

Mr Gordon Vachon (Canada), was appointed Special Assistant to the Director-General (External Relations). He will officially take up the post in mid-October.

As of 31 August, 473 of the allotted 507 fixed-term posts in the Secretariat were occupied. Of these, 331 were in the professional and higher category and 142 were in the general service category. Including staff on short-term and temporary assistance contracts and others the total personnel strength was 522 from around 66 different nationalities. Following a decision by the Conference at its sixth session, the Secretariat continued to keep 30 fixed-term positions unfilled.

Subsidiary Bodies

Confidentiality Commission The changes to the Policy on Confidentiality that were suggested by the Confidentiality Commission when it met for its special session during 17–18 January were in the process of being formulated into a draft decision for consideration at the seventh session of the Conference in 2002. However, a date had yet to be set for the next regular session of the Commission, since its fifth session (planned for 18–20 April) was cancelled as part of the Organization's austerity measures.

Scientific Advisory Board (SAB) The SAB was actively preparing for the 2003 review conference. In pursuit of this, some members of the SAB, in their private capacities, attended the IUPAC planning meeting during 23–24 July to discuss the proposed review of the scientific and technological developments relevant to the Convention being undertaken by that organization, with the participation of its national constituent academies and societies. This review will focus on two areas: synthetic organic chemistry and how advances may effect the Convention, its

implementation, and the General Purpose Criterion, and analytical chemistry and how that field can contribute to the technologies and methods used in verification of the CWC. In July 2002, IUPAC are to convene a workshop at which the findings would be presented and discussed. IUPAC will involve the worldwide chemical industry in this review.

The SAB will hold its own discussions on scientific and technological developments and their relevance to the Convention in 2002.

Future Work

At its twenty-sixth session at the end of September the Council is expected to formally establish a working group on the First Review Conference, and provide this body with a mandate and terms of reference. Much work continues to be undertaken within all bodies of the OPCW — the SAB, the Secretariat including the Inspectorate, and the Council — with respect to the Review Conference and the identification of key issues and/or aspects of the CWC's implementation that merit discussion and debate.

Discussion of the 2000–03 budgets will also continue to figure prominently in the daily work of the OPCW and the 2001/2002 Council sessions. The twenty-sixth session of the Council will have numerous budgetary issues to address — related to the current austerity measures, the payment by states parties of their 2001 annual assessments and reimbursements under Articles IV and V, and programme delivery and daily operations in the fourth quarter of 2001. The budgetary deficiencies faced by the Organization are not likely to be resolved prior to the seventh Conference of the States Parties, now planned for 7–11 October 2002.

This review was written by Pamela Mills, the HSP researcher in The Hague.

Strengthening the Biological and Toxin Weapons Convention

A four week session, the twenty-fourth, of the Ad Hoc Group to consider a legally binding instrument to strengthen the Biological and Toxin Weapons Convention (BWC) were held in Geneva from Monday 23 July to Friday 17 August. The previous Ad Hoc Group session held in April/May 2001 (see *Quarterly Review* no 15) had seen a significant step forward with the introduction of the Chairman's composite text and the recognition by the states parties that while the rolling text was the underlying basis for the negotiations, delegations expressed their views with regard to the composite text. There was consequently a real expectation that the negotiations of the Protocol could be completed prior to the Fifth Review Conference in November/December 2001 coupled with a recognition that the Chairman's composite text could provide the basis to achieve this. Although during the April/May session, the United States had spoken on the final morning to say that, although its position on the substance of this Protocol were well known

and many of those points were not reflected in the Chairman's text, the United States was carefully studying the text as a whole. Other states parties noted that, although the interventions made by a number of delegations on the composite text showed that views still differed on a limited number of issues, this should not allow the Ad Hoc Group to lose sight of the fact that there was a strong collective will to overcome such differences and to conclude the negotiations by the time line set out by the mandate. There had been appeals by some states parties to all participating governments to demonstrate the political will to achieve agreement of the Protocol.

Although the July/August session began promisingly with over 50 of the 55 or so states parties engaged in the Ad Hoc Group negotiations speaking on the first two days in favour of the Chairman's text being used as the basis for the political decisions needed to complete the Protocol prior to the Fifth Review Conference in November, the mood was

sharply changed on 25 July when the United States delivered a 10-page statement rejecting both the composite Protocol and the approach adopted in the Protocol. This effectively stalled the Ad Hoc Group negotiations — and certainly contributed to the failure to agree a procedural report on the July/August session. This failure in the early hours of Saturday 18 August has to be primarily attributed to the United States rejection at the eleventh hour of the Protocol when it was evident that many delegations had come to the July/August session expecting hard negotiations resulting in successful agreement of an agreed Protocol.

As there is no agreed procedural report of the July/August session, there is no formal statement as to which states parties and signatory states had participated. There is, however, information that can be gleaned from drafts of the procedural report which had to a large extent been agreed when the session ended — the nub of the disagreement related to how the report should deal with the rejection by the United States as that country was not prepared to agree any procedural report in which it was named or one in which there was reference to ‘one delegation’ or to ‘a delegation’. In the July/August session, 60 states parties and 3 signatory states participated; 4 more states parties than in the April/May session as 8 (Albania, Bosnia and Herzegovina, Cyprus, Ethiopia, Luxembourg, Malta, Venezuela and Viet Nam) participated in July/August whilst 4 (Bangladesh, Jordan, Philippines and Tunisia) did not. One more signatory state (Myanmar) participated than in April/May.

