



UNITED STATES DELEGATION
TO THE ADHOC GROUP OF THE CONVENTION ON THE PROHIBITION OF
THE DEVELOPMENT, PRODUCTION AND STOCKPILING
OF BACTERIOLOGICAL (BIOLOGICAL) AND TOXIN
WEAPONS AND ON THEIR DESTRUCTION

STATEMENT

BY

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STATEMENT BY THE UNITED STATES
TO THE AD HOC GROUP OF
BIOLOGICAL WEAPONS CONVENTION STATES PARTIES

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Mr. Chairman, Colleagues:

I take the floor today after twenty-three sessions of the Ad Hoc Group, spanning some six and a half years of negotiation trying to develop a legally-binding document to enhance confidence in compliance with the Biological Weapons Convention. The relevance of our objective has not diminished over those years. Everyone should understand the importance the United States places on the Biological Weapons Convention and the global ban on biological weapons it establishes.

No nation is more committed than the United States to combating the BW threat. This is a threat we face not only at home but also abroad. Our forces and our friends and allies may well be the victims of this weapon of terror and blackmail. We must counter this complex and dangerous threat with a full range of effective instruments -- nonproliferation, export controls, domestic preparedness, and counterproliferation. We are firmly committed to combat the spread of biological weapons.

After years of arduous negotiation, with the sterling work of numerous friends of the chair to facilitate discussions about specific issues, this group had gone as far as that technique would permit in resolving individual issues and questions along the model set forth in the original rolling text in 1997. You, Mr. Chairman, then undertook the challenging and onerous task of proposing a set of mutual compromises, based on that rolling text, as a potential way to bring the negotiations to closure in a short period. The United States congratulates you on the effort you have made to resolve very contentious issues.

The United States has subjected the "Composite Text" proposal to detailed scrutiny. As every veteran of these negotiations will recall, the United States has had serious issues with both individual proposals and the general approach to some issues throughout these negotiations. Those concerns and requirements have not changed -- indeed, they remain one of the consistent criteria against which the United States has evaluated this text.

In addition to the text, we have looked at the overall issue of biological weapons threat. Our approach for doing so is comprehensive, and includes new, affirmative ideas for strengthening the Biological Weapons Convention. We believe we can strengthen the Biological Weapons Convention through multilateral arrangements. To be valuable, however, we believe any approach must focus on effective innovative measures.

The review conducted in Washington has encompassed more than the substantive content of individual issues. We recognize that in any negotiation no individual country can

dictate the outcome on all elements of the final text. We also recognize that the proposals in the "Composite Text" frequently do reflect values and views the United States has inserted into the negotiation. However, as indicated in the Twenty-Third session and for years before that, the United States still has very serious substantive difficulties with the textual proposals in these negotiations. We have recognized the substantive and political values many of the participants here attach to a successful completion of the Protocol, and that the demonstrated ability to achieve a consensus result, even if it cannot satisfy every signatory's preferred outcomes, is perceived as a potential benefit in itself. The United States view, therefore, has been considered at the most senior levels of our government. We continue to have problems and certainly are not going to mislead anyone on this point.

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, strengthening confidence in compliance with the Biological Weapons Convention. 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 draft Protocol will not improve our ability to verify BWC compliance. It will not enhance our confidence in compliance and will do little to deter those countries seeking to develop biological weapons. In our assessment, the draft Protocol would put national security and confidential business information at risk.

The United States intends to develop other ideas and different approaches that we believe could help to achieve our common objective of effectively strengthening the Biological Weapons Convention. We intend to explore those ideas and other alternative approaches during the next several months with the goal of reaching a consensus on a new approach for our shared objective.

There is no basis for a claim that the United States does not support multilateral instruments for dealing with weapons of mass destruction and missile threats. We strongly support the Australia Group, and will be working actively to strengthen it at its next meeting in Paris October 1-4. Indeed, we support all multilateral arms control, nonproliferation, and export control regimes that are currently in force, such as - the NPT, the CWC, the BWC, MTCR, NSG, IAEA, Zangger Committee, and the Wassenaar arrangement.

