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STRENGTHENING THE BIOLOGICAL WEAPONS CONVENTION

What next for the Ad Hoc Group?

After seven years of negotiation in the Ad Hoc Group of the States Parties to the Biological Weapons Convention, the United States has withdrawn support for the creation of an international system of declarations, on-site visits and challenge investigations that is the central element in the current approach of the AHG to strengthening the Convention. Despite this setback, the AHG should certainly not abandon the pursuit of its mandate from the 1994 Special Conference of States Parties. That mandate, which is in full effect and is without limit of time, calls upon the Group to

consider appropriate measures, including possible verification measures, and draft proposals to strengthen the Convention, to be included, as appropriate, in a legally binding instrument, to be submitted for the consideration of the States Parties.

The deliberations of the Ad Hoc Group and the preceding study of potential verification measures by the VEREX group of governmental experts have significantly advanced international understanding of the possibilities, and their challenges, for strengthening the BWC with a legally binding instrument, or protocol. For the AHG to abandon its task would be to dissipate this collective fund of experience and knowledge and to forfeit a unique opportunity to strengthen the BWC. Quitting would further risk sending a signal that the international community has given up on creating a united front to suppress biological weapons and that hostile exploitation of biotechnology is now inevitable. Such a signal would lend support to arguments within governments for initiating or intensifying activities inimical to the objectives of the BWC — the very opposite of what the Special Conference intended.

So what is it that the Ad Hoc Group should now undertake to do? The answer must come from national capitals, discussions within regional groupings and informal consultations within the Group itself, initiated by its Chairman, Ambassador Tibor Tóth of Hungary. As these deliberations go forward, suggestions from outside government may be of use. We offer three, each intended to further the work of the AHG in the development of effective and acceptable international measures to be incorporated into a legally binding instrument:

(1) Promote the conduct of voluntary bilateral and multilateral field trials of transparency and compliance measures at biodefence and industrial facilities, both within

and between the three regional groups of nations. The provisions of the AHG Chairman's composite draft protocol (posted on www.opbw.org) could be used as a baseline in joint practice trials not only of declarations, transparency visits and clarification procedures but, in due course, of facility and field investigations. The objective would be to develop a common base of experience on which to evaluate the utility and acceptability of various modalities and procedures for declarations and on-site measures.

(2) Develop standards for the design and harmonization of national measures, including domestic criminal legislation, pursuant to the obligation of each state party under BWC Article IV to prevent violations of the Convention anywhere on its territory.

(3) Formulate options for aid and assistance to countries threatened or attacked with biological weapons, as required under BWC Article VII, and for facilitating the acquisition and use of equipment and materials for the diagnosis and treatment of prevalent infectious diseases, an activity in support of BWC Article X.

Meanwhile, in deciding what compliance measures it can accept, the United States needs to ask itself more carefully than it previously has just what biodefence activities make sense and are compatible with the spirit and the letter of the Biological Weapons Convention, and what information about them needs to be kept secret. The location and general nature of legitimate biodefence work, if routinely declared under the provisions of a protocol, would generally be considered by other states as confidence building. But the same information, coming to light only as a leak to the media, risks eroding the constraints on borderline activities and fueling arguments for provocative or prohibited BW activities within governments elsewhere.

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The deterrent core of the current protocol approach is a mutually reinforcing system of declarations, on-site visits and challenge investigations. The objective, while acceptably safeguarding legitimate biodefence and industrial secrets, is to increase uncertainty within any government weighing the pros and cons of conducting activities prohibited by the BWC that such activities could be kept hidden. A fuller explanation of this approach is set out in the March 1998 issue of this *Bulletin*, pages 1-3. A majority of states in the Ad Hoc Group appear to believe that the Chairman's composite draft protocol adequately accomplishes these objectives. The United States does not. We submit that a solution-orientated attack on the problem has yet to attract the talent and effort it merits.