As, following the US rejection, there was much confusion in the Ad Hoc Group before the Group decided to work on the language of a report to the Fifth Review Conference which would have been incorporated in the draft procedural report, it was not surprising that in the draft procedural report, there was no listing of either Friends of the Chair or of the Facilitators to assist the Ad Hoc Group. There was a single working paper (WP.455) providing a statement by Cuba on the twenty-fourth session which Cuba had drawn to the attention of delegations in the last few hours of the session when there was no longer any translation facilities. Since there was no procedural report, there are no annexes containing either the composite Protocol or of the rolling text. However, a technical correction of the Chairman’s composite Protocol text had been issued to delegations prior to the July/August session as CRP.8 (Technically corrected version) dated 30 May 2001; this is simply an editorially corrected version.

The July/August session had some 17 AHG meetings with 12 of these being plenary; 7 were in the first week, 2 in the second, 3 in the third; and the remaining 5 in the final week. The distribution of meetings shows how the Ad Hoc Group had to take time for reflection and consideration following the United States rejection on the third day before engaging on the preparation of a draft procedural report in the third and final week. Most of the meetings opened as a plenary meeting when Ambassador Tóth asked if any delegation wished to make a statement. After any statement, or if there were no statement, the meeting would then become informal. The remainder of the time available was used for informal consultations primarily between the Chairman and delegations and regional groups.

The July/August session as usual saw a number of associated events involving NGOs. On 24 July there was an

EU/NGO meeting. Belgium, who have the current EU Presidency, distributed copies of the EU statement presented to the Ad Hoc Group on the previous day and statements were made by the University of Bradford Department of Peace Studies (“The Composite Protocol Text: A Net Gain for All States Parties”), VERTIC (“Reaching an Agreement on a BWC Protocol: Laying the foundation for a strong verification regime”), INES (“Concerning the Protocol to the Biological Weapons Convention”) and the Federation of American Scientists (“Cost-Benefit Analysis of the Chairman’s Text of the BWC Protocol”). These were then followed by a very lively debate and discussion between the representatives of the EU delegations and the NGOs.

A press release was issued on 24 July in which nine NGOs called on the Ad Hoc group to conclude a Protocol to the BWC before the Fifth Review Conference, saying:

The Protocol negotiations are the sole ongoing multilateral disarmament negotiations so their outcome will be of great importance to international security and non-proliferation. We urge the AHG to send the right message and bring the negotiations to a successful conclusion. The Protocol will be an important tool to help prevent the spread of biological weapons and fill a gap in the network of international disarmament and non-proliferation treaties.

On 25 July the Department of Peace Studies of the University of Bradford, UK presented and distributed to an audience of 60 individuals from 26 Ad Hoc Group delegations copies of Review Conference Paper No 3, *New Scientific and Technological Developments of Relevance to the Fifth BTWC Review Conference*, July 2001 and of Evaluation Paper No 21, *The Composite Protocol Text: An Evaluation of the Costs and Benefits to States Parties*, July 2001 (both available at <http://www.brad.ac.uk/acad/sbtwc>).

Later the same day an NGO seminar was opened by Ambassador Jayantha Dhanapala, the UN Under-Secretary-General for Disarmament Affairs. Other contributions were made by the University of Bradford Department of Peace Studies (“Why the Composite Protocol Needs to be Adopted Now: A Net Gain for All States Parties”), the Sunshine Project (“Bioweapons Negotiators Urged to Press Ahead: Spies and High Explosives are No Recipe for Security”) and the Federation of American Scientists (“Comments on the US Rejection of the BWC Protocol”).

In addition, in the final week of the session, on 15 August, the Department of Peace Studies of the University of Bradford, presented and distributed to an audience of 65 individuals from 22 delegations copies of Evaluation Paper No 22, “The US Rejection of the Composite Protocol: A Huge Mistake based on Illogical Assessments”, August 2001 (available at www.brad.ac.uk/acad/sbtwc). A video was also shown of the BBC World *Hard Talk* programme which had addressed the US rejection of the Protocol and had been transmitted worldwide on 30 July.

Political Developments

The Ad Hoc Group was poised at the start of its twenty-fourth session to move forward to successfully finalise the negotiation of almost seven years for a Protocol to strengthen the effectiveness and improve the implementation of the Biological and Toxin Weapons Convention. In his opening

remarks, Ambassador Tibor Tóth said that first, the session was about developing a Protocol and thus strengthening the Convention. Second, that the Ad Hoc Group must consolidate the composite Text at this session. Third, that the Ad Hoc Group must continue to negotiate based on the reality before it. In the nine-week period between the twenty-third and twenty-fourth sessions Ambassador Tóth hoped that every delegation had undertaken a long and detailed study of the composite Text and examined what it contains for each state party and what it contains for other states parties as well as what it does not contain for each state party and equally what it does not contain for others. In addition, delegations should have analyzed how the composite Text fulfils the mandate of the Ad Hoc Group and how it balances the existing mutually exclusive parts of the rolling text and the different objectives of all states parties into a coherent, workable and meaningful Protocol. He concluded by noting that negotiating the Protocol has been an act of co-operation among the states parties to the Convention and, as happens in most areas of co-operation, there has to be compromise in order to gain in the long run collectively. Ambassador Tóth said that now is the time for compromise and now is the time to really deliver on those promises of negotiation in the spirit of co-operation. He went on to say that whilst it would be necessary to make some changes to the composite Text, any such change must move the Ad Hoc Group forward in a consensus way, and changes must not move the Ad Hoc Group backward towards the rolling text notion of alternatives. In order to move forward, Ambassador Tóth said that the inconsistencies and omissions identified in the last session have been taken up by the editorial facilitators who had provided him with a new Technically Corrected Version of CRP.8 and delegations have been provided with copies of that document.

