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# The BWC Protocol: Mandate for Failure

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By the summer of 2001 it was clear that after a six-year international effort the Biological Weapons Convention (BWC) protocol negotiations would end in failure. At the time, many attributed primary, if not sole, responsibility for this failure to the United States because its widely reported July 25th statement withdrawing support for a protocol precluded further negotiations on the basis of Chairman Toth's compromise "composite" text. However, even if the Bush administration had not preempted further discussion of the "Chairman's Text," the negotiations would have reached an impasse as states whose objective all along was to weaken the convention were refusing to agree to a text until their demands were met. Ultimately, the United States and its allies would have been confronted with the choice of abandoning the effort or capitulating to a protocol text that did serious harm to the BWC and its goal of ridding the world of biological weapons. This dilemma was rooted in, and foreshadowed by, the badly flawed mandate of the Ad Hoc Group agreed at the Special Conference in 1994.

## A FLAWED MANDATE

In 1994, a correlation of forces resulted in an international resolve to "strengthen" the Biological Weapons Convention. The recent adoption of the Chemical Weapons Convention (CWC) and the

revelations about the BW programs of Iraq and the former Soviet Union fueled international support to revisit the convention in light of the advances in arms control and biological science since the BWC was signed in 1972.

Although it was the first arms control agreement to ban an entire class of weapons, the BWC contained no formal verification provisions. Instead, verification (to the extent it was achievable) was implicitly predicated upon self-policing by the state parties to the convention. Nationally detected evidence of compliance breaches could be pursued either through consultations under Article V or by requesting under Article VI that the UN Security Council initiate an investigation. Periodic BWC review conferences had endeavored to bolster the convention by establishing (1) voluntary confidence-building declarations of select biological activities and (2) voluntary procedures under Article V for considering allegations of noncompliance. The results of these efforts were modest and mixed.

A previous attempt during the 1991 Review Conference had failed to achieve consensus on launching a formal negotiation to bolster the BWC through a supplementary legal agreement. The United States had blocked proposals to convene negotiations on the grounds that verification of compliance with the convention was at best extraordinarily difficult and certainly not achievable by an internationally based verification regime. As a compromise, the United States agreed only to the establishment of an ad hoc group of scientific experts (called VEREX) charged with preparing a technical report on the feasibility of potential verification measures. The VEREX exercise produced only vague and inconclusive results, but it served as a convenient placeholder for supporters of protocol negotiations while they waited for a shift in U.S. policy.

A sea change occurred in U.S. policy toward the BWC with the election of President Clinton in 1992. The Clinton administration shared the concerns of its predecessor regarding the verifiability of the BWC. It concluded nonetheless that a protocol that fell short of verifiability could help deter violations and enhance compliance with the BWC by providing increased transparency and openness of bio-

logical activities. The stage was then set, and states parties to the BWC took up the issue of a negotiation mandate in September 1994 at the Special Conference in Geneva, ostensibly called to consider the VEREX report.

Instead of demonstrating a shared vision and resolve, the negotiation mandate that was agreed by the Special Conference underscored the divergent, if not antithetical, negotiating objectives of the participating states. It was an undeniable harbinger of the struggle that was about to be joined for possession of the soul of any BWC protocol and, by implication, the convention itself. Western diplomats attempted to keep the focus on constructive arms control, but consensus on the mandate would be achieved only if all points of view were included. The final mandate established an Ad Hoc Group (AHG) to negotiate a legally binding instrument (subsequently designated a "protocol") "to strengthen the effectiveness and improve the implementation of the Convention" with focus on four principal areas: compliance measures, confidence-building measures (CBM), definitions and objective criteria, and Article X.

The arms control objectives of the Western Group (which included the United States, Canada, Western Europe, Australia, and Japan) were addressed under the rubric of "measures to promote compliance." A second element relating to the "incorporation of existing and further enhanced confidence building and transparency measures" acknowledged the accomplishments of BWC review conferences and was closely related to compliance measures.

