organisation

The CT envisages the establishment of an OPBW to assist in implementing the protocol. It would consist of a Conference of States Parties (CSP), the EC and a Technical Secretariat (TS). The CSP, the principal organ, would meet in annual and special sessions. Each state party would have one vote.²⁰ The CSP would elect the members of the EC, appoint the Director-General of the organisation and establish subsidiary organs as needed. The principal tasks of the 51-member EC would be to supervise the TS, decide on requests for visits and investigations, and oversee the effective implementation of the protocol, including its budget and programme of work. The TS would administer the protocol, including receiving, processing and analysing declarations, conducting visits and investigations, and facilitating consultation, clarification and co-operation among states parties. It would also promote scientific and technological exchanges for peaceful purposes and technical co-operation.

Reactions to the Composite Text²¹

The BWC protocol negotiations took place in the aftermath of exceptional geopolitical upheavals. The Warsaw Pact's dissolution, the break-up of the Soviet Union and the transition to majority rule in South Africa all affected the work of the AHG. Moreover, the revelations of defectors from the Soviet Union's offensive BW programme and the findings of the United Nations Special Commission on Iraq (UNSCOM) regarding Iraq's BW programme had a conspicuous effect on the negotiations. In contrast to most Cold War arms control negotiations, the BWC protocol negotiations were characterised by unusually strong disagreements within the Western Group and the Non-Aligned Movement (NAM). Meanwhile the Eastern Group practically disintegrated. This made it more difficult to find the path to the end game of the negotiations because the regional groups no longer 'bundled' disparate views to the same degree as they did during the East–West conflict.

The CT received a mixed reaction in Geneva during the 23rd AHG session in April 2001. A large majority of delegations embraced the CT as the negotiating

instrument through which further refinements could be sought. A group of seven countries—China, Cuba, Iran, Indonesia, Libya, Pakistan and Sri Lanka—urged the AHG to revert to the Rolling Text as the basis for resolving outstanding disagreements. Nevertheless, by the end of the session it became clear that the CT would be the basis for future negotiations, with the Rolling Text serving as a back-up or ‘safety net’ should the negotiators wish to protect their positions.

Apart from one single occasion late in the session, the US stayed conspicuously silent. Early in the 23rd session the media reported that after a review of BW policy the administration of George W. Bush had rejected the CT.²² The US position became official on 25 July when Ambassador Don Mahley, in a 10-page statement, rejected not only the CT but the entire approach of the AHG towards fulfilling its mandate.

The Western Group

As befits a compromise document, no country or delegation saw everything that it wanted in the CT. A spectrum of views existed within the Western Group, but most members (other than the US)—especially Australia, Netherlands and Sweden—favoured stronger verification and compliance measures than the CT envisaged. The European Union (EU) member states would have preferred declaration triggers that covered more facilities, even though many of them have sophisticated pharmaceutical industries.²³ Most members of the Western Group (apart from the US) also preferred a ‘super-majority’ red light filter for all investigation requests, rather than the formula in the CT. The EU (with reluctance on the part of some members) accepted some weaker measures at US urging. It agreed, for example, to confine the purpose of randomly-selected visits to transparency rather than to confirming the accuracy of declarations.

The non-aligned countries

The NAM countries also held an array of opinions about the verification measures in the draft protocol and the CT. Generally speaking, South Africa and several South American countries, such as Brazil and Chile, tended to support positions similar to those of the EU, favouring strong verification. Others, including China, India, Iran and Pakistan, consistently advocated weaker measures. They opposed mandatory clarification visits, for instance, and wanted minimal provisions, if any, to investigate outbreaks of disease.