During the first two days of the session, over 50 of the 55 or so states parties engaged in the negotiation of the Protocol spoke in favour of completing the negotiation on the basis of the Chairman's composite Protocol text.

Iran said that it was determined to work towards a successful conclusion, and was ready to discuss the composite Text, with the expectation of the full and active participation of all delegations ready for trade-off, and for give and take. It was ready to achieve a common goal — the successful conclusion within the deadline.

China said it firmly believed more than ever in the successful conclusion of the Protocol — the only multilateral arms control treaty now under negotiation — will be not only conducive to strengthening the non-proliferation regime in the biological field but also beneficial to the international security system constructed on the basis of multilateral arms control treaties. This is exactly the time when the political will, sense of responsibility and spirit of compromise of all sides are put to the test.

The Russian Federation said that the Ad Hoc Group had an historic opportunity to strengthen considerably the BWC regime, prohibiting an extremely dangerous type of weapons of mass destruction, that it was important not to lose this opportunity, and resolute steps should be taken in order to successfully complete the important work of the past six years. Russia believed that a legally binding Protocol to the Convention had to be drawn up this year, in keeping with

decisions taken earlier by states parties. Russia is prepared to do this.

South Africa then spoke to emphasise that it is the task of the Ad Hoc Group, at this last session, to do two things — to complete its work, and to adopt a report, by consensus, to be considered by a Special Conference of States Parties to be held before the commencement of the Review Conference. South Africa went on to say that if opposition to biological weapons is to be sustainable in the long term, it is necessary that the international community as a whole take action and commit themselves to strengthening the norm against the development, production, stockpiling and use of these reprehensible weapons. South Africa saw a Protocol strengthening the implementation of the Biological Weapons Convention as a core element of the international security architecture. Moreover, this Protocol would not only provide a means to strengthen security, but would also provide important technical cooperation and assistance provisions that would enhance the international community's fight against the debilitating impact of disease on our peoples and on socio-economic development. The Protocol and the provisions contained in Article 14 would provide further tools in the fight against disease. South Africa placed an emphasis on the benefits that would be achieved for the continent of Africa and for the countries of the South as a whole, noting, however, that disease knows no boundaries — especially in the modern world with its advanced systems of communication and travel — and the countries of the developed world will also derive full benefit from the fight against disease, which will be assisted by the provisions of Article 14.

Belgium, speaking on behalf of the European Union and the associated states (totalling 28 countries) said that the EU reiterated its determination to respect the decision of the Fourth Review Conference to complete the negotiation of the Protocol prior to the Fifth Review Conference. The statement went on to say:

the European Union reaffirms that even if on certain points the Composite Text does not fully correspond to what we would like to see, nevertheless we think that it is a basis on which political decisions could be taken. Indeed a Protocol based on the Composite Text and which would respect the general balance of it could certainly consolidate the Convention and would be a useful supplement to existing multilateral regimes in the field of disarmament and non-proliferation and therefore would enhance everyone's security.

Pakistan, Japan and Chile spoke in favour of completing the Protocol negotiation before the Fifth Review Conference. As Chile said, it was necessary to cross the Rubicon at this session and there was just one bridge — the composite Protocol text — to cross the Rubicon even though there might be differences of opinion in respect of the characteristics of that bridge. There is no alternative.

On the second day, Cuba said that after carefully examining the Chairman's text, they could say that although not all their concerns had been taken into consideration, some of them of major importance have been and consequently Cuba, in the spirit of the greatest flexibility, would be ready to participate in a negotiating process that should be carried on a responsible basis on the text that you submitted. Cuba emphasised the importance of the Ad Hoc

Group mandate agreed in 1994 and noted that it cannot be manipulated either in its contents and/or date.

Brazil then spoke on behalf of 36 states (Argentina, Australia, Austria, Belize, Brazil, Bulgaria, Canada, Chile, Croatia, Cyprus, the Czech Republic, Denmark, Ecuador, Greece, Guatemala, Hungary, Iceland, Ireland, Italy, Luxembourg, Malta, Mexico, the Netherlands, New Zealand, Nicaragua, Norway, Peru, Republic of Korea, Romania, Slovakia, Slovenia, South Africa, Spain, Sweden, Turkey and Ukraine) including some of those who had been associated with the EU statement, saying:

the Ad Hoc Group has entered the last round of negotiations on the Protocol to strengthen the implementation of the Biological Weapons Convention. At this crucial juncture it is of utmost importance that all delegations demonstrate the necessary political will to bring these negotiations to a successful conclusion before the forthcoming Review Conference. We continue to believe that your Composite Text (CRP.8) provides the basis to conclude our work expeditiously in accordance with the mandate of the Ad Hoc Group and the undertakings regarding the conclusion of the negotiations as agreed by consensus at the 1996 Review Conference. We consider that CRP.8 reflects a careful and sustained endeavour to reach comprehensive and balanced compromises. We believe that a Protocol based on your text would enhance international confidence that the prohibitions of the Convention are being upheld and that its provisions are being implemented.

Brazil concluded by saying:

this statement demonstrates that there is much common ground as well as a strong and widely-shared political will amongst the States Parties to the BWC to conclude successfully these negotiations before the Fifth Review Conference.