A third element of the mandate encompassing "definitions of terms and objective criteria" was demanded by the Russian Federation as the price for its support for a negotiation mandate. On its face, this element was entirely unnecessary, as the compliance measures and CBM elements would facilitate the incorporation of any definitions or criteria needed to implement a protocol. Russia, however, had other plans for this element. As the negotiations got under way in 1995, Russia would soon argue that the purpose of a protocol was to remedy the failure of the BWC to define specifically key terms in the convention and delineate prohibited and permit-

ted biological activities. Under this element of the mandate, it apparently sought to shield ongoing, illicit BW activities in the Russian Federation by establishing legal “safe harbors.”

Finally, at the insistence of the Non-Aligned Movement, or NAM (a formal group consisting of developing countries and China), a fourth element mandated consideration of “specific measures designed to ensure the effective implementation of Article X [of the BWC].” NAM countries would exploit this element (encompassing the field of international trade and scientific cooperation) to pursue a North-South development agenda that bore little if any relation to the threat of biological weapons. Most importantly, radical NAM states such as Iran would use this mandate element as a platform to challenge national export controls and the Australia Group on the grounds that such transfer restrictions violated Article X of the BWC.

Instead of launching a focused negotiation, the compromise mandate rolled Trojan horses within the walls of the Biological Weapons Convention. As Western and moderate states wrestled with the difficult arms control question of how to strengthen compliance with the convention, NAM states endeavored to recast the BWC as an economic development pact, radical NAM states demanded that barriers to proliferation be eliminated, and Russia plotted to weaken fatally the central prohibitions of the convention. Although there was recognition among Western participants that the mandate was burdened with dangerous elements, the compromise mandate, however flawed, allowed the negotiations to go forward, and these states rationalized that problems with the “bad half” of the mandate would somehow be overcome later. However, as with the negotiations to produce the mandate itself, negotiations over a protocol would be governed by a consensus requirement, and advocates of the “bad half” of the mandate would employ their ability to block progress on, or completion of, any protocol until their demands were met.

### **THE RUSSIA PROBLEM**

The most fundamental dynamic of the BWC Ad Hoc Group was that some of the active participants in the negotiation were sus-

pected of violating the very convention that the Ad Hoc Group had been mandated to “strengthen.”<sup>1</sup> Of greatest concern in this regard was the Russian Federation, inheritor of the massive Soviet BW program. Russia’s negotiating proposals did not allay these concerns; rather it was suspected that they were designed to legitimize illicit activities and protect an ongoing BW effort from international scrutiny.

As signaled during the mandate negotiations, Russia sought to use the protocol to produce a de facto reinterpretation of the convention using “definitions of terms and objective criteria” as a replacement for the intent-based standard inherent in Article I. Given the dual-use nature of many biological activities, Article I of the convention is formulated as a general prohibition that hinges on the intent (offensive or peaceful) of a state party’s activities. In an effort to remove the “intent element” from the BWC, at the Second Ad Hoc Group session in 1995, Russia proposed that the protocol contain definitions of more than a dozen terms contained in the convention, including biological weapon, biological agent, means of delivery, hostile purposes, and armed conflict.<sup>2</sup> The Russian proposal prompted an outraged member of the Canadian delegation to take the floor of the Ad Hoc Group and inquire (with pointed irony) whether the Soviet Union had violated the BWC simply because it did not know what the words meant.

In this regard, Russia also sought to quantify explicitly the reference in Article I to “... biological agents...of *types* and in *quantities* that have no justification for prophylactic, protective, or other peaceful purposes” (emphasis added).<sup>3</sup> To this end, it attempted to characterize the list of agents being developed for declaration purposes as definitive, rather than illustrative, of potential BW threats. Further, Russia proposed per se “legitimate” threshold quantities of pathogens and toxins; facilities that possessed less than these thresholds would be assumed to be in compliance with the convention, whereas amounts in excess would constitute a prima facie indicator of noncompliance. The overall effect of these Russian proposals would be to create legal “safe harbors” where offensively intended biological activities would be immune from challenge.

