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ASIA PACIFIC SEMINAR ON THE NATIONAL IMPLEMENTATION OF THE CHEMICAL WEAPONS CONVENTION

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The Asia–Pacific Regional Seminar took place in Jakarta, Indonesia during 28–30 November. Attending were representatives of 20 countries of the region. There were more than 100 participants in all. Some countries outside the region were represented, as were a number of non-governmental organizations. The OPCW Provisional Technical Secretariat was present with five members headed by the Deputy Executive Secretary. Also very fortunate was the participation of the chairmen of Working Groups A and B, respectively Ambassador Morales Pedroza and Sylwin Gizowski. This proved of considerable help when the discussions turned to matters currently being considered in the Hague.

The seminar was opened by Indonesian Foreign Minister Ali Alatas. He called for attention to be given to the right of developing countries to have full access to chemicals and chemical technology, observing that certain control measures on trade in chemicals in the name of disarmament might have a detrimental effect. He noted that the verification provisions of the CWC, if implemented in good faith, will strike a good balance between the demand for effective verification of compliance and the need for legitimate confidentiality.

Responding, Deputy Executive Secretary Li Chang-he said he foresaw the Convention entering into force before the end of 1995. He gave an overview of the problems that the negotiators face in the Preparatory Commission. He encouraged delegates to begin thinking, even now, about preparations for the first Conference of States Parties and the election of the first Executive Council.

The main topic of the first day's discussion was the National Authority (NA), the point of contact between a State Party and the OPCW. Statements were made by representatives of the Republic of Korea, Thailand, Indonesia, Myanmar, Japan and New Zealand on the progress they were making in forming their Authorities. It became very clear that differences in political, legal and economic struc-

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STRENGTHENING THE BIOLOGICAL AND TOXIN WEAPONS CONVENTION: THE OUTCOME OF THE SPECIAL CONFERENCE†

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Michael Moodie in the last issue of the *Bulletin* set out the prospects for the Special Conference held in Geneva during 19–30 September 1994. There is a clear need for a verification protocol for the Biological and Toxin Weapons Convention (BTWC), which was signed in 1972 and entered into force in 1975, and has 133 States Parties and 18 signatories who have yet to ratify or accede to the Convention. Following the Third Review Conference in 1991, an Ad Hoc Group of Governmental Experts (VEREX) met to consider and evaluate potential verification measures from a scientific and technical viewpoint. Its report was circulated to States Parties in late September 1993 and the requisite majority of States Parties requested that a Special Conference be held to consider the results of VEREX and decide on further action.

The Special Conference was attended by 79 States Parties; two signatories, Egypt and Morocco, and one non-signatory, Israel, attended as observers. The Special Conference, despite disagreements on the nature and content of any further work, managed to agree in the early hours of Saturday 1 October 1994, a mandate for a new Ad Hoc Group, open to all States Parties, to consider appropriate measures and to draft proposals to strengthen the Convention to be included in a legally binding instrument.

Although the BTWC has no provision for a verification regime, Article V obliges States Parties to consult one

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another and to coöperate in solving any problems which may arise in relation to the objective of, or in the application of, the provisions of this Convention. Article VI enables States Parties to take a complaint of possible non-compliance to the UN Security Council. The Third Review Conference in 1991 recognized that effective verification could reinforce the Convention. It established VEREX.

VEREX

This group met four times in Geneva during 1992 and 1993 and concluded that some verification measures would "contribute to strengthen the effectiveness and improve the implementation of the Convention, also recognising that appropriate and effective verification could reinforce the Convention". The final report also recognised that any single measure by itself could not determine whether a State Party was compliant with the Convention. Some measures in combination could provide enhanced capabilities by, for example, increasing the focus and improving the quality of information, thereby improving the possibility of differentiating between prohibited and permitted activities and of resolving ambiguities.

The final report of VEREX was circulated to States Parties and the required majority requested that a Special Conference be held in Geneva to consider the VEREX report and to address how best to take this forward.

Special Conference

The Special Conference had essentially four phases: it opened with a day and a half for plenary considerations, then transformed itself into a Committee of the Whole for the remainder of the first week prior to a further transformation into a Drafting Committee for the first two days of the second week. This was followed by formal and informal plenary sessions which culminated in the agreement of the mandate for an Ad Hoc Group to draft proposals for a legally binding instrument to strengthen the BTWC. In addition there were meetings of the three regional groups (Western, Eastern and Non Aligned), informal consultations with the Conference President involving the co-ordinators of these groups, office holders such as the Chairman of the Committee of the Whole and other informal meetings. These all played an important part in ensuring a successful outcome.