On the morning of the third day, Switzerland said that it emphasised three principles:

- that the threat of biological weapons remains the key problem to international security against the background of the enormous progress made in biological research. No effort should be spared to set aside the danger of abuse of such progress. All legitimate measures must be used to reduce and set aside the threat of biological weapons. Verification of the Convention on Biological Weapons is one of the problems that has been awaiting solution for years and a convincing response from the Ad Hoc Group;
- an agreement to strengthen the Convention should be based on a fair balance between verification, disarmament, development, legitimate participation in the fruits of scientific research in the interests of humanity as a whole and world health; and
- the fight against biological weapons should bring together all key actors and calls for global and consolidated effort. That is why a universal approach should be adopted as had been done in the BWC itself.

India said:

Our challenge during these negotiations is to reach a shared understanding of new developments relevant to the Convention and transform it into a legally binding instrument that maintains a balance between transparency, non-intrusiveness, non-discrimination and effectiveness. ... Your Composite Text, Mr. Chairman, has been a timely initiative Your text has brought us close to what could

well be the final solution. Therefore, at this stage, what is needed is limited adjustments and not large-scale revisions. To conclude our exercise successfully and iron out some of the anomalies, we need to keep our sights fixed on the basic principles that I just identified: transparency, non-intrusiveness, non-discrimination and effectiveness. Declarations, visits and investigations form the verification core of the Protocol.

India concluded by saying:

we are all aware that we have reached a decisive point in our work. This has already been highlighted by other speakers. Therefore I have deliberately chosen to focus on specifics for two reasons. First, to emphasize that there are only limited issues that need to be fixed; and secondly, that the 'fix' can be found within the overall framework and thrust of the Composite Text.

The United States Rejection

Despite such an overwhelming positive response to the composite text by a significant majority of the states parties participating in the work of the Ad Hoc Group, the United States then delivered a 10-page detailed statement rejecting not only the Chairman's text but also the approach to the Protocol saying:

After extensive deliberation, the United States has concluded that the current approach to a Protocol to the Biological Weapons Convention, an approach most directly embodied in CRP.8, known as the 'Composite Text', is not, in our view, capable of achieving the mandate set forth for the Ad Hoc Group of strengthening confidence and compliance with the Biological Weapons Convention.

The statement went on to say:

One overarching concern is the inherent difficulty of crafting a mechanism suitable to address the unique biological weapons threat. The traditional approach that has worked well for many other types of weapons is not a workable structure for biological weapons. We believe the objective of the mandate was and is important to international security. We will therefore be unable to support the current text — even with changes — as an appropriate outcome of the Ad Hoc Group efforts.

The rejection by the United States of the Protocol and its consequences are addressed in the second invited article of this *Bulletin*. The details and various elements of the 10-page statement have been examined and analyzed in Bradford Evaluation Paper No 22, noted above.

Reactions to the United States Rejection

This US rejection of both the composite Protocol and the approach to the Protocol at the eleventh hour caused much disappointment for the other delegations as it is evident that many states parties had come to this session expecting hard negotiations leading to acceptance of a Protocol. Somewhat incongruously, the first to speak on the afternoon of 25 July after the US rejection that morning, was Ambassador Dhanapala who had come to bring a message from the Secretary-General to the Ad Hoc Group. This message said:

After 25 years without a system of formal verification, it is now widely believed that the Convention should be

strengthened through an international instrument establishing measures to monitor its implementation and verify compliance. Strong commitment to the Convention led this Ad Hoc Group to be established in 1994. Since then, you have made remarkable progress in negotiating a Protocol aimed at bolstering the Convention's effectiveness and improving its implementation. A verification regime would facilitate a State Party's compliance with the Convention and provide accountability among its parties. Progress in reinforcing the international norm established by the Biological Weapons Convention has another tremendous advantage. It substantially improves the prospects for expanded international cooperation involving the peaceful uses of biological materials and technology and the exchange of scientific and technological information, which is a legal right of all Parties to the Convention. It offers the prospect of opening a major new global market, while lessening the risk that the pursuit of profits for some will destroy the hopes of peace for all.

The statement continued:

This Protocol, when endorsed by the world community, will significantly reduce the global threat of biological weapons. It will increase the value of the Biological Weapons Convention as an instrument of international peace and security — a fundamental concern of the United Nations. The United Nations stands ready to provide all necessary assistance to facilitate these negotiations. I strongly encourage you to redouble your efforts to ensure that the negotiation process succeeds.

Thailand then spoke to say that it endorsed the statement of the like-minded group as expressed in the joint statement delivered by Brazil on 24 July and urged the Ad Hoc Group to together conclude the Protocol prior to the Fifth Review Conference so as to make the world a safer place for the succeeding generations.

Cuba expressed concern about the United States rejection of the Protocol as well as concern that such a powerful and hostile neighbour had never spared any efforts in expressing its aggressive attitudes, especially in connection with its biological programme, was not in a position or wishing to compromise with regard to verification and comply with the requirements of the Convention.

Japan took the floor to express disappointment about the conclusion of the US policy review on the Chairman's text, as it considered that the text, while insufficient and needing improvement, still presented the most realistic way to strengthen the BWC under the given conditions. Japan regarded this text as a basis for further work in order to reach an agreement by the next Review Conference and pointed out that the Ad Hoc Group was confronted with very difficult questions: firstly, how should it evaluate its joint and cumulative efforts for many years, which had produced the composite text; and second, how could it accommodate this new United States approach to the process. However, Japan firmly believed that US participation was imperative in the task of setting up stringent compliance measures.