The CT also received support outside government. With a few exceptions, non-governmental organisations, independent researchers and academics praised the CT or thought its verification provisions should be stronger, in some cases considerably so.²⁴

The US position and rejection of the protocol

The US argued consistently for weaker declaration triggers and provisions for visits. But the CT included much of what the US had advocated throughout the negotiations. At least for BW, the US government interprets the concept of 'verification' differently from many of its allies and has long maintained that the BWC is not verifiable and could not be made verifiable.²⁵ Nevertheless, the US supported the right to launch investigations of allegations of non-compliance quickly and was the initiator of many of the ideas behind the clarification process for declarations contained in the CT.²⁶ The US also promoted limiting declarations of national biological defence programmes and advocated 'triggers' that would identify fewer facilities, many of which (perhaps half or more) are likely to be in the US.

Negotiations within the US government to arrive at a position in the AHG were frequently arduous and contentious. Under the Clinton administration disagreements among the departments and agencies with a stake in the protocol were thrashed out in inter-agency meetings led by staff of the National Security Council. The positions thus arrived at often did not have the full support of the agencies involved. Against this backdrop, the incoming Bush administration carried out a classified review of US BW arms control policy.

On 25 July 2001, at the 24th session of the AHG, Ambassador Mahley announced that the US rejected not only the CT but essentially all the efforts of the AHG to fulfil its mandate. He argued that '[t]he mechanisms envisioned for the Protocol would not achieve their objectives, that no modifications of them would allow them to achieve their objectives and that trying to do more would simply raise the risk to legitimate United States activities'. He concluded that 'because the difficulties with this text are . . . inherent in the very approach used in the text, more drafting and modifications of this text would in our view, still not yield a result we could accept'.²⁷ Thus the Bush administration repudiated more than six years of negotiations, significant portions of the AHG mandate and the accomplishments of

VEREX, all of which the US, under the leadership of Presidents Clinton and George H. Bush, had endorsed.²⁸

The US, Mahley stated, 'intends to develop other ideas and different approaches' to strengthen the BWC. One option for the US could be to advocate a new mandate. Rumours suggest a mandate limited to declarations and investigations, despite the fact that there is virtually no possibility that the states parties to the BWC will reach consensus on a new mandate in the foreseeable future. 'Picking out the cherries' from the protocol will be difficult. It is hard to imagine how implementing some verification measures, such as investigations provisions, will be acceptable without the other CT elements, such as visits, enhanced consultations and new confidence-building measures.²⁹ US-led efforts outside the BWC, including export controls and counterproliferation, are not likely to be readily implemented. It is also doubtful that these provisions will be successful in halting or turning back proliferation, especially in the long term. What counterproliferation measures is the US likely to propose to address alleged BW programmes in China, Iran and Russia, for example?³⁰

The remainder of the 24th session of the AHG was dominated by reactions to the US statement, attempts to assign blame and the disintegration of consensus on a report of the group's work. Although Chairman Tóth achieved consensus on parts of the text, delegations were not able to agree on a complete report.³¹

Conclusion

The parties must now decide on the future of the efforts of the AHG. The rancour engendered by the US rejection of the AHG's efforts and the failure to reach consensus on a final procedural report bodes ill for future efforts to strengthen the convention. The mandate for the AHG established by consensus at the 1994 Special Conference will not expire at the 2001 Review Conference, even though that event was the target for completion of a protocol. Arguments about the way to proceed with strengthening the BWC may dominate discussions for years to come.

Many of the compromises contained in the CT were made to accommodate the US position on the Rolling Text before it categorically renounced the CT. It is therefore worthwhile to consider whether any changes to the CT would make it a better basis for strengthening the effectiveness of the convention.

Compared to the convention, even with the addition of the 1991 and 1996 confidence-building measures and associated agreements contained in the Final Statements of various BWC review conferences, the CT was a monumental step forward for verification. Taken together, measures contained in the draft would:

- trigger facilities and activities for declaration;
- permit visits to a number of facilities, albeit limited, to gain information regarding their activities;
- clarify omissions and irregularities in declared information; and
- permit the investigation of possible violations of the convention.