Let me outline some of the reasons for reaching the conclusion I have just announced about this Protocol. As I noted earlier, many of these will not be new or surprising. They reflect positions the United States has advanced repeatedly throughout these negotiations.

Objectives

One central objective of a Protocol is to uncover illicit activity. Traditionally, this has meant seeking regular on-site inspections of locations potentially able to conduct such activity, the shorter-notice and the more intrusive, the better. Always, there is a balance between pursuing illicit actions and protecting legitimate national security and proprietary information unrelated to illicit activity.

In the draft Protocol, there is an inherent dilemma associated with the question of on-site activities. The provisions for on-site activity do not offer great promise of providing useful, accurate, and complete information to the international community. However, when we examined the prospects of the most intrusive and extensive on-site activities physically possible -- which we believed were likely not acceptable to most other countries -- we discovered that the results of such intrusiveness would still not provide useful, accurate, or complete information.

One objective is to agree on a declaration base that would provide reasonable inventories of activity in a country relevant to the underlying Biological Weapons Convention. Our assessment of the range of facilities potentially relevant to the Convention indicates that they number, at least in the case of the United States, in the thousands, if not the tens of thousands. In addition, their number and locations change on an irregular but frequent basis. Thus, we had no hope that any attempt at a comprehensive declaration inventory would be accurate, timely, or enduringly comprehensive.

In short, after extensive analysis, we were forced to conclude that the mechanisms envisioned for the Protocol would not achieve their objectives, that no modification of them would allow them to achieve their objectives, and that trying to do more would simply raise the risk to legitimate United States activities.

This is not a new perspective. We have voiced it since the initial negotiating sessions in 1995. The United States has worked with other countries to try to find the way to create an appropriate balance in the draft Protocol. However, despite the efforts of many, we are forced to conclude that an appropriate balance cannot be struck that would make the draft Protocol defensible as an instrument whose utility outweighs its risk.

The Paradigm

Another key objective for a Protocol to strengthen the Biological Weapons Convention would be to deter or complicate the ability of a rogue state to conduct an illicit offensive biological weapons program. These negotiations have worked from the outset on the model of regimes that have gone before. The most frequently cited paradigm for our work has been the Chemical Weapons Convention. Indeed, many of the arguments and justifications for the scope and nature of activities envisioned under the draft Protocol have used the CWC as the example of comparison.

This is, unfortunately, seriously flawed. When developing the ban on chemical weapons, the question of dual-capability was in the forefront. It was, and is, a legitimate question with respect to the CWC, since the immediate precursors of chemical agents require production facilities capable of making chemical agents, but have legitimate commercial applications. The same kind of dual-capability issue exists in biology to an even greater extent.

In chemical manufacturing, although the precursors have legitimate application, the economics of their production dictates making them in a limited number of facilities. Such facilities, because of the toxicity and corrosiveness of the precursors, have recognizable infrastructure requirements.

When setting up the CWC, we were able to require universal declaration for such facilities, and then establish an international regime that would visit each such facility on a regular and repeated basis. If there were such a recognizable facility that were not declared, the very lack of declaration would be sufficient to raise questions about its role and function.

The Ad Hoc Group quickly recognized that no such cataloging was possible with respect to biology to biological facilities. Almost any facility that does biological work of any magnitude possesses the capability, under some parameters, of being diverted to biological weapons work. Trying to catalog them all would be tantamount to impossible. Likewise, visiting even those selected - almost arbitrarily - for declaration on the same universal and regular basis as the CWC would require an international organization of the size and possession of rare skills among its employees that no one in the Ad Hoc Group was willing to contemplate.

What we are left with, then, is a regime that contemplates -- at best -- declaration of an almost randomly-selected set of facilities from among those actually relevant to a potential proliferator. To compound the difficulty, among that random sample of facilities, regular on-site activity would take place at only a random sample of even that sub-set. And, given the distribution of biological activity around the world, despite the best efforts at finding a "smoothing function" to distribute on-site activity, the overwhelming bulk of such activity would take place on the territory of those States Parties least likely to be proliferation candidates.