Canada then spoke to say that it regretted the announcement made that the United States had decided that it cannot support the Chairman's text and expressed the view that the Protocol, if implemented, would strengthen global norms against the possession of biological weapons, provide machinery to investigate allegations of non-compliance,

complicate and deter biological weapons proliferation and reduce the likelihood that deliberate disease will be used as a weapon in the future. Canada concluded by sustaining the active hope that a Protocol based on the Chairman's text can be successfully completed before the BWC Review Conference late this year.

South Africa then spoke to join the views of Japan and Canada and to say that South Africa also regretted the content of the United States statement. South Africa remained convinced that the endeavour which this Ad Hoc Group is working on is important and essential to continue to strengthen international peace and security.

The next morning, 26 July, South Africa spoke on behalf of the Non-Aligned Movement and other States to say that the group regretted the conclusion which was announced by a major negotiating partner, namely that the Ad Hoc Group's efforts have simply not yielded an outcome that would be acceptable and that even further drafting and modification of the text would not yield an acceptable result for it. The NAM and other States wished to assure the Chairman of their full and continued cooperation in the difficult task that confronts the Ad Hoc Group and called on all states parties, the major negotiating partner in particular, to continue to work so as to achieve the objectives that were set forth by the Fourth Review Conference.

On the afternoon of 26 July, Belgium (on behalf of the European Union and the associated states) said:

We noted with concern that the United States are of the view that the costs related to the Protocol would outweigh the benefit thereof. This is one of the conclusions that we do not share. We regret that after six years of joint work on the basis of terms of reference accepted by all, the United States are of the view that nothing could make the Composite Text submitted by President Tóth acceptable. We do not share the conclusion either. The European Union is of the view that we should reserve the achievement of many years of negotiation.

The European Union went on to say that they wished that a multilateral negotiating forum would be maintained in the context of this Convention and that:

At this stage of the negotiation, we must maintain the chances of arriving at a multilateral agreement on biological weapons involving all concerned States. We are considering all possible options. In any event it cannot be business as usual.

Russia expressed disappointment and anxiety in connection with the approach set forth by the United States and went on to say that obviously this is a full rejection of the results of six years of work of the multilateral forum. However, the position of Russia with respect to the development of a Protocol remained unchanged and Russia determinedly supports fulfilment of the terms of reference of the Ad Hoc Group and development of the Protocol before the Fifth Review Conference. Russia concluded that it must not be allowed for work to be broken off and for six years of efforts by the states participating in the Ad Hoc Group on the Protocol to be laid to waste. The Ad Hoc Group must not miss the chance to solve a problem which has needed to be solved for a long time.

Brazil said that it had listened with great attention to the statements made during the previous two days and had

identified in them both disappointment and the willingness to proceed with the efforts to work toward the strengthening of the BWC. The Brazilian delegation shared those views. Brazil regretted the decision by the United States to reject the draft Protocol prior to the conclusion of the negotiations. For Brazil, the provisions contained in the Protocol would doubtless contribute to strengthen international security in the biological field — there is not and neither can there be an international disarmament and non-proliferation treaty absolutely fool-proof, but true political will to engage in disarmament and prevent proliferation has to be embodied in multilateral agreements if they are to have international legitimacy and become politically viable. Brazil concluded by saying it believed that the Ad Hoc Group has a mandate to fulfil and that its task should be accomplished. Brazil has been fully participating in these negotiations with that objective in mind and is ready to continue to work to attain the objectives that were set forth by the states parties in the Fourth Review Conference.

Australia noted that its Foreign Minister had said that Australia was very disappointed by the US decision to reject the composite text. Australia believed:

we will lose a valuable opportunity to step up our fight against the biological weapons if the Protocol negotiations fail. We have long believed that such threats are best met with a range of measures, including multilateral instruments. ... Australia maintains that failure to achieve a Protocol could amount to a setback for multilateral arms control and send the wrong message to potential proliferators. Australia believes that after seven years of hard work we have brought ourselves within reach of achieving an acceptable result by the November Review Conference and that this is still possible with the right political will.

Australia believed that the composite text would offer all states parties, including those in the Asia-Pacific region, real security benefits by raising the bar against biological weapons proliferation and by making it more difficult for countries to cheat on their Biological Weapons Convention commitments. The Protocol would also increase transparency in the booming biotechnology sector, allowing companies to trade with greater confidence. Australia does not share the US assessment that the draft Protocol would put national security and confidential business information at risk. The Composite text allows states parties to take sensible and effective measures to protect this kind of information, not least by managing access and sharing equipment and so on.

Iran spoke noting that in the statements at this session a consensus had been emerging that a Protocol could indeed be agreed prior to the Fifth Review Conference. Iran said:

At the peak of satisfaction for the creation of a new cooperative atmosphere and momentum, all of the sudden we face a totally unjustified statement, with its main message that even the Protocol concept is questioned and there is no necessity to work on a protocol for the BWC.

Iran went on to note:

Detailed scrutiny of the said statement would lead us to the following conclusions: in spite of the fact that the US has been fully involved in all stages of negotiation, in many cases created obstacles to consensus, imposed its position through introducing square brackets in the Rolling Text,

claims in the said statement that its serious concerns have been ignored during past years. This statement for the first time, surprisingly and with unjustified explanation, questioned the very concept and the necessity of the Protocol. Had the US made this position years ago, energy and thousands of man days spent by all other countries had not been wasted. Such decisions, neglecting already undertaken international obligations, shall undoubtedly put the credibility of any country in question.

