

Averting Failure of the Biological Weapons Nonproliferation Regime

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Verifying Compliance with the BWC

Ever since the 1972 Biological and Toxin Weapons Convention (BWC) entered into force in 1975, it has been considered a weak treaty because it lacks formal mechanisms to monitor compliance. A series of BWC Review Conferences attempted to strengthen the regime by negotiating voluntary confidence-building measures such as information exchanges, but only a minority of member-countries participated. After an expert group called VEREX assessed the feasibility of BWC verification measures from a scientific and technical viewpoint, an Ad Hoc Group (AHG) of BWC States-Parties was established in September 1994 to negotiate a Protocol to the Convention specifying measures to enhance compliance and deter violations.

Over the past five years, the AHG has met periodically in Geneva and has produced a voluminous draft Protocol (currently more than 300 pages long) in the form of a "rolling text." Although some progress was made in the latest round of negotiations, the rolling text still contains about 2,000 bracketed words, sentences, or paragraphs where consensus remains elusive. Some of the issues are highly technical, but others reflect basic philosophical differences over how best to structure and carry out the on-site inspection regime. The United States, for example, has opposed random inspections of declared facilities because of concerns over protecting the proprietary interests of the U.S. biopharmaceutical industry. In addition, a group of non-aligned states has conditioned its support of the Protocol on the dismantling of all controls on trade among BWC states-parties in biotechnology equipment and materials, a position unacceptable to Western countries.

What Are the Risks if the Negotiations Fail?

Failure of the Geneva negotiations to conclude the BWC Protocol by the end of 2000 would probably mean a slow-down or indefinite suspension of the talks, since key players will be distracted by the new presidential administrations in the United States and Russia and by competing arms control priorities. An inability to conclude the Protocol could be perceived as a sign of complacency or apathy regarding the biological weapons (BW) threat, further weakening the international norm against possession of these "poor man's" weapons of mass destruction. Although erosion of the norm is unlikely to result in a sharp jump in the number of states seeking a BW capability (now estimated at about a dozen), current proliferators may expand their arsenals, and the probability of BW use could increase at both the state and subnational levels.

Some conservatives would prefer that the United States abandon or de-emphasize multilateral negotiations like the AHG and place greater reliance on national counterproliferation policies such as export controls, deterrent threats, and preemptive

strikes against suspected BW development and production facilities. But a narrow focus on unilateral measures would be counterproductive, potentially making BW use more likely. For example, a policy of preemptive strikes against BW facilities could increase incentives for proliferators to resort to biological warfare early in a conflict. Moreover, seeking to deter BW use by relying on threats of massive retaliation—including the implicit threat to employ nuclear weapons—would set back U.S. nuclear nonproliferation objectives. Such a policy would put America's credibility on the line, creating pressures to follow through on a nuclear threat if deterrence fails; it would also increase the risk of an inappropriate nuclear response to false-positive indications of a BW attack.

The dual-use nature of BW materials and production equipment makes it extremely difficult to prevent their diffusion through supply-side measures such as export controls. For this reason, the best strategy for diminishing the BW threat is to modify the decision calculus of proliferant states by strengthening the international norm against possession of biological weapons and reducing their perceived military utility. These objectives can be achieved by backing up the BWC with effective compliance measures, together with economic and political sanctions against hold-outs and violators. Deployment of improved protective equipment and medical defenses for troops and civilians would reinforce deterrence by reducing or mitigating the consequences of a BW attack, thereby denying a potential proliferator's military objectives.

What Can Be Done to Prevent the Negotiations from Failing in the Near-Term?

Intensify the negotiations. The AHG should intensify the BWC Protocol negotiations in early 2000 by entering into continuous session until the treaty has been concluded. Because many countries do not have large enough delegations in Geneva to staff concurrent sessions of the AHG and the Conference on Disarmament, meetings of the latter body should be suspended until the AHG has completed its work.

Chair should issue "vision text" as soon as possible. In order to bridge the major substantive disagreements remaining in the rolling text, AHG Chairman Tibor Toth should engage in urgent consultations with key delegations to develop a "vision text" that replaces bracketed words and sections with compromise language.

United States must assume leadership role. During the endgame of the BWC Protocol negotiations, the United States should demonstrate greater leadership than it has shown to date.

- 1) Washington should give the negotiations a higher political profile by linking the Protocol with the emerging bioterrorist threat. Although the Protocol does not specifically address the acquisition of BW by subnational groups, reinforcing the norm against BW possession and use at the state level will be critical to preventing the spread of these weapons to terrorists, who often follow the lead of states.
- 2) In order to resolve persistent interagency conflicts over U.S. negotiating positions, the National Security Council staff should immediately elevate all unresolved and contentious issues to the deputy secretary level for decision. Senior U.S. policymakers should also engage pharmaceutical company executives to hammer out compromise inspection procedures that industry can live with.