In the considered judgement of the United States, the small scope of applications of this kind of twice-removed randomness, coupled with a required emphasis on the wrong targets from among the susceptible population, simply does not provide anything remotely resembling a deterrent function on a proliferator, even a non-state actor. We therefore conclude that the conceptual approach used in the current negotiating effort fails to address the objective we have sought throughout the negotiations.

This approach, although relevant in the references to non-biological areas used throughout the negotiations, simply does not apply to biology. If we are to find an appropriate solution to the problem, we need to think "outside the box." It will require new and innovative paradigms to deal with the magnitude of biological activity that can

be a threat, the explosively changing technology in the biological fields, and the varied potential objectives of a biological weapons program. We simply cannot try to patch or modify the models we have used elsewhere.

Biodefense Issues

Defense against biological weapons is of great concern to the United States. As we have stated repeatedly, any Protocol needed to ensure that the ability to protect against those who would violate the norm of abolishing biological weapons was not impaired. The United States has the most extensive biodefense program described by any participant in these negotiations. The United States therefore has more national security equities

directly at risk through this Protocol than any other participant. At the same time, the potential downside of undercutting biodefense efforts is not limited to the United States. We share the results of our efforts with other countries in assisting them to protect themselves against potential biological weapons attack. Our concerns, then, are not limited to self-protection. They are concerns that should be relevant to many of the countries in this room.

We recognize that finding a balance of protection and disclosure has been especially difficult in the biodefense arena. The proposal in the "Composite Text" is far from what some countries have suggested, and even incorporates a number of elements the United States has demanded. However, there are still provisions in the current proposals we believe would be inimical to legitimate national security efforts.

More importantly, as we have analyzed the options, we came to the conclusion that the same inherent flaw I described earlier is present in the approach to biodefense. Between declarations on biodefense and other categories, such as working with listed agents, the current proposals do not provide sufficient protection. At the same time, the exclusions in declarations would permit a potential proliferator to conceal significant efforts in legitimately undeclared facilities. Conversely, if we try to make the declarations comprehensive enough to capture all biodefense activity, the level of risk to legitimate and sensitive national security information becomes truly unbearable.

On-Site Activity Utility

Earlier I noted the dysfunction of concentrating on-site activity in places that would be largely irrelevant to possible biological weapons concerns. This alone detracts seriously from any value for the objectives of the Ad Hoc Group. However, there is a second liability of on-site activity as envisioned in the "Composite Text."

The activities outlined to take place on a regular basis, transparency visits, actually risk damage to innocent declared facilities, despite the fact that they would have almost no chance of discovering anything useful to the BWC if they took place at a less-than-innocent facility. This risk is a two-edged sword: proprietary or national security

information may be at risk, and/or the activity may serve to misdirect world attention into non-productive channels.

A number of safeguards have been inserted into procedures to protect information not relevant to the BWC. Those safeguards are insufficient to eliminate unacceptable risks to proprietary or national security information. The nature of proprietary information in the biological field is very diverse. It ranges from overall capacities, which reveal market size and profit potential, to routine physical production configurations that provide efficiency and output advantages. Protecting such a diverse and innocent-seeming range of information would require facilities to exercise the protections incorporated in the draft Protocol language extensively and, even then, they would have no firm assurance proprietary information could not be inferred from what was seen by inspectors.

At the same time, the very exercise of the protections incorporated in the draft language could misdirect the attentions of the international community. Countries, or competitors, with economic or political agendas of disruption could raise unfounded allegations. Such allegations would be refutable only with economic or national security costs, and refutation after the fact would likely already have resulted in commercial damage to private firms. The United States, with its visibility in the world, is perhaps more sensitive to such a situation than some. Our concern, however, is not for the United States alone. We simply cannot agree to make ourselves and other countries subject to such risks when we can find no corresponding benefit in impeding proliferation efforts around the globe.

Constitutional and Ratification Issues

Throughout this negotiation, we have made all our colleagues aware of the constraints we face in achieving ratification of an international agreement. This is, to the United States, a crucial component of any outcome. We do not believe in negotiating, nor signing, agreements that do not support their stated objectives. At the same time, the United States operates in a specific Constitutional framework. It requires the executive branch of our government, to submit the results of any negotiation to the United States Senate for advice and consent to ratification.