Iran concluded by reiterating their commitment to complete the negotiations of the Protocol.

On 30 July, Argentina spoke to say that it had listened carefully to the difficulties which the composite text gives rise for the United States. Argentina regretted the fact that the United States found it impossible to continue negotiations on the basis of that text, and concluded:

We shall work and we shall support initiatives, which make it possible to get out of the impasse where the Ad Hoc Group finds itself now. We consider it opportune to begin the work of drafting the report, which will be presented to the Review Conference for the Biological Weapons Convention. A freeze on the work of this Ad Hoc Group would send a negative signal to the international community and its failure would add one further factor for concern to the somewhat discouraging situation in recent years for the disarmament and non-proliferation regime.

Picking up the Pieces

The Ad Hoc Group next met in plenary session on 3 August when Ambassador Tibor Tóth outlined some of the indications that he had gained from informal consultations both with delegations and with the regional groups. He reported that he had addressed two key issues — first, whether the efforts related to the consolidation and finalisation of the Protocol could be continued, and second, if not, then what other action would be appropriate and how should the situation be reported. Ambassador Tóth reported that the overwhelming majority of those delegations to whom he had talked had reconfirmed their support for the composite text or for the composite text being used for the basis of negotiations to complete the Protocol. However, concern was expressed over the fact that in the current circumstances it is not possible to do that.

Ambassador Tóth then went on to consider various aspects relating to the writing of a report of the work of the Ad Hoc Group noting that whilst there was not yet clarity as to the recipient of the report, it might be possible to commence work on some of the building blocks to be incorporated into the report.

New Zealand recalled the statement made on the second day of the session by Brazil on behalf of 38 states and then spoke on behalf of Brazil, Chile, the Netherlands, New Zealand, Norway, Peru, South Africa, the Czech Republic, Romania, Ireland, Croatia and Ukraine. New Zealand said:

While it is very regrettable that a consensus has not emerged on the Chair's package of compromises in CRP.8, we are at least encouraged about the confirmation we have had in statements this session for the ongoing value and importance of multilateral endeavours in the context of the Convention. Despite recent setbacks, it is imperative that the Ad Hoc Group does not become paralyzed into inactivity. The first

order of business will be for the Ad Hoc Group as a whole to begin working on its report.

New Zealand then set out some of the elements that they considered should be included in the report which, they argued, should be addressed to a Special Conference to be held in the week prior to the Fifth Review Conference.

Mexico then spoke to deeply regret the announcement made on 25 July by the United States. Mexico wished to repeat its conviction that it is through multilateral negotiations, undertaken in the framework of the BWC and not through unilateral or partial regimes, that the prohibition of biological weapons will be preserved and strengthened. Mexico urged that the Ad Hoc Group must explore every possibility for reaching agreement to fulfil its mandate. However, Mexico wanted to underscore that, in order to have a meaningful outcome to the negotiations, the commitment and support of all the participating states was essential.

France spoke to say that France had come to this session ready to conclude an agreement on the basis of the Chairman's composite text. On the third day, however, it was evident that these prospects — in the short term anyway — had become impossible. It emerged clearly that no discussion on the content of a possible Protocol was possible in the immediate circumstances and that the work of the Ad Hoc Group could not be continued as usual. Since 25 July, this session of the Ad Hoc Group had been *de facto* in suspension. In these circumstances France considered that the only task incumbent on the Ad Hoc Group was to draft its report and put an end to the session. France considered that this report should be short and that its formulation should be modelled on the report of the Ad Hoc Group following its fifth session in September 1996 and that of the twenty-third session in May 2001. France called on the Chairman to provide an early draft report and concluded by saying that France was convinced that the abrupt stop that was put to our work is not definitive and all states parties to the Convention will wish to pursue and complete the work started in 1994.

Interventions were then made by Germany, Japan, Russia, Pakistan, Australia, India, Canada, Libya, Switzerland, Iran, Cuba, and the Republic of Korea addressing various points relating to the report of the Ad Hoc Group. Points that emerged were that the mandate of the Ad Hoc Group was not challenged and remained in force, that the process of the Ad Hoc Group should be preserved and that both the rolling text and the Chairman's composite text were important products of the Ad Hoc Group and should be attached to the report. There was disagreement about the proposal made by New Zealand on behalf of 12 states that the report should go to a 'Special Conference' as it was argued that a special conference should only be called to consider a successful outcome of the Ad Hoc Group even though it was recognized that reporting to a special conference separate from the Fifth Review Conference might have some advantage.

Ambassador Tibor Tóth then spoke to note that none of the statements had disagreed with his perception that important work remains to be done by the Ad Hoc Group as the task given to the Ad Hoc Group remains to be fulfilled and the mandate remains to be completed. Insofar as the report is concerned, Ambassador Tóth recognized that more consultation would be needed on the recipient of the report

as well as on the description of the developments in this session and the description of the situation being faced by the Ad Hoc Group. However, he would make available to delegations at the beginning of the next week those ingredients related to the more procedural and descriptive parts of the information to be included in the procedural report. These ingredients would be based as far as possible on already existing consensus language.