The importance of strengthening the BTWC was emphasised by all the States Parties who made statements to the opening plenary session. Thus Germany speaking on behalf of the European Union said that:

> ... It is not acceptable to leave the Convention without effective mechanisms for ensuring compliance. ... Some approaches regarded by the European Union as particularly promising [are]:
>
> - Mandatory national declarations covering a broad range of relevant activities will be a key measure
> - On-site measures such as information visits, but particularly short notice inspections mandatory for States Parties, will be of primary importance.
> - One area not dealt with by VEREX is the alleged use of biological weapons. Any verification protocol must contain rules for such an eventuality
>
> The VEREX results have convinced the European Union that verification of the BTWC is possible ... Only a legally binding obligation for all States Parties can guarantee the measures decided upon are actually implemented.

These ideas were subsequently presented by the EU in a draft mandate tabled during the deliberations of the Committee of the Whole (BWC/SPCONF/WP.1 of 20 September 1994). The United States said that:

> We strongly support preparation of a protocol containing a regime to strengthen the Covention. Second, we believe that all measures included in the protocol should be mandatory and legally binding. ... A combination of mandatory declarations, facility visits and on-site measures could be mutually reinforcing, providing a solid foundation for the regime. ... In conclusion, the United States supports strengthening the BWC through the negotiation of a legally binding regime that provides for a reasonable, effective and mutually reinforcing set of mandatory measures.

All States recognised the importance of strengthening the BTWC whilst protecting international coöperation and trade (Article X). Some States, notably China, Indonesia, Iran and India emphasized the importance of this Article. China stated that it was their view that:

> at the present stage pending further study and research on verification measures, the strengthening of confidence-building measures may well be the only practical approach to strengthen the effectiveness of the Convention. ... China persistently holds the view that full implementation of the relevant Articles of the Convention on the strengthening of international cooperation and exchanging peaceful uses of biotechnology would be helpful to the economic and social development of all States Parties and beneficial as well for the enhancement of the universality and authority of the Convention.

Indonesia said that they would wish to point out some areas which they believed needed in-depth analysis:

> in trying to form a verification system which is cost-effective, reliable and least intrusive. Firstly, it should not hamper the use, research and development of biological/toxin agents for peaceful purposes, particularly in addressing the diseases which normally occur in the tropical countries ... Secondly this verification system should be trustworthy, therefore it should eliminate any possibility of disclosing commercial proprietary information liable to damage the interest in national industries of States Parties. Thirdly, it should not hamper technical cooperation among the States Parties and create a barrier to access to advance technology, rather it should promote international cooperation in the development of bio-technology for peaceful purposes.

Iran noted that:

> The question of peaceful use, in the meantime as described in Article X of the Convention has proved an unaccessible idealistic mirage. Expansion of the list of the Australia

> Group and inclusion of 65 biological substances and related equipment in a short span of two to three years is an indication of what lies on the horizon. This list is in contravention to the text of the Convention. The restriction needs to be lifted. ... Strengthening of the Convention through verification mechanisms and enhancing its effectiveness presupposes universality and requires unqualified support of all members. ... This cannot find support except if coupled with removal of existing arbitrary export control regimes. ... We shall continue to render our support and increase our efforts to promote the objectives of this conference with a constant view on developments for peaceful use.

A similar view was expressed by India who were concerned that it was too early to say whether particular measures could be agreed and that there should be no immediate commitment to negotiation of binding measures.

Feasibility of a verification regime

The United Kingdom introduced a Working Paper (BWC/SPCONF/WP.2 of 20 September 1994) on the outcome of four practice inspections which addressed the feasibility of a verification regime in the biotechnology, pharmaceutical and vaccine industries. The objectives of these inspections were:

> To test the effectiveness of verifying compliance with the BTWC by means of inspection of biotechnology, research and development, pharmaceutical and vaccine plants, especially those that are large, multipurpose, flexible, compatible with pathogen work and where there are substantial concerns about commercial confidentiality.
>
> To examine the issues that arise for industry, for the government of the State Party receiving the inspection, and for the administration of such verification measures under the BTWC.
>
> To test whether sufficient access within the plant and to documentation could be given to demonstrate compliance with the BTWC, without unacceptable compromise to commercial confidentiality.

The four main issues in the practice inspections — access, compliance assessment, commercial confidentiality and logistics — were considered and, as a result of these inspections it was possible to conclude that:

> In-depth inspections are practicable: auditing, interviewing and visual inspection of key equipment are all essential and mutually reinforcing. Any measure on its own is of little or no value.
>
> The risks to commercially sensitive information can be reduced by prior preparation and managed access. On many occasions the amount of access that can be granted without unduly risking proprietary data can be extensive.
>
> The standards of evidence for an effective inspection are high. This is a qualitative problem as unambiguous evidence of non-compliance is difficult to acquire, but indicators of such activity can be identified. Given the potential dual-use nature of biological agents and much related equipment, inspection teams need evidence from all aspects of the site under investigation if they are to form a judgement on its compliance.
>
> Availability of portable candidate BW agent identification kits would be of immense value.
>
> The main burden on industry is largely one of diversion of management time to hosting the inspection; there should be no need to disrupt plant operations or enter sterile areas provided alternative means can be found to satisfy inspector concerns.
>
> Many of the access problems encountered in the PCI programme were site specific, and the managed access solutions were equally specific. This is probably a general conclusion which might apply to most sites.