With determination equaling that of its effort to reinterpret the convention, Russia also sought to shield itself from international scrutiny by restricting challenge investigation mechanisms being developed under the compliance measures element of the mandate. Russia's initial position invested only the United Nations Security Council (where Russia possesses a veto) with the power to authorize challenge investigations.<sup>4</sup> In a subsequent proposal, Russia outlined a protracted review process involving technical experts and an advisory body of BWC states parties, but expressly barred consideration of evidence obtained from defectors and other unauthorized sources.<sup>5</sup> Russia also adamantly opposed challenge investigations for suspicious outbreaks of disease, supporting only investigations of alleged BW use and suspect facilities. In its response to the Russian proposal, the U.S. noted the absence of any mechanism to investigate incidents such as the 1979 anthrax outbreak near an illicit Soviet BW facility in Sverdlovsk. Despite President Yeltsin's 1992 admission of offensive BW activities in Sverdlovsk, the Russian delegation disputed the U.S. statement and reiterated an earlier (and thoroughly discredited) Soviet explanation that the outbreak resulted from "tainted meat."

To be sure, Russia was not the only participant in the protocol negotiations suspected of having an offensive BW program in violation of the convention. Most notably, China and Iran, among others, were suspects as well. Russia's efforts to reinterpret the convention and prevent international scrutiny were so obvious that it was not difficult to infer a direct link between its negotiating positions and its suspected offensive BW activities. China and Iran also supported positions that would have restricted challenge inspections, especially investigations of suspicious outbreaks, but their motivations were obscure and open to various interpretations. The Russia problem was simply that part of the iceberg protruding above the surface, apparent for all to see.

### THE DEVELOPMENT DIVIDE

At the insistence of the Non-Aligned Movement, the AHG mandate required consideration of “specific measures designed to ensure the effective implementation of Article X [of the BWC].” As negotiations commenced, NAM states rejected any characterization of the BWC as an arms control or security treaty and, instead, recast it as an economic development agreement that the developed countries had failed to honor. In the name of “strengthening” the BWC, the protocol had become a hostage to the North-South development debate.

The development debate was joined directly in Article VII of the rolling text of the protocol entitled “Scientific and Technological Exchange for Peaceful Purposes and Technical Cooperation.” The NAM goal was to anchor the general obligations of Article X of the convention in specific protocol obligations requiring assistance to developing countries. Such assistance obligations would encompass financial aid, technical assistance visits by the protocol implementation organization, and a so-called cooperation committee that would oversee assistance efforts.

Although the Western Group states demonstrated significant flexibility, the rolling text for Article VII still contained major unresolved issues. Western countries had rejected proposals from NAM states that would have legally required financial assistance in the construction of new laboratories, research institutes, and vaccine production facilities in developing countries. There was also strong opposition to a NAM proposal that would have legally obligated developed countries to comply with “any other specific measure(s)”<sup>6</sup> agreed by the Conference of States Parties, an organ of the implementing organization where developing countries would easily command a majority. The open-ended financial implications of this provision were of serious concern to many Western Group countries.

A second major area of disagreement on assistance issues involved NAM proposals for a lopsided allocation of on-site activity between technical assistance visits and on-site visits for arms control purposes. So-called randomly selected visits were intended to promote arms control transparency at facilities declared under the protocol because of a perceived greater potential for BW misuse. In contrast, technical assistance visits were intended to assist developing countries and not to be an arms control measure. Any facility (regardless of whether it was declared) could request a visit to address inter alia biosafety, good manufacturing practices, training, and regulatory issues. In 1999, the NAM proposed amendments to the rolling text requiring that the annual allotment of randomly selected visits be reduced to accommodate requests for technical assistance visits that exceeded planned levels.<sup>7</sup> If there were a large number of such requests, no randomly selected visits would occur that year in favor of fulfilling as many technical assistance visit requests as possible. In short, development would trump arms control. This proposal underscored the indifference of many NAM delegations to international efforts to address the BW problem. NAM delegations clung to this proposal throughout the negotiations and it was reflected as a bracketed alternative in the last version of the rolling text.