South Africa then spoke saying that they were being overwhelmed by a sense of surrealism as South Africa had had the sense a week ago and again today that a large number of states parties in the room were like-minded in their support for the Protocol and in their support for strengthening the BWC. South Africa urged that the Ad Hoc Group should not let the divisions which are becoming apparent on what is a procedural issue undermine the unity that existed among the supporters of the Protocol and our endeavours to strengthen the Convention. South Africa considered that the focus of the work of the Ad Hoc Group should be how to take those who have either explicitly rejected the Protocol or who continue to maintain silent reservations forward with the overwhelming majority of countries represented in the room who support the Protocol and who support strengthening the Convention. It concluded by welcoming the fact that there was no indication of anybody questioning the validity of the mandate and urging that the report should focus on the agreements in the Ad Hoc Group.

Interventions were then made by Iran, the United Kingdom, South Africa and Pakistan before the Chairman closed the meeting agreeing to continue consultations in informal meetings early the third week of the session with a view to moving to consideration of the more procedural ingredients for the report early in that week.

Drafting the Report of the Ad Hoc Group

After the US statement many delegations made their disappointment clear and during the second week there was much informal consultation in which the Ad Hoc Group sought to find a way forward. These informal consultations led the Ad Hoc Group to reaffirm the validity of the mandate and turned to drafting the report of the Ad Hoc Group and considering how to report the twenty-fourth session and what might be done in the future. The drafting during the third and fourth weeks was difficult — there were diverging views, for example, as to whether this should be a report to a Special Conference, given that the Ad Hoc Group had been established by a Special Conference, or to the Review Conference; what reference should be made to the mandate of the Ad Hoc Group; how the events at this, the twenty-fourth, session should be reported; and what should be included on future activity. Nevertheless, by early in the fourth week, agreement had been reached on a number of paragraphs for the report which was modelled on the previous procedural reports of the Ad Hoc Group and on the report of the fifth session in September 1996 (prior to the Fourth Review Conference). The first five of these agreed paragraphs closely paralleled the corresponding introductory paragraphs of the twenty-third session. The sixth paragraph — which included a number of subparagraphs — addressed the substance of the report. The following elements were included and agreed:

- The Ad Hoc Group had decided to inform the states parties to the BWC of the progress it had made since the Fourth Review Conference in fulfilling its mandate;
- The mandate for the Ad Hoc Group reproduced from paragraph 36 of page 10 of BWC/SPCONF.1
- Language noting that the Ad Hoc Group was building on the work of VEREX, that the Ad Hoc Group had reported to the Fourth Review Conference, that a further 19 substantive sessions had been held since the Fourth Review Conference and the documents of those 19 sessions
- Language noting the introduction of the rolling text at the seventh session in July 1997, the production of a further 16 versions of the rolling text since then, the introduction of “Part II” text from the twelfth session (September 1998) through to the twentieth session (July 2000), the Chairman’s informal consultations at the twentieth, twenty-first and twenty-second sessions and the introduction of the Chairman’s composite text (CRP.8) at the twenty-third session.

The outstanding issues in later half of the fourth week related to first, how to report events at the twenty-fourth session, and second, what should be said about the future activity of the Ad Hoc Group. Agreement was eventually reached for language along the lines of:

The Ad Hoc Group has not been able to fulfil its mandate, since by the end of the twenty-fourth session it was not able to complete its work and submit its report, to be adopted by consensus, including a draft of a legally-binding instrument to the States Parties to the Convention. This mandate, as agreed by the Special Conference in 1994 and set out in paragraph 6.1 remains in force and determines future work of the Ad Hoc Group.

It was expected that this paragraph would be preceded by a paragraph addressing the developments of the twenty-fourth session in more detail and that further paragraphs would consider future action.

On the final day, 17 August, the negotiations of the procedural report continued. Agreement was reached on language that the rolling text and the composite text should be annexed to the procedural report as two texts that have emerged as a result of the negotiations. There was close to agreement on language relating to future activity of the Ad Hoc Group that would invite the Fifth Review Conference to consider the work of the Ad Hoc Group including this report and how the Ad Hoc Group can fulfil its mandate.

The nub of the disagreement related to how to report the events at the twenty-fourth session, with the United States making it clear during the third week that they would block any report which named the United States as being the reason for the Ad Hoc Group being unable to complete its work — and indeed that references to “one delegation” or to “a delegation” would not be accepted. It became clear that naming names was not appropriate and an alternative formulation was sought. Although there appeared to be acceptance of a possible solution in which language along the lines of:

During the plenary meetings at the twenty-fourth session delegations expressed their views in national and group statements on the work of the Ad Hoc group and its completion as soon as possible before the commencement of the Fifth Review Conference. After undertaking

intensive consultations, the Chairman informed the Ad Hoc Group that there was no consensus for continuing substantial negotiations to that effect at the twenty-fourth session. The Ad Hoc Group proceeded to drafting its procedural report.

It was clear that something was missing between the first and second sentences because as the European Union had said in their response to the US statement that “it cannot be business as usual.” Although a proposal was made on the final day to fill this gap by annexing the statements made by all states parties in plenary meetings of the twenty-fourth session being attached as a separate annex appeared to attract support, this was not acceptable to the Western Group because of the precedent that this would establish even though such a solution had been adopted during the VEREX process at a difficult session when a statement had been annexed to the report. However, the Western Group appeared not to have any proposal to solve the difficulty. In the end in the early hours of the morning of 18 August the delegations in the Ad Hoc Group were unable to agree even on a single paragraph report.

Reflections

In retrospect, it is clear that despite the negative indications regarding the United States, many of the delegations came to the twenty-fourth session with high expectations that a Protocol would be completed or at least further progress would be made possibly with some sort of accommodation to allow more time to persuade the United States to join the Protocol. In the event, the United States rejection at the eleventh hour of the Protocol and of the approach to the Protocol was much more absolute than had been anticipated. Consequently, a number of delegations were understandably upset that, despite the United States rejection being based on illogical assessments and not standing up to detailed examination, the work of almost seven years of negotiation was coming to naught.