In good faith throughout these deliberations, we have brought to the attention of the Ad Hoc Group the issues where we believed there were explicit requirements to allow the United States to achieve ratification. We have operated on the assumption -- which we still believe is valid -- that creating an instrument that would preclude United States participation was not in the best interests of this negotiation or of the Biological Weapons Convention.

We also have explicitly recognized that some of the conditions necessary to satisfy these requirements would theoretically allow abuse. For our own part, the United States does not use such devices in an abusive fashion. We also believe that if others were to do so, the nature of their use would be obvious to any objective observer, and the international community could draw appropriate conclusions. Thus, we do not believe the potential

abuse argument outweighs our own responsibility to create an instrument to which we believe we could become an active party.

There are elements of the "Composite Text" draft that violate the requirements with respect to this issue. I do not intend to try to detail them today -- they are familiar to all in this room who have sat through the numerous Ad Hoc Group sessions where we have detailed both the appropriate solution and the rationale for it.

However, the result is a text that, even if the United States were convinced had substantive merit in achieving its stated objectives to strengthen the Biological Weapons Convention, would not be one we could predict with reasonable probability the United States would become a party to. This is, in our view, a futile effort. We deeply regret if the nature of these specific requirements was not made clear throughout the negotiations, but it was certainly not for lack of effort on the part of the United States delegation.

Export Controls

The nations involved in this negotiation should be commended for their ability to attack a subject with as many divergent national views such as global control of biotechnology. I have referred several times to the central objective of the United States in undertaking this work: to assist in the global effort to stem, or at least inhibit, proliferation of biological weapons. We believe that remains an essential goal for international security.

Some of the participants in this negotiation, however, have approached the situation with a different mix of national priorities. They view the issue as much from the perspective of technological development as from direct security enhancement measures. While the United States agrees with the concept that global technological development in biotechnology helps create a more secure environment, we view this as a subordinate element to the compliance-enhancement aspects of any Protocol to the Biological Weapons Convention.

The Convention is, after all, a disarmament treaty, not a trade treaty. There are competent organizations throughout the world whose principal function is to fight disease, enhance trade, and promote development. The United States supports those organizations, and applauds their successes in their own areas of competence.

Other delegations appear to disagree fundamentally with our assessment. Just this week, we have heard that "... Confidential Proprietary Information (CPI) is the concern of only a few advanced countries, where National Security Information is the concerns (sic) of all States Parties....(T)herefore, my delegation expects the deletion of the references to CPI in the final text." In addition, we hear that "any parallel export control regimes have to be dissolved after the Protocol enters into force (for States Parties to the future Protocol)."

We have explained at length why ignoring the protection of legitimately sensitive information, both for proprietary and national security reasons, is an essential element of

focusing any instrument on the disarmament objectives we should be seeking rather than trade enablements, which should be the purview of other organizations. We also take seriously the threat of biological weapons proliferation. A Protocol should be, if it were properly focused and implemented, another instrument in the set of tools countering proliferation of weapons of mass destruction. Never has the argument been made successfully that it could have become the single answer to the proliferation problem. To insist that other effective tools be forfeited in order to establish a Protocol is an indication of the wide gap between demands and possible solutions still existing in these negotiations.

We do not believe the Ad Hoc Group product, or the international organization -- affectionately known as the OPBW -- envisioned by the current draft Protocol, is an appropriate substitute for those other organizations. In fact, we fear that the inevitable competition of alternative international organizations with overlapping mandates could actually impede some of the effectiveness of those other already existing organizations.

Likewise, we are perplexed by the arguments of some participants in these negotiations that commitments in the areas of trade and development are necessary "prices" to pay for the security-enhancing compliance measures envisioned in other elements of the draft Protocol. Global political situations would indicate that the very countries trying hardest to argue for compensation to agree to security enhancement are those most likely to have a biological weapons threat to their own security. The logic of their position is not apparent.

From the beginning, the Protocol the Ad Hoc Group has sought has been an additional tool to address the biological weapons threat. We all recognize that the threat is both real and growing. Other efforts already exist to address the threat, including the BWC itself. While they have not eliminated the problem, they nonetheless have been useful in retarding the threat.