Finally, NAM efforts to embed their economic vision of the BWC in the implementing organization itself were highly controversial. NAM delegations led by Iran proposed the establishment of a “Cooperation Committee” as a separate body with the implementing organization charged with promoting “effective and full implementation of Article X of the Convention and Article VII of the Protocol.”<sup>8</sup> It was envisioned that the Cooperation Committee would review the implementation of western assistance efforts and make “proposals and recommendations” to the Conference of States Parties.

Western Group countries opposed the establishment of a Cooperation Committee because of concerns that it would become a NAM platform for criticizing Western assistance programs and pressuring for additional resources. Moreover, there was fear that the Cooperation Committee was intended by the NAM to shift the focus of



the BWC implementing organization away from arms control and on to development assistance. Despite these concerns, Western Group countries eventually acquiesced in principle to a Cooperation Committee believing it was inevitable. However, some Western Group countries, particularly the United States, sought to impose controls on the operation of the committee through voting and membership provisions. These provisions would have opened the committee up to all states parties to the protocol and utilized a consensus rule for all committee actions. In the last version of the rolling text, the NAM continued to argue for a geographically weighted membership formula and a majority decision-making rule that would have assured it control of the Cooperation Committee.

#### **CREATING A PROLIFERATOR'S PARADISE**

Armed with the Article X element of the negotiation mandate, the NAM Group sought to effectively dismantle nonproliferation barriers (such as national export controls and the Australia Group) by “multilaterizing” the nationally implemented, nontransfer obligations contained in Article III of the convention. Article III imposes an obligation on each state party not “in any way to assist” any country in pursuing the BW activities prohibited by Article I. Article X and the specific language of the mandate set out the converse obligation, namely, that “the provisions of the convention should not be used to impose restrictions and/or limitations” on transfers for peaceful purposes. Western Group states have fulfilled their Article III nontransfer obligation through nationally based export control systems that restrict transfers to countries suspected of pursuing offensive biological weapons programs. The NAM Group criticized these nationally based systems as arbitrary, if not discriminatory, and contrary to the legal obligation under Article X to “facilitate...the fullest possible exchange” of biological equipment, materials and technology. In a 1999 formal statement, the NAM Group proposed that its “concerns would be best addressed through multilaterally-negotiated, non-discriminatory and legally binding mechanisms to be incorporated into the future Protocol.”<sup>9</sup>

The NAM effort to “multilateralize” national determinations required under Article III of the BWC was led by Iran, India, Pakistan and China, though underlying motivations were likely more overlapping than identical. Strongly suspected of pursuing a BW program in direct violation of the convention, Iran apparently was seeking to further this illicit effort by gaining access to currently restricted biological equipment and technology. China, another suspect BW state, may have had similar objectives. Since all four of these countries were actual or aspiring nuclear powers, they likely shared a common strategy to “roll back” export restrictions in the biological area with a view to delegitimizing (and later weakening) nuclear-related controls. Finally, as a potential supplier of sensitive missile and other dual-use technology, China might have calculated that it would benefit from the adoption of weak international standards for controlling transfers.

These four states were the principal architects of a proposed section in the protocol ironically entitled “Measures to Strengthen the Implementation of Article III.” This section set out three elements to achieve the multilateral transformation of Article III: transfer guidelines, denial review mechanism, and elimination of the Australia Group.<sup>10</sup> To begin with, each state party to the protocol would be required to restructure its export control system around a uniform, end-user certification requirement. States would be obligated to provide an export license so long as the recipient state provided assurances that the transferred items would be used only for purposes not prohibited by the convention. Any concerns about the intended end use of the item would be addressed through various bilateral and formal consultation procedures. If consultations failed to resolve the dispute, the denied state would have recourse to a panel of independent experts to review the denial and render a determination by majority vote. All parties would be legally required to abide, without exception, by the ruling of the panel. The final piece of the new multilateral export regime took aim at the Australia Group, requiring parties to the protocol “to refrain from establishing new discriminatory ad hoc export control regimes and to invalidate the existing ones.”<sup>11</sup>