- 3) The United States should initiate bilateral consultations with key countries such as Russia, China, and India, and strive to develop mutually acceptable solutions to unresolved issues that can then be proposed jointly in the AHG.
- 4) Finally, the United States must come into full compliance with the 1993 Chemical Weapons Convention (CWC). At present, Washington remains in technical violation of this treaty because of delays in submitting declarations for the U.S. chemical industry. Full U.S. compliance with the CWC would increase confidence in the U.S. commitment to arms control and give new impetus to the BWC Protocol negotiations.

What to Do in the Face of Failure?

If the AHG makes little progress toward a vision text over the next six months, Chairman Toth should propose negotiating a shorter version of the Protocol as an interim agreement. Highly contentious issues, such as the types and modalities of facility inspections, would be put off to a follow-on negotiation. Agreeing to conclude and implement a stripped-down Protocol would prevent the collapse of the AHG negotiations and help to strengthen the BWC, while laying the foundations for more ambitious compliance measures at a later date. The “Phase 1 protocol” might include the following basic elements, which most delegations believe are indispensable for building confidence in BWC compliance:

- 1) ***Investigation of Suspicious Disease Outbreaks.*** If an infectious disease outbreak appears suspicious in origin, a member-state could request a short-notice investigation. The investigating team would have guaranteed access to the affected area, including the right to interview disease victims and medical staff and to take biomedical and environmental samples.
- 2) ***Obligatory Facility Declarations.*** All member-states would be required to declare biodefense facilities, high-containment laboratories, and government or industry plants containing dual-use equipment suitable for the large-scale production of BW agents.
- 3) ***Voluntary Clarification Visits.*** If a member-state has questions about the completeness or accuracy of another country’s declaration, it would have the right to request a clarification of the issue with the party in question. The clarification process could include voluntary visits to declared facilities.
- 4) ***BWC Technical Secretariat.*** A small Technical Secretariat composed of scientific experts would be established to conduct field investigations, compile and analyze facility declarations, and conduct clarification visits to declared facilities.

Once this basic compliance regime is in place, follow-on negotiations could be held to address more contentious measures, such as “random” visits to declared facilities and short-notice “challenge” visits to declared or undeclared facilities. One drawback of this approach, however, is that it would provide no guarantee that mandatory facility inspections would ever be included in the regime. In addition, if a follow-on protocol is negotiated, it would also have to be submitted to the U.S. Senate for advice and consent to ratification.

Desirable Initiatives for the Future

If the BWC Protocol negotiations collapse or fail to culminate in an agreement by the end of 2000, the United States should consider some fallback options to prevent a serious weakening of the BW nonproliferation regime. The following initiatives might be undertaken, with the first three being worthy of pursuit regardless of the success or failure of the Protocol:

- 1) ***Enhance international disease surveillance.*** With additional financial and technical resources, the World Health Organization (WHO) could play a more effective role in the early monitoring of infectious disease outbreaks throughout the globe. By increasing the probability that covert BW use will be detected and investigated, a strengthened international disease surveillance system could have an important deterrent effect. In the event of a BW incident, rapid detection would improve response capabilities.
- 2) ***Regulate “germ commerce.”*** International regulations should be negotiated to ensure that cultures of dangerous pathogens from commercial culture collections around the world are sold only to legitimate biomedical researchers. Authorized recipients would be registered and subject to periodic inspection by the WHO or some other international scientific body. Although the verification of transactions involving hazardous microorganisms would be difficult, such a system would help to deter illicit shipments to would-be BW proliferators.
- 3) ***Negotiate an international treaty criminalizing the possession of chemical or biological weapons.*** A draft treaty to this effect has been proposed by the Harvard Sussex Program on CBW Armament and Arms Limitation. States parties to the treaty would undertake to try or to extradite individuals on their territory charged with CBW possession, including heads of state.
- 4) ***Establish a small BWC Secretariat to compile, translate, and distribute the voluntary confidence-building declarations.*** Having a Secretariat in place would encourage and facilitate BW-related information exchanges among member-states, provide an ongoing forum for discussion, and serve as a nucleus for a future BWC compliance organization.
- 5) ***Develop bilateral and regional confidence-building measures.*** Such measures might include reciprocal visits to biodefense facilities and joint research projects on the application of biotechnology for peaceful purposes.
- 6) ***Require end-use verification of BW-relevant technology transfers.*** Any BWC member-country that imports sensitive dual-use fermentation equipment would have to accept periodic on-site inspections by the exporting country to confirm the exclusively peaceful end-use of the technology.