Nevertheless, the verification and compliance measures contained in the CT are weaker than many proposals contained in bracketed language in the Rolling Text. If states parties had moved forward with the CT as the basis for a legally-binding protocol and allowed tinkering with the language in order to achieve a consensus among participating delegations (with the possible exception of the US), a number of relatively small language changes could have enhanced the verification measures provided for and promoted greater confidence in the convention.

First, the CT's mixture of red light and green light voting procedures for launching an investigation could have been simplified and strengthened to allow any investigation, whether of alleged use or of another type of violation, to proceed unless blocked by a large (either two-thirds or three-quarters) majority. The launching of such an investigation, which could conceivably prevent the use of BW, should not be burdened by an overly restrictive approval mechanism.

Second, declaration requirements could have been strengthened. Declaration of all biodefence facilities is an important standard and would strengthen verification efforts. Such simplified provision would also place equal obligations on all parties. Similarly, details of the requirements for annual declaration of facilities that work with listed agents and of production facilities could be modified. A trigger mechanism in line with proposals made by the EU would capture more relevant facilities.

Third, a return to stronger proposals for randomly-selected transparency visits would have reinforced the protocol's potential to deter violations of the BWC. Requiring negotiated random access for transparency visits rather than allowing

the visited state party to make all access decisions could have restored faith in the ability of visits to play a role in deterring proliferation and enhanced their transparency function. Similarly, the connection between activities observed during visits to a declared facility and activities declared could have been reinstated in the language dealing with the purpose of transparency visits.

Alas, delegations showed no stomach for moving forward with negotiations without the participation of the US. The opportunity to strengthen the prohibition on the possession of BW is not likely to appear in any alternative forum or at any time in the foreseeable future. It is lamentable that the control of biological materials is so difficult to envision and problematic to implement. Nevertheless, to abandon a decade of serious work to address this threat with no prospect of alternatives that could garner sufficient support to be implemented would be the height of folly. The world would be left with a treaty whose weaknesses have been repeatedly articulated and with the knowledge that the available means to address those weaknesses had been shunned.