In the name of strengthening the convention, the proposed multilateral control regime would have created a proliferator's paradise. While end-user certifications work in some situations, Western Group countries argued that they are hardly panaceas, especially when dealing with suspected violators and the very real risk of diversion to prohibited uses. They also emphasized that a piece of paper can simply not be a one-size-fits-all substitute for national discretion informed by experience and intelligence. Moreover, in cases where states determined that they had not received adequate end-use assurances, the standard of review by the panel of independent experts would require the denying state to demonstrate that the recipient was engaged in activities prohibited by the convention. To have any chance of prevailing, the transfer-denying state would have to provide sensitive intelligence as well as information on intelligence sources and methods to the panel. Of course, such disclosure would compromise those intelligence sources and methods. Further, the denying state would have to explain why it had not called for a challenge inspection to allow international inspectors to "verify" the existence of the alleged BW program. Even if a challenge investigation had been conducted, unless conclusive evidence of illicit activities was uncovered, the state denied the transfer would claim that its innocence had been proved.

In sum, the NAM proposals were calculated to impose a Hobson's choice on Western Group countries: either allow a sensitive transfer to a country of BW concern or compromise sensitive intelligence and, even more damaging, the underlying intelligence collection apparatus by which it was obtained.

#### **THE WESTERN DEBATE—A PLAY WITHIN A PLAY**

The arms control debate over how to strengthen the convention that preoccupied Western Group countries was marginalized by the other agendas at work in the protocol negotiations and is best understood as a "play within a play." The inherent political contradictions of the Ad Hoc Group were complemented by the intractable character of the BW problem itself. Nature and the advance and

worldwide spread of biotechnology have conspired to make biological weapons programs highly resistant to effective verification. Unlike chemical weapons, a few kilograms of biological agent widely dispersed over troop concentrations or a major city could sicken or kill many thousands of people. Small-scale equipment, occupying perhaps only a single room, could produce the limited quantities of pathogens needed for a devastating BW attack. And virtually all of the equipment involved is dual use and can be found today in almost every corner of the world. Owing to the small quantities of agent needed to be militarily significant and the advances in pharmaceutical production technology, it is no longer even necessary to stockpile BW agents. When the decision to use BW is made, legitimate production facilities can be commandeered and starter cultures can quickly be grown (within days) into substantial quantities of BW agent, particularly if high-efficiency production equipment is used. In short, when all is considered, the BW problem is substantially larger than any solutions a protocol could have provided.

Faced with these daunting challenges, two contrasting approaches competed for supremacy within the U.S. government and, by extension, the Western Group. The first approach drew its inspiration from the recently concluded Chemical Weapons Convention and sought to decant its declaration, inspection, and organizational concepts into the BWC protocol. This view dominated the Western Group and was the position of the European Union. Advocates favored broad declaration of biological activities, random inspections to check the accuracy of declarations, a strong challenge investigation mechanism, and a large implementing organization. The second approach viewed the CWC as a false analogy and, given the perceived uniqueness of the BW problem, sought a very modest protocol comprising limited declarations, a strong challenge investigation mechanism, and a relatively small implementing organization.

Bureaucratic factions within the U.S. government were sharply divided between the two protocol philosophies. A tug-of-war ensued from 1995 till 2000. U.S. policy initially reflected the “anti-CWC” approach and slowly shifted to a hybrid of the two models.

The United States eventually supported a broader package of declarations that included large-scale producers of biological products and random visits to declared facilities to enhance transparency (not to confirm declarations). However, even these U.S. concessions failed to produce a workable compromise within the Western Group, and many members, particularly the European Union, continued to push for a pure CWC model, pinning their hopes on the like-minded elements of the U.S. government, ultimately winning the internal U.S. government struggle.

Western Group and internal U.S. government disunity had a profoundly adverse impact on the overall dynamics of the negotiation. U.S. leadership has been fundamental to the success of previous multilateral arms control negotiations. Torn by internal divisions, superpower leadership was simply not possible and its absence was palpable. Western Group disunity precluded any forceful, collective attempt to counter the efforts of those countries determined to use a BWC protocol to undermine the convention.

