

PSGICC-8: Strengthening the Biological Weapons Convention

Geneva, 20-21 September 1998

Rapporteurs' Summary by Daniel Feakes

This was the fourth of the current Pugwash CBW workshop series, held in collaboration with the Harvard Sussex Program, to be hosted by the Swiss Pugwash Group. The meetings were held in the premises of the Graduate Institute of International Studies, University of Geneva. [Participating](#) by invitation were 47 people, including one Student Pugwash observer, from 20 countries (Australia, Brazil, China, Egypt, Ethiopia, Germany, India, Indonesia, Iran, Israel, Italy, Japan, the Netherlands, Nigeria, Pakistan, Russia, Sweden, Switzerland, the UK and the USA), all of them doing so in their private capacities. The present report is the responsibility only of its author, who was asked by the meeting to prepare a report in consultation with the Steering Committee. It does not necessarily reflect a consensus of the workshop as a whole, or of the Study Group.

The workshop focused on topics arising from the draft legally binding instrument for strengthening the 1972 Biological and Toxin Weapons Convention (BWC) which the Ad Hoc Group of States Parties (the AHG) is now developing as a Rolling Text. The workshop also considered possible inputs to the draft suggested by the experiences of other international organizations, including ones dealing with disarmament issues. Particular attention was paid to the activities of the Organization for the Prohibition of Chemical Weapons (OPCW) and the United Nations Special Commission on Iraq (UNSCOM). It was observed that the legally binding instrument could build upon existing arrangements in a number of areas, as by establishing co-operation with such other international organizations as the World Health Organization (WHO), the Food and Agriculture Organization (FAO) and the Office International des Epizooties (OIE). Representatives of the WHO and OIE participated in the workshop.

The main business was with possible compliance-verification regimes, having particular regard to the experiences of the OPCW and UNSCOM. The prevailing view was that an effective verification regime would have to consist of an integrated package of measures based upon the twin pillars of declarations and inspections. Papers were presented on verification topics, along with others on national implementation, the surveillance and control of emerging diseases, and the national and international criminalization of CBW activities.

The workshop opened with reports on the work of international bodies active in the implementation of the CBW conventions. The first report concerned the activities of the AHG, which was in session in Geneva at the time of the workshop. Several members of delegations were among the workshop participants. The latest version of the Rolling Text (in BWC/AD HOC GROUP/36 of 4 August 1997) has a lot of square-bracketed text not yet agreed upon, but the report to the workshop was optimistic, stating that during the AHG's current meeting more square brackets were being removed from the text than added to it. The workshop was informed that the AHG had just appointed additional Friends of the Chair on confidentiality issues (Germany) and on national implementation and assistance (India), in addition to those already established, namely: compliance measures (UK), confidence-building measures (Hungary), Article X (initially Chile, now Brazil), definitions (Iran), legal issues (Australia) and investigations (South Africa).

It was reported that two alternative organizational arrangements are under discussion. The first proposes the establishment of a small and cost-effective organization to oversee the implementation of a strengthened BWC, while the second envisages ad-hoc arrangements involving the use of existing international organizations and agreements. The workshop was also told that the present Secretary-General of the United Nations is keen to facilitate NGO participation and contacts between NGOs and delegations wherever possible. The AHG is preparing for an intensification of its work over the next few months, and 1998 is considered by many to be a window of opportunity for the strengthening of the BWC.

The workshop next received a report on the first months of the implementation of the Chemical Weapons Convention (CWC), which entered into force at the end of April 1997, and on the activities of the OPCW. The Organization now has 100 ratified and acceding states parties and it is hoped that the Russian Federation will have ratified in time to play an active role in the second session of the Conference of States Parties in December 1997. Ratification by the Russian Federation might also encourage other signatory states to deposit their instruments of ratification. The workshop heard that the OPCW was affected by financial problems which have now been successfully resolved and that the recruitment of inspectors and staff is continuing. It was learnt that the OPCW has already carried out 66 inspections of chemical facilities around the world and is on course to meet its inspection

targets for 1997. The workshop was told that, alongside these initial successes, around a third of states parties had still not submitted their initial declarations and that a number of important issues remained unresolved. Nonetheless, the OPCW's record to date was impressive and there were many lessons to be learnt for any future biological weapons organization.