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Endnotes

- ¹ VEREX is the Ad Hoc Group of Governmental Experts to Identify and Examine Potential Verification Measures from a Scientific and Technical Standpoint established by the Third Review Conference in 1991.
- ² Nicholas Sims discusses each of these steps in greater detail in 'Verifying biological disarmament: towards a protocol and organisation' in Trevor Findlay (ed.), *Verification Yearbook 2000*, Verification Research, Training and Information Centre (VERTIC), London, December 2000, pp. 87–99.
- ³ The author wishes to emphasize the importance of the other measures of the draft protocol, such as technological exchanges and co-operation that do not deal with compliance with the non-possession of BW. Their absence from this chapter reflects the emphasis of this publication on verification, not necessarily the protocol *in toto*.
- ⁴ For a summary and analysis of the CT see also Daniel Feakes, 'Dissecting the Composite Text', *Briefing Paper 01/01*, VERTIC, London, July 2001.
- ⁵ Special Conference of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, *Final Report*, BWC/SPCONF/II, Geneva, 19–30 September 1994, p. 10.
- ⁶ The general purpose criterion forbids the possession of all biological agents and toxins of types and in quantities that are not justified for prophylactic, protective or other peaceful purposes.
- ⁷ For a more detailed discussion of these issues see Marie Isabelle Chevrier, 'From verification to strengthening compliance: prospects and challenges of the Biological Weapons Convention', *Politics and the Life Sciences*, vol. 14, no. 2, August 1995.
- ⁸ According to the *Los Angeles Times*, Russian Deputy Foreign Minister Grigoriy V. Berdennikov admitted that offensive weapons development in violation of the BWC continued until March 1992. John Thor Dahlburg, 'Russia admits it violated pact on biological warfare', *Los Angeles Times*, 15 September 1992, pqasb.pqarchiver.com.
- ⁹ See 'Proposed Text for Article III: Declarations, Current Biological Defence Declaration', Working Paper submitted by the United States of America, BWC/AD HOC GROUP/WP.319, 2 October 1998.
- ¹⁰ Maximum containment and high containment are defined in Article 2 of the CT. See UN document BWC/AD HOC GROUP/CRP.8, 3 April 2001, available at www.opbw.org.
- ¹¹ In contrast, in the CWC much of the random activities are to verify basic obligations of the convention, such as chemical weapons destruction.
- ¹² Facilities may not be subject to visits if they fall only under the trigger for production facilities that produce microbially produced substances. See Article 4C, para. 15, p. 22 in the CT.
- ¹³ Working Paper by Sweden: 'Visits and Investigations', BWC/AD HOC GROUP/WP.243, ninth session, Geneva, 5–23 January 1998. See also working paper submitted by South Africa, 'Visits', BWC/AD HOC GROUP/WP.336, January 1999; and working paper submitted by Brazil, Chile, New Zealand, and Norway, 'Proposed Language for the Section on Randomly-Selected Visits and Annex B', BWC/AD HOC GR, January 1999.
- ¹⁴ The US delegation long opposed all but the most superficial non-challenge visits, partly because of the US pharmaceutical industry's long-standing opposition to any mandatory non-challenge on-site visits and partly because of sensitivities over its biodefence activities. A number of other Western Group countries agreed to support the US position regarding the purpose of what came to be called randomly-selected transparency visits. See Volker Beck, 'Preventing biological proliferation: strengthening the Biological Weapons Convention, A German perspective' in Oliver Thränert (ed.), *Preventing the Proliferation of Weapons of Mass Destruction: What Role for Arms Control? A German–American Dialogue*, Friedrich Ebert Stiftung, International Policy Analysis Unit, Berlin, 1999. For a discussion of the US position as of 1999 see Marie Isabelle Chevrier, 'Preventing biological proliferation: strengthening the Biological Weapons

Convention, an American perspective' in Thränert (ed.). In private conversations, members of delegations which have (perhaps reluctantly) agreed to support the position of the US on randomly-selected transparency visits stress the importance and value of all provisions that permit inspectors to go on-site, even under highly restricted circumstances.

¹⁵ BWC/AD HOC GROUP/CRP.8, p. 28.

¹⁶ BWC/AD HOC GROUP/CRP.8, p. 31.

¹⁷ BWC/AD HOC GROUP/CRP.8, p. 37.

¹⁸ That most investigations under the protocol would have required more support from the Executive Council in order to move forward may have little practical significance. No state party to the CWC has yet requested a challenge inspection.

¹⁹ See Alan Zelicoff, 'An impractical protocol', *Arms Control Today*, vol. 31, no. 4, May 2001, p. 26; and Robert P. Kadlec, 'First, do no harm', *Arms Control Today*, vol. 31, no. 4, May 2001, p. 16.

²⁰ Under certain circumstances a state party could lose its vote in the CSP, for example, for repeated non-payment of dues.

²¹ For a more detailed discussion of the reactions to the CT within the AHG at the 23rd session see Jenni Rissanen, 'Hurdles cleared, obstacles remaining: the Ad Hoc Group prepares for the final challenge', *Disarmament Diplomacy*, no. 51, April 2001.

²² Lois Ember, 'US nixes efforts to strengthen treaty', *Chemical and Engineering News*, vol. 79, no. 17, 23 April 2001.

²³ See, for example, Working Paper submitted by France on Behalf of the European Union, 'Declaration Triggers for Work with Listed Agents and/or Toxins', BWC/AD HOC GROUP/WP.42I, 18 July 2000. See also Rissanen.