The UK has thus demonstrated that inspections are feasible and practicable and could provide an effective strengthening of the BTWC without jeopardising commercially sensitive information.

During the Special Conference, on 21 September 1994, the Federation of American Scientists (FAS) organised a seminar entitled "Beyond VEREX: Issues for Consideration at the Special Conference" which was attended by many delegates. One of the presentations focused on industrial aspects when Dr Wilderbeek, President of the Intervet Corporation who had been involved in the Dutch/Canadian bilateral trial inspection of a commercial facility in the Netherlands said that he foresaw no difficulty in making declarations under a future BTWC verification regime. Insofar as visits to facilities were concerned, his concern was that facilities such as Intervet Corporation in the Netherlands are subject already to a range of national and international inspections such as by the US Food and Drug Administration, the US Department of Agriculture and the UK Ministry of Agriculture, Fisheries and Food, which inspected their facilities and their compliance with Good Manufacturing Practice (GMP) in production and Good Laboratory Practice (GLP) in research. He therefore proposed that inspections under a BTWC verification regime should be focused on those organisations not subject to regular inspections. He concluded that there was overall support from the vaccine industry for strengthening the BTWC and said that there would be a lot of cooperation from industry in implementing a regime on condition that a practicable and workable regime was imposed.

Key Issues

There were several issues that were keenly debated at the Special Conference. These have been reflected in the agreed mandate for the new Ad Hoc Group: definitions; confidence building measures; a system of measures to promote compliance with the Convention; sensitive information relating to civil industry and national security; and impact on scientific research and industrial development (Article X measures). Each of these is considered in turn.

Definitions Some States Parties argued for the definition of terms and objective criteria such as lists of agents, their threshold quantities, equipment and types of activities. Others considered that definitions could weaken the Convention as the prohibition in Article I stating:

> Each State Party ... undertakes never in any circumstances to develop, produce, stockpile or otherwise acquire or

retain:
(1) Microbial or other biological agent, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;
(2) Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

has stood the test of time well and has been reinforced by successive Review Conferences which have confirmed that subsequent advances in biotechnology are included within Article I. Any attempt to open up the Convention for a definition of terms could be used to exploit ambiguities and narrow the scope, or lead to alternative interpretations which might thereby inadvertently facilitate proliferation. Lists of agents might, however, be helpful in targeting declarations — and are certainly more helpful than containment standards — as it is agents and toxins that present a threat to the Convention. Threshold quantities only have possible application for toxins, but even here the increasing use of toxins for medical and pharmaceutical purposes make even this problematic. Moreover, the greater ability to produce toxins as a result of developments in biotechnology make quantitative limits a debatable proposition. For biological agents, they are meaningless because the agents are living microorganisms which can be rapidly replicated. Definitions of equipment and types of activities also present difficulties because of the dual purpose nature of virtually all equipment and activities. The agreed mandate requires consideration of definition and objective criteria where relevant for specific measures designed to strengthen the Convention.

Confidence Building Measures (CBMs) Some States were keen to create a regime based on CBMs; others recognised that the response to the CBMs agreed at the Second Review Conference and extended and strengthened at the Third Review Conference had been minimal. Less than half the States Parties had made one or more declarations since 1987 and only a handful have provided the required annual response. A regime based on such 'politically binding' measures would be ineffective. However, the provision of information voluntarily by States Parties will be a useful adjunct to a legally binding regime. The mandate requires consideration of the incorporation of existing and further enhanced confidence building and transparency measures, as appropriate into the regime.

A System of Measures The heart of a verification regime will be the identification of appropriate measures applicable to all relevant facilities and activities. Many States Parties such as Australia, Argentina, Canada and Poland supported the draft mandate put forward by the European Union which proposed a mandatory regime that provides openness and transparency of all activities relevant to the BTWC. The EU mandate proposed in particular that the regime should include the following basic elements:

- Off-site measures, including national declarations covering a broad range of activities, such as BW defence programmes, vaccines, relevant pharmaceutical and biotechnology activities, and facilities handling specific organisms and toxins, and
- On-site measures such as information visits to declared facilities, short-notice inspections, and investigations of allegations of use.

and that the regime should also include a provision for multilateral information sharing, on a voluntary basis, to contribute to the efficacy of verifying compliance with the Convention. Other States were keen to see consideration of all the measures identified and evaluated by VEREX together with other possible measures. The mandate requires consideration of a system of measures including, as appropriate, measures identified, examined and evaluated by VEREX. Such measures should apply to all relevant facilities and activities, be reliable, cost-effective nondiscriminatory and as non-intrusive as possible, consistent with the effective implementation of the system. The mandate also requires that the regime include measures for the investigation of alleged use.