The United States believes very strongly in employing all available means to enhance international security. One of the things we will not allow is any degradation of those tools we already have to fight a serious challenge to security. Throughout these negotiations, some participants have attempted to do just that. Such an effort is flatly unacceptable to the United States.

It is the responsibility of all of us, since we are already parties to the Biological Weapons Convention, to inhibit or prevent biological weapons being in the hands of any state or party whatsoever, by both national and international means. We take that national responsibility very seriously. To the degree we can enhance our efforts through cooperation with other states parties, we will continue to do so. Efforts to constrain, impede, or eliminate such efforts will be unacceptable to the United States now and at any time in the foreseeable future. Those who think there is any flexibility on this point in the United States are sadly mistaken, and should abandon any such pursuits.

Disturbing Negotiating Positions

Some participants in these negotiations have also sought outcomes that are, frankly, disturbing to the United States. We do not understand, even after repeated explanations, the rationale for such efforts. We can only urge that states reexamine their basis for such positions.

The mandate of the Ad Hoc Group clearly states that any Protocol must not abridge, diminish, or otherwise weaken the Biological Weapons Convention. The United States has tried to keep that principle in mind whenever we have proposed measures or other elements for the draft Protocol.

We must wonder, though, when we are asked to consider provisions that would constrict the potential scope of the prohibitions in the Convention by fixing the meaning of terms in the Convention itself. We have heard repeatedly about the flexibility needed to keep up with explosively changing technology. It seems to us that efforts in contrary directions cannot be in the interests of the object and purpose of the Convention.

Likewise, we have long held that seeing the actual effects of a biological weapons program would be one of the less ambiguous issues in evaluating potential threat. While less ambiguous, such effects are not unambiguous. It therefore seemed to us that being able to examine such effects, including disease outbreaks, was an important capability for any Protocol regime. Attempts to restrict such investigations do not seem in the best interests of all parties.

Conclusion

I apologize for the length of this intervention. As I stated at the outset, the United States understands and appreciates the amount of effort, and the amount of compromise, that have marked the negotiations to this point. We agree with the assessment that it was time to move from the rolling text to a composite text in an effort to formulate compromise solutions to outstanding issues. We have analyzed those efforts from both a political and substantive perspective, recognizing the sincere desire of most of the participants to reach an outcome that would have a product ready for consideration and signature by States Parties.

The United States does believe that many, if not all, of the difficulties I have outlined today are things the participants in this room have heard, repeatedly, over the last six years. These are not new ideas the United States has just now formulated -- they are long-standing concerns. At the same time, we recognize that no country in a multilateral negotiation achieves all of its desired positions, and that some of the compromises reflected in the composite text are difficult for others to accept.

Others in this room have the same objectives as the United States for a Protocol -- enhancing international security. The various expressions of support for the composite text we have heard clearly indicate that others have evaluated the draft Protocol and have

concluded that, however imperfect, it does satisfy those objectives. Regrettably, the United States has come to a different conclusion.

We have spent the effort to examine the text in detail, and at the senior-most levels. We have also examined the principles on which the text is based. We have looked for a set of specific changes that could alter our fundamental conclusions. These intensive reviews have led us to conclude that this effort simply does not yield an outcome to which we would be prepared to agree. I have outlined above some of the reasons why we have reached this conclusion. Because the difficulties with this text are both serious and, in many cases inherent in the very approach used in the text, more drafting and modification of this text would, in our view, still not yield a result we could accept.

Some have argued both publicly and privately that not having this Protocol will weaken the BWC itself. The United States categorically rejects that supposition. Let me re-emphasize that the U.S. fully supports the global ban on biological weapons embodied in the BWC, and remains committed to finding effective ways to strengthen the overall regime against the BW threat, including multilateral ones. The United States will, therefore, work hard to improve -- not lessen -- global efforts to counter both the BW threat and the potential impact such weapons could have on civilization. And we would reply to those who cry that not having this Protocol weakens the global norm against BW that there absolutely is no reason that kind of reaction need occur. It will happen only if we convince ourselves that it is happening, and we would urge others to join with us in ensuring such a reaction does not take place.

Thank you Mr. Chairman and colleagues.