#### **VISIONS AND ENDGAMES**

On March 30, 2001, Ad Hoc Group Chairman Tibor Toth introduced his “Chairman’s Text,” a proposed compromise intended to set into motion a negotiation endgame. In previous multilateral arms control negotiations—such as the CWC and the Comprehensive Nuclear Test-Ban Treaty (CTBT)—it had proven impossible to resolve most central issues through text-based negotiation. Instead, breaking through the logjam of brackets was achieved through a so-called chairman’s compromise “vision” text. In the case of both the CWC and the CTBT, the Chairman’s Text was largely, although not completely, the basis for the final text. Radical NAM countries and China challenged the Chairman’s Text and successfully secured additional concessions from the United States and other western countries during both the CWC and CTBT negotiation endgame. In the case of the BWC protocol, a similar dynamic was expected to unfold, but the intensity and breadth of dissatisfaction were unprecedented.

In April 2001, at the Ad Hoc Session following the introduction of the Chairman's Text, all indicators pointed to an impending "train wreck," not a CWC/CTBT-like endgame that would close the deal. Those who had set out to use the protocol to weaken the convention were very disappointed with the Chairman's Text and immediately voiced their complaints. Russia insisted that the Chairman's Text failed to satisfy the mandate requirement for "definitions and objective criteria" that would address alleged ambiguities in the convention. The Chairman's Text did provide definitions of *biological weapon* and *peaceful purposes*, but they constituted only verbatim repetition of language already contained in Article I of the convention. In an apparent effort to appease Russia, the Chairman's Text also paid some lip service to threshold quantities, but Russia was deeply dissatisfied.

The NAM attacked the Chairman's Text for failing to address adequately the Article X aspects of the Ad Hoc Group mandate. China described the text's treatment of Article X issues as one-sided and issued a statement calling for a "balance between preventing proliferation and promoting development" and the "abolishment of discriminatory export control arrangements."<sup>12</sup> Iran indicated that there would be no protocol unless the transfer issue was successfully resolved. Finally, a joint statement issued by China, Cuba, India, Indonesia, Iran, Libya, Mexico, Pakistan, and Sri Lanka reaffirmed their demand for "transparent, multilaterally negotiated, non-discriminatory and legally-binding" export guidelines embedded in the protocol.<sup>13</sup>

In sum, the Chairman's Text had proposed a compromise solution to the arms control aspects of the text while largely sidestepping radical proposals related to the other half of the mandate—definitions/criteria and Article X. But even the arms control proposals had included a showstopper: challenge investigations. Russia demanded that the mechanism for investigating suspicious outbreaks of disease be eliminated from the Chairman's Text, leaving only investigations of alleged use. Compounding this situation, China joined Russia in

insisting that it be stricken from the text. Iran, Pakistan, China, and India strongly emphasized the failure of the Chairman's Text to provide for mandatory consultations before a request for a challenge investigation could be acted upon. And finally, Pakistan stated that its support for the protocol was dependent on the incorporation of its proposal allowing a state to refuse a challenge investigation on "national security" grounds.

Deep dissatisfaction with the Chairman's Text imperiled its ability to usher in an endgame phase by replacing the rolling text as the basis for future negotiation. In the middle of the April session of the Ad Hoc Group, a like-minded group including China, Pakistan, and Iran took decisive action to neutralize the Chairman's Text. In a joint statement issued May 4, the like-minded group indicated that "wide differences continue to exist among delegations on several issues, such as definitions, clarification visits, Executive Council decision-making for investigations, declaration triggers, transfers and export regulation, entry-into-force, etc."<sup>14</sup> The like-minded called upon the Ad Hoc Group to "immediately resume substantive negotiations based on the rolling text to achieve consensus on the outstanding issues." In a negotiation in which the only rule is consensus, Chairman Toth's gambit to force an endgame had clearly failed and the negotiations had reached an impasse.