The workshop then received a report on the recent activities of UNSCOM. The workshop was given a detailed overview of UNSCOM's monitoring of the Iraqi biological weapons programme during 1996 and 1997 and informed of the main measures used by the commission for the verification of Iraqi disclosures. It was noted that UNSCOM is a very special case and its intrusive verification regime may not be appropriate for the strengthened BWC. Nevertheless, the experience accumulated by UNSCOM during its seven years of operations would be extremely useful for any future BWC organization as it had undoubtedly demonstrated the value of several of the measures being considered for the legally binding instrument. The workshop held a detailed discussion of what lessons could usefully be learnt from this experience.

Following these initial reports, the workshop moved on to a detailed discussion of particular aspects of the latest version of the Rolling Text:

Definitions. The workshop heard an authoritative account of the progress being made in the AHG in respect to definitions. Central questions include which terms require definition -- all of them, or only those considered to be technical? -- and what the precise role should be for lists. It was widely felt in the workshop that the negotiations must take care to ensure that definitions are generated only where needed for the purpose of implementing the legally binding instrument, for there was a danger that definitions could affect the scope and implementation of the entire BWC; it was important to ensure that the outcome of the negotiations would not in any way modify the basic prohibitions of the BWC. It was widely accepted that the BWC applies not only to human but also to plant and animal pathogens. With these important factors in mind, the workshop discussed whether the creation of comprehensive lists was possible and whether definitions in the projected protocol would restrict the scope of the BWC. A number of participants raised the point that in negotiations definitions are rarely entirely technical, being also influenced by a variety of political factors. It was observed that the work on definitions was closely linked to that on compliance measures, and that, once agreed, definitions can quickly become immutable. The workshop was reminded that, eventually, compliance measures will need to be implemented and that some definitions will be needed in order to make it clear to states parties what steps they have to take. It is therefore important to consider at an early stage what definitions are necessary for the future verification regime.

Declarations and on-site measures. The workshop spent a large part of its time on detailed discussions of the means by which an effective verification framework could be developed for the BWC. Many participants noted that the experiences of the OPCW and UNSCOM demonstrated that an effective verification regime had to be based upon an integrated approach. It was widely accepted that this approach should ideally consist of declarations, on-site visits/investigations, notification of transfers and multilateral information-sharing.

On the subject of declarations the workshop heard that for both the OPCW and UNSCOM they are an essential off-site element of the verification package, being used as a baseline against which information from other sources (inspections, other states parties etc) can be compared. Mandatory declarations would not have to cover all activities of possible relevance, the workshop was told, but only those of most relevance, thus ensuring that a BWC organization was not overwhelmed with information. The distinction between the trigger of a declaration and the information which was requested from a state party was emphasized. It was stated that triggers would have to be precise so that states parties knew what was expected of them. Surveys of possibly declarable facilities in a number of states had shown that relatively few (tens) facilities would actually be affected by mandatory declarations, thus reassuring those in the biological industries.

On-site visits and investigations can be broken down into two types: non-compliance concern investigations (NCCIs) and non-challenge visits (NCVs). The necessity for the former is widely accepted in the AHG and so discussions in the workshop concentrated upon the latter, non-challenge visits. Many participants put forward reasons why NCVs are essential - alongside mandatory declarations, NCCIs and information exchange - to an effective verification regime. There is a greater likelihood of receiving honest and accurate declarations of activities from states parties if they are aware that they are liable to random visits to validate such information. A regime including NCVs would also ensure that inspectors as well as states parties had the opportunity to prepare for, and develop procedures for, NCCIs when necessary. Such a regime would also act as a deterrent to those who might otherwise be tempted to engage in BW work. It was expected that NCVs would be very infrequent events and, as they are not intended to prove noncompliance, they need not be particularly intrusive. The workshop also heard how the OPCW Confidentiality Policy protects confidential business information of the chemical industry and that it could be adapted to serve the same purpose for the biological industry.

Scientific and technical exchanges. The workshop heard that BWC Article X (Scientific and Technological Exchange for Peaceful Purposes, and Technical Cooperation) is a politically sensitive issue as it is necessary to balance the wishes of both developed and developing countries. The technical cooperation for which the article provides was considered by workshop participants to be a good measure for building confidence. It was suggested that existing co-operation between states on emerging diseases for public health reasons could be a useful foundation for improving Article X, although duplication with organizations such as the WHO would have to be avoided. Similarities to Article XI (Economic and Technological Development) of the CWC were noted, although it appeared that the current negotiations in Geneva are more sensitive to trade and co-operation issues than those for the CWC had been.