The overall tone of the reactions to the US rejection was in general moderate as there had been press reports prior to the session indicating that the US was likely to reject the Protocol although testimony on 10 July to the House Subcommittee in the US Congress by Ambassador Don Mahley had not indicated which way the US would finally go. It seems clear from the way in which the session developed that many of the states parties in Geneva had not developed a clear strategy as to how to proceed if the US were indeed to reject the Protocol. Consequently, when that rejection came on the third day of a four week session — and the completeness of the rejection — it apparently caught delegations on the hop without political guidance as to whether the other States Parties would be better off with a Protocol without United States participation or with staying with the Convention alone until some uncertain later date — which might be some years ahead — when the US was prepared to reengage. This was probably compounded by the presence of the principal policy makers at the negotiation in Geneva and the difficulty of obtaining new political direction long range during what is the holiday season in many countries. It is, however, evident that the delegations which had hitherto been strong supporters of the Protocol

did not press strongly for the report — and it is noteworthy that neither the Belgian Ambassador nor the Australian Ambassador played any part as spokesperson for the European Union or for the Western Group.

This US rejection of the Protocol at the eleventh hour has directly contributed to the failure of the Ad Hoc Group to even agree a report and has put the Fifth Review Conference in November at serious risk of failure. This failure to agree a report was, however, compounded by a lack of leadership by the European Union or the Western Group who might have been expected to have pressed strongly for the Protocol — although the Western Group has rarely been evident as a group in the Ad Hoc Group negotiations. The US position is

a complete U-turn to the approach consistently taken by the United States over the past decade during which every approach to counter the threat of biological weapons and their proliferation has been pursued. The end result of the rejection of the Protocol by the United States is that it will not be trusted by other states parties as a state that lives up to its earlier promises and official statements at the highest level. The damage that this mistrust — as it involves the world's leading power — will cause to international security will be incalculable.

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

Proceedings in South Africa

Quarterly Review no 6

The Continuing Trial of Wouter Basson

This report covers the period 1 July through 21 September 2001. A detailed account is posted on the HSP website.

The court was in recess for the first three weeks in July. The trial resumed on 23 July to hear the evidence in chief, followed by the cross-examination of Dr Wouter Basson. Basson was the only witness to testify during the period under review.

Basson's testimony, both during the presentation of his evidence-in-chief and during cross-examination, was characterised by claims made for the first time during the trial. He began by providing an overview of his employment record in the South African Defence Force (SADF) saying that he had joined as a permanent force member in 1975. He graduated as a specialist physician in 1980, a year before being instructed to initiate the chemical and biological warfare programme. Basson claimed not to have taken part in any military operations until 1980, except for having undertaken a short trip into the operational area to medically examine Angolan prisoners of war.

It was in 1981, he told the court, that the Surgeon General, Nicol Nieuwoudt, called him into a meeting in which he was told of the SADF's need for research to be done into chemical and biological warfare, based on the threat that chemical weapons could be used against SADF troops in Angola. Basson was instructed by the Chief of the Defence Force, Gen Constant Viljoen, the Chief of Staff Intelligence, Peter van der Westhuizen and the Commanding Officer of Special Forces, Fritz Loots, to gather intelligence internationally on chemical and biological warfare.

Basson claimed that he had been involved in two related incidents during the mid-1970s (before qualifying as a physician). He said that he had travelled to Iran after potato crops on the northern border of Iran had been affected by a mycotoxin which resulted in the deaths of Iranians from necrotizing enterocolitis. Basson said he had been called in to assist because the fungus which had affected the crop only appeared in two parts of the world, in Iran and in a remote area of South Africa. He failed to explain why he, as a junior medical practitioner who had no expertise in the particular

area in question would have been consulted, and his claims have been disputed by CBW experts consulted by the author.

Basson also said that in the 1970s he was collected in South Africa by a US Air Force aircraft to assist after scientists at a secret US laboratory in Zaire (now the Democratic Republic of Congo) had contracted haemorrhagic fever. These scientists, he claimed, were treated in Zaire before being flown to 1 Military Hospital in South Africa where they recovered. These claims to have been disputed by South African scientists who were involved in treating patients suffering from haemorrhagic fever during the period in question.

Basson said that shortly after having been instructed to gather intelligence on chemical and biological warfare he realised that the SADF 'knew nothing' about the subject. He also claimed that the CBW programme had been established in such a way as to ensure plausible deniability to ensure that the SADF could not be linked to the programme. The initial process of gathering intelligence, he said, took six months whereafter he reported his findings to the Chief of the Defence force and some selected senior officers.

Whilst still involved in the development of a chemical and biological warfare programme, Basson said that he was also instructed to establish a medical unit to provide specialized support to Special Forces operators. For this purpose he was placed under the direct command of the Commanding Officer of Special Forces, and therefore no longer reported directly to the Surgeon General. The chain of command, as described by Basson, is highly irregular, not only was he reporting to the Commanding Officer of Special Forces but he also claimed to have offices at Military Intelligence's Directorate of Special Tasks, and at "certain South African Police murder and robbery units."

Project Coast, code-name for the CBW programme, was officially launched in July 1981, for which purposes he reported to the Surgeon General and a special Co-ordinating Management Committee, established for this purpose, under the chairmanship of the Chief of the Defence Force. This