In July 2001, as the Ad Hoc Group reconvened for its 24th session, the negotiations were in disarray, with the same forces at work that had corrupted the Ad Hoc Group mandate almost seven years earlier. The Western Group countries again faced a moment of truth. At the Special Conference in 1994, they had rationalized accommodating mandate elements inimical to the convention in the hopes of later containing and sanitizing those elements. The Chairman's Text had largely contained the bad half of the mandate, but for that very same reason, it was dead-on-arrival. The only path to consensus would be for Western Group countries to accommodate protocol measures that would harm the convention.

## CONCLUSION

The Ad Hoc Group mandate both presaged and precipitated the polarized negotiation endgame that would occur seven years later. While U.S. intervention may have been the most immediate cause for the termination of the protocol negotiations, the international effort to strengthen the Biological Weapons Convention would have inevitably failed in either of two ways. First, failure could have taken the form of a bad protocol. Western Group countries could have agreed to Russian and radical NAM provisions that seriously undermined the convention, perhaps deluding themselves that these provisions would somehow be rendered harmless during subsequent implementation. Alternatively, Western Group countries could have walked away from a bad deal and the negotiations would have failed to achieve a protocol. Given that this underlying dynamic was already well in evidence by July 2001, there is no basis for attributing ultimate responsibility to the United States for the demise of the negotiations. Blaming the United States as the proximate cause for the collapse of the negotiations, however, provided a convenient scapegoat for many to protest the perceived “unilateralism” of the Bush administration or to conceal their own culpability for the impasse in the negotiations.

Though inactive since August 2001, the Ad Hoc Group continues to exist legally, as does its mandate. No doubt there are some that hope to reanimate the Ad Hoc Group should a political sea change occur in the United States. As Samuel Johnson said of second marriages, such a move would constitute “the triumph of hope over experience.” Strengthening the Biological Weapons Convention remains an important and difficult task for the international community. The arms control issues involved are complex and controversial. They should be fairly debated in fora where those who seek to do harm to the convention must work their mischief in dark corners and not enjoy the legitimacy conferred by the negotiation mandate.



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Kenneth D. Ward served as the Deputy Head of the U.S. Delegation to the BWC Ad Hoc Group negotiations from 1995 until February 2001. The views expressed in this article are his own and do not represent those of the U.S. Department of State or the U.S. government.

<sup>1</sup> Throughout the 1990s, the Annual Reports to Congress of the U.S. Arms Control and Disarmament Agency and subsequently the Department of State raised BWC compliance concerns about several Ad Hoc Group participants: China, Iran, and Russia.

<sup>2</sup> See BWC/Ad Hoc Group/15, Working Papers WP15, WP56, and WP381, July 11, 1995.

<sup>3</sup> See BWC Ad Hoc Group Working Papers WP99, WP290, WP382, and WP379.

<sup>4</sup> Ad Hoc Group floor statement.

<sup>5</sup> See BWC Ad Hoc Group Working Paper WP181, p. 2-3.

<sup>6</sup> Final version of rolling text, BWC/AD HOC GROUP/56-1, May 18, 2001, p. 155, para. 4(k).

<sup>7</sup> See BWC Ad Hoc Group Working Paper WP402, September 22, 1999, para. 7.

<sup>8</sup> BWC Ad Hoc Group Working Paper WP349, January 1999.

<sup>9</sup> BWC Ad Hoc Group Working Paper WP407, October 8, 1999.

<sup>10</sup> These proposals are set out in brackets in the final version of the rolling text. See BWC/AD HOC GROUP/56-1, May 18, 2001, p. 76 transfer guidelines; p. 77 review mechanism; and p. 76 elimination of the Australia Group.

<sup>11</sup> *Ibid.*, p. 76.

<sup>12</sup> BWC Ad Hoc Group Working Paper WP453, May 8, 2001, para. 2(b) and 2(d).

<sup>13</sup> BWC Ad Hoc Group Working Paper WP452, May 7, 2001.

<sup>14</sup> BWC Ad Hoc Group Working Paper WP451, May 4, 2001.