Finally, one must wonder if the United States has adequately appreciated the downside of its recent action. Having rejected the current protocol approach after participating in it for seven years, how will the United States regain sufficient political credibility to win support for any new proposals it may advance? Without a mutually agreed verification arrangement, how will the United States resolve questions about the military biological facilities at Ekaterinburg, Kirov and Sergiyev Posad that were engaged in offensive work under the Soviet Union? More generally, without a protocol, how will the United States find an international forum to undertake action to clarify other present and future ambiguities? Without an internationally supported protocol, and short of peremptory acts of war, how will the United States deal with facilities it believes to be engaged in prohibited activities? Without having to contend with declarations, on-site visits and investigations, will not a government contemplating a biological-weapons programme be more confident of being able to keep it hidden and therefore be more likely to embark upon it? And, without the provisions of a protocol that build confidence between states parties, how will the United States persuade others of the fact that it is not itself developing biological weapons, a perception that would be directly contrary to the US interest in preventing the spread of biological weapons? The existence of US criminal law against BW activities, applicable to individual persons but of dubious applicability to acts of state, is not a sufficient answer.

This is not to say that partial answers to some of these questions cannot be devised. But as time passes, the drawbacks of having renounced the current approach to a protocol and the opportunity it offers for enhancing international unity in the effective prohibition of biological weapons will come to be more keenly felt. That will be the time the United States takes another look at ways to minimize the cost and maximize the utility of the triad of declarations, visits and investigations around which the current protocol approach is built. Meanwhile, the Ad Hoc Group, including the United States, has much to do.

And for the impending Review Conference?

The mandate of the Ad Hoc Group does not include review of the operation of the BWC. That is the responsibility of conferences of the states parties, a responsibility that derives from the requirement in Article XII of the Convention for an initial review conference and from the decisions of each

successive review conference to authorize another. The Fifth Review will open in Geneva on 19 November.

The Convention's review conferences serve the essential purposes of reaffirming the international norm against biological weapons; of keeping the consensus understanding of its terms and provisions abreast of any relevant new scientific and technological developments; and of authorizing continuation of the review process itself. Review conferences help keep the BWC alive and responsive to changes in its context. But they are not enough.

What is needed in addition is an international entity representing all the states parties to give practical implementation to the provisions of the Convention. The 1994 Special Conference mandated the drafting of a legally binding instrument, including possible verification measures, which would accomplish precisely that. It must remain the ultimate goal. Meanwhile, anguish over the July setback, after a decade of work in Geneva, first in VEREX and then in the Ad Hoc Group, must not be allowed to deflect the states parties from tending to the basic needs of the Convention. The upcoming review conference could be the last opportunity for a whole five-year cycle for the states parties acting together to take new practical steps.

One modest but important step forward would be for the Fifth Review Conference to create a Committee of Oversight to serve the agreed interim needs of the Convention until an Organization for the Prohibition of Biological Weapons can be put into operation. The Committee's tasks would include following up the decisions of the Fifth Review Conference; promoting universal adherence to the Convention; and managing the orderly operation of the confidence-building measures agreed at the Second and Third Review Conferences and any other such measures that may be decided by the states parties. The case for such an interim supportive institution, an outline of the general functions it might serve, and a draft mandate that would bring it into existence, are put forward by Nicholas Sims in this issue of the *Bulletin*.

Whether through this, or some other scheme or schemes, what is essential is that the Fifth Review Conference reaffirms the norm and the understandings achieved by the states parties thus far and that it sets out a practical way forward, even if modest. The world needs to see that governments can act together to combat the menace of biological weapons; now more than ever.

Forthcoming events

24–28 September, The Hague
— Twenty-sixth session,
OPCW Executive Council

11–16 November, Agra, India
— 51st Pugwash Conference
*Challenges for Peace in the
New Millennium*

19 Nov–7 Dec, Geneva — Fifth
BWC Review Conference

24–25 November, Geneva —
Pugwash Workshop
*Strengthening the Biological
Weapons Convention*

10–13 December, Wiston
House, Sussex — Wilton Park
conference *Non-Proliferation:
Meeting the Challenges*, details
on www.wiltonpark.org.uk