²⁴ Nine NGOs signed a statement in support of the CT. 'NGO statement on BWC protocol negotiations', press release 24 July 2001, available at www.vertic.org. See also Oliver Meier, 'Comments on the Verification Provisions in the "Composite Text" for a Compliance Protocol to the BWC', presented at the meeting of EU delegations and NGOs, 25 April 2001, Palais des Nations, Geneva, available at www.vertic.org; Thérèse Delpéch, 'United States' disarming rejection', *Libération*, 22 August 2001, p. 5 (in French); Graham S. Pearson, Malcolm R. Dando and Nicholas A. Sims, 'The composite protocol text: an evaluation of the costs and benefits to states parties', *Evaluation Paper no. 21*, Bradford Project on Strengthening the Biological and Toxin Weapons Convention and Preventing Biological Warfare, University of Bradford, July 2001; Marie Isabelle Chevrier, 'A necessary compromise', *Arms Control Today*, vol. 31, no. 4, May 2001; and James F. Leonard, 'An essential first step', *Arms Control Today*, vol. 31, no. 4, May 2001. Steinbruner, Gallagher and Gunther call the exemption of facilities from declaration—particularly biodefence facilities—the most serious defect of the CT. John Steinbruner, Nancy Gallagher and Stacy Gunther, 'A tough call', *Arms Control Today*, vol. 31, no. 4, May 2001, p. 23. For exceptions see Michael Moodie, 'Building on faulty assumptions', *Arms Control Today*, vol. 31, no. 4, May 2001; Michael Moodie, *The BWC protocol: a critique*, The Chemical and Biological Arms Control Institute, Special Report 1, Washington, DC, June 2001; and Amy E. Smithson, Prepared Statement Before the House Committee on Government Reform, Subcommittee on National Security, Veterans Affairs, and International Relations, 5 June 2001, available at www.stimson.org. Smithson recommends rejection of the CT but not the protocol.

²⁵ In September 2000, at the annual conference of the Association for Politics and the Life Sciences, Assistant Secretary of State Edward Lacey stated that the BTWC could be verified, but not without a level of intrusion intolerable to the US government. For a discussion of the US understanding of verification see Marie Isabelle Chevrier, 'Verifying the Unverifiable: Lessons from the Biological Weapons Convention', *Politics and the Life Sciences*, vol. 9, August 1990, pp. 93–105.

²⁶ US support of the idea behind clarification visits was first announced by President Clinton on 27 January 1998. See White House, Office of the Press Secretary, 'The Biological Weapons Convention', Fact Sheet,

Washington, DC, 27 January 1998; and Working Paper submitted by the United States, 'Proposed Elements of Clarification Visits', BWC/AD HOC GROUP/WP.294, 9 July 1998.

²⁷ United States Delegation to the Ad Hoc Group of the Convention and on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, 'Statement by Ambassador Donald A. Mahley, United States Special Negotiator for Chemical and Biological Arms Control Issues', Geneva, 25 July 2001.

²⁸ George W. Bush's rejection of the CT did not come as a surprise given the personnel in his administration. Vice-President Richard Cheney, for example, was only the most prominent member of the administration arguing against US ratification of the CWC in 1997. In contrast, Secretary of State Colin Powell supported CWC ratification. Significantly, Ambassador Donald Mahley, who heads the US delegation in Geneva and the policy review conducted in early 2001, was involved in forging BW policy in the Reagan and Bush administrations long before the Clinton Administration came to power. He was known to be publicly questioning the mandate of the AHG as early as mid-2000.

²⁹ These measures were recommended by Moodie, *The BWC protocol: a critique*. The text is available at www.cbaci.org.

³⁰ In its annual reports to Congress the US Arms Control and Disarmament Agency repeatedly stated its suspicions that China, Iran and Russia (as well as others) were not in compliance with the BWC. The most recent report, issued in 1999, covered 1998.

³¹ Jenni Rissanen 'A turning point to nowhere? The BWC in trouble as US turns its back on a verification protocol', *Disarmament Diplomacy*, no. 59, July/August 2001, pp. 11–19.