Article X measures This was the most contentious issue throughout the Conference and the last to be resolved. There was much debate about how to strengthen the BTWC whilst not impairing the provisions under Article X to facilitate the fullest possible exchange of equipment, materials and information for peaceful purposes which require that:

(1) The States Party to this Convention undertake to facilitate and have the right to participate in the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes. Parties to this Convention in a position to do so shall also cooperate in contributing individually or together with other States or international organisations to the further development and application of scientific discoveries in the field of bacteriology (biology) for the prevention of disease, or for other peaceful purposes.

(2) This Convention shall be implemented in a manner designed to avoid hampering the economic or technological development of States Parties to the Convention or international cooperation in the field of peaceful bacteriological (biological) activities including the international exchange of bacteriological (biological) agents and toxins and equipment for the processing, use or production of bacteriological (biological) agents and toxins for peaceful purposes in accordance with the provisions of this Convention.

A particular point of contention related to export controls with a few states seeking their removal whilst most states argued that such removal would be inconsistent with the obligations under Article III not in any way to aid proliferation. Article III requires that:

Each State Party to this Convention undertakes not to transfer to any recipient whatsoever, directly or indirectly, and not in any way to assist, encourage, or induce any State, group of States or international organisations to manufacture or otherwise acquire any of the agents, toxin, weapons, equipment or means of delivery specified in Article I of the Convention.

There was however a fair measure of agreement that States Parties should encourage the transfer of information relevant to the implementation of a verification regime of the BTWC and to improvement of biosafety standards as proposed by Brazil (BW/SPCONF/WP.4 of 21 September 1994). The mandate requires consideration of specific measures designed to ensure effective and full implementation of Article X, which also avoid any restrictions incompatible with the obligations undertaken under the Convention.

Sensitive information There was broad agreement that any regime should be constructed so that sensitive commercial proprietary information and legitimate national security information should be protected; this requirement is included in the mandate.

Scientific research and industrial development There was also a broad measure of agreement that any regime should be formulated and implemented in such a way as to avoid any negative impact on scientific research, international cooperation and industrial development; this requirement is included in the mandate.

The Way Ahead

The mandate specifies that the first meeting of the Ad Hoc Group will take place in Geneva on 4–6 January 1995 and be devoted to procedural matters; it will also decide the Group's method of work. Additional meetings will be held as appropriate. It is agreed that the Group will complete its work as soon as possible and submit its report, which shall be adopted by consensus, to the States Parties, to be considered at the Fourth Review Conference in 1996, or later at a Special Conference.

In considering the approach to be adopted by the Ad Hoc Group there is a compelling logic that attention should be focused first on developing an appropriate system of measures; effort on definitions and objective criteria where relevant for specific measures requires prior identification of the measures. A parallel argument applies to the consideration of CBMs as appropriate into the regime; the regime must first be identified and then the relevance of politically binding or legally binding CBMs addressed. Finally, Article X considerations are premature until the regime has been drafted and its potential impact on the exchange of equipment, materials and information for peaceful purposes has been evaluated. Specific measures to implement Article X consistent with the obligations of the rest of the Convention including Article III should then be considered.

In developing a verification protocol it is necessary to select measures that strengthen both the assurance that States are compliant and the deterrent effect against non compliance. The essential measures needed for a protocol include mandatory declarations and on-site inspections allowing both for visits to validate declarations and short notice inspections of both declared and undeclared facilities and activities including sites of alleged use. These can be illustrated graphically as shown below.

A balance will need to be struck between national costs, such as those incurred in preparing mandatory declarations and hosting inspections, and international costs such as those for an inspectorate. Whilst other measures identified by VEREX should be considered, careful attention needs to be given to whether the added value merits the additional costs. Care must be taken to avoid the temptation of gaining a false sense of security through collection of information of marginal benefit.

It is important to maintain the momentum already generated following the Third Review Conference in September 1991, the four meetings of VEREX in 1992 and 1993 and the Special Conference in September 1994. The risks to national and international security from biological weapons proliferation will not reduce until such time as such would-be proliferator states judge that their activities will not be militarily effective, that they are likely to be detected by a mandatory legally binding verification protocol and hence that such BW capabilities are not worth acquiring.