Measures to strengthen the implementation of BWC Article III (Non-transfer). Discussion focused on possible measures to strengthen the implementation of Article III, such as requiring states parties to declare transfers of certain biological materials to a future BWC organization, and on the practicality of tracking such transfers on a global basis. The workshop heard that tracking material and equipment by UNSCOM within Iraq (which had been uncooperative) had been difficult, and considered the practicability of such a system on a global basis. Other matters raised included the point that, by banning the transfer of materials which are essential for the treatment and eradication of diseases to non-states parties, research into diseases could be adversely affected and humanitarian assistance might not be deliverable to states suffering an epidemic. On a positive note the workshop was aware that measures to control the transfer of dangerous materials both nationally and internationally are being strengthened for public health and anti-terrorism reasons and could be utilised and built upon by an enhanced BWC.

Having considered these particular aspects of the Rolling Text, the workshop then took up in succession the two legal topics on its agenda. On the matter of implementing and strengthening BWC Article IV (National Measures), the workshop heard that measures to improve the implementation of the provisions of this article would be essential to the success of the projected legally binding instrument and would also contribute towards controlling dual-use technologies. As in the CWC national measures could involve not only the establishment of national authorities but also the enactment of penal legislation. If the AHG negotiations follow the example of the CWC, the national implementation of the BWC could mean more than simply signing and ratifying; it could involve a close liaison between the national authority and the BWC organization and an intense exchange of information between the two bodies. Some participants pointed out that it is essential that states parties know what is expected of them and that national measures are not neglected as attention focuses on organizational issues. Many in the workshop agreed that strong national measures were vital for the BWC, and that some states parties might need more help than others in establishing national authorities and enacting the necessary national legislation.

The workshop then moved into the question of international criminal law and the BWC. Following on from previous workshops, the Harvard Sussex Program presented a Draft Convention on the Prevention and Punishment of the Crime of Developing, Producing, Acquiring, Stockpiling, Retaining, Transferring or Using Biological or Chemical Weapons. At present there is a total prohibition on the development, production, storage and use of both biological and chemical weapons. However, the CWC and the BWC commit states parties, and the extent to which individuals are subject to the prohibitions thereby placed on states depends on the national measures which states parties take to implement these treaties. Moreover, in the overall array of treaties and statutes currently in force and under negotiation (such as the so-called "bombing" convention and the statute of the projected International Criminal Court), there are large gaps in the criminalization of activities by individuals. The draft international convention prepared by the Harvard Sussex Program is intended to reinforce existing legal instruments and harmonise their provisions and prohibitions by introducing the concept of individual responsibility and establishing a universal jurisdiction. Many participants in the workshop expressed interest in the idea, commenting that it had a certain topicality, although some suggested that an alternative, albeit less comprehensive, approach would be to work for incremental improvements on the relevant articles of the BWC, the CWC and other existing statutes.

The workshop then went on to discuss surveillance of present and emerging diseases affecting human beings, other animals and plants, and responses to unusual outbreaks. It heard about the current activities of international organizations whose experience in responding to sudden outbreaks of disease could be relevant to work of the AHG in the strengthening of the BWC. Emphasis was placed on the procedures adopted by, in particular, the WHO and the OIE for the reporting of unusual outbreaks of disease in human beings and animals. Although information provided by organizations such as the WHO was seen as important, it was also stressed that such organizations should continue to deal with the public health aspects of disease, rather than becoming directly embroiled in the politics that would surround possible future allegations of biological warfare. Relevant international organizations had not been closely involved in the negotiations for the CWC as the negotiators were more focused on the disarmament aspects of the convention, and it was hoped that such disarmament focusing would not recur in the AHG negotiations. The fact that the WHO, FAO, OIE and other international organizations had already made presentations to the AHG was welcomed.

The final session of the workshop included consideration of what the Study Group should address at its future meetings. It was suggested that subsequent workshops be devoted to specific key topics rather than general discussion. It was also suggested that a future workshop could provide an opportunity for representatives of the chemical industry to meet with their counterparts from the biotechnology industry to share experiences of the CWC verification regime. Further workshops are being planned for 1998 at dates which may be chosen to coincide with the intensified meetings of the AHG and the OPCW Conference of the States Parties.