

VISITS: THE EMERGING PORTFOLIO

by Graham S. Pearson

Introduction

1. The Protocol to strengthen the Biological and Toxin Weapons Convention (BTWC) is developing and is fast approaching its final form¹. Visits have received much attention throughout the negotiations -- and rightly so, as they are an essential and effective pillar of the future strengthened regime to ensure the total prohibition of biological weapons. Briefing Paper No 2² -- now over two years ago -- argued the necessity for visits whilst Briefing Paper No 18³, at the beginning of 1999, demonstrated that visits are an essential and effective pillar of the regime to *strengthen the effectiveness and improve the implementation* of the BTWC and Briefing Paper No 20⁴, in April 1999, argued that a portfolio of visits was essential for the future regime and demonstrated how the various types of visits -- randomly-selected, declaration clarification, voluntary declaration assistance, voluntary declaration clarification and voluntary cooperation and assistance visits -- **together** contributed to an effective **and** efficient regime. Briefing Paper No 20 concluded that *"random and clarification visits together with voluntary request visits all have different yet complementary roles, that are essential and effective, to play in ensuring that declarations are accurate and complete in the strengthened BTWC Protocol thereby enhancing the contribution that declarations make to building transparency and confidence in compliance. They are **non-accusatory** and **non-confrontational** and are **not** associated with any consideration of whether or not a facility is in compliance with the Convention. They are highly efficient elements of the future regime which strengthen the regime significantly through ensuring accurate declarations yet entail only modest resources. Visits also add value in that it is very unlikely that a would be violator would risk carrying out prohibited activities at a declared site knowing that any declared site may, albeit infrequently, be subjected to a visit."*

2. The developments in respect of visits during the last few months are encouraging and make it appropriate to examine the emerging portfolio of visits. It has been evident that the discussions within the Ad Hoc Group in the area of Compliance Measures over the past few sessions have been focussed on visits -- what these should be, how they should be carried out and what they should not be. It is apparent that all engaged in the negotiations have developed a deeper and clearer appreciation of the nature of visits and the importance of their contribution to the regime.

3. Following the September/October AHG Session, it is now clear that the concept of a portfolio of visits, comprising randomly-selected visits, declaration clarification procedures and voluntary assistance visits, is supported by the majority of the States engaged in the negotiations. This is a significant step forward. This Briefing Paper examines the emerging portfolio of visits and concludes that randomly-selected visits must be to **all** declared facilities in order to achieve complete and accurate declarations for all declared facilities.

¹Graham S Pearson, *The Strengthened BTWC Protocol: An Overall Evaluation*, Evaluation Paper No. 1, University of Bradford, July 1999. Available on <http://www.brad.ac.uk/acad/sbtwc>

²Graham S. Pearson, *The Necessity for Non-Challenge Visits*, University of Bradford, Briefing Paper No. 2, September 1997. Available on <http://www.brad.ac.uk/acad/sbtwc>

³Graham S. Pearson & Malcolm R. Dando, *Visits: An Essential and Effective Pillar*, University of Bradford, Briefing Paper No. 18, January 1999. Available on <http://www.brad.ac.uk/acad/sbtwc>

⁴Graham S. Pearson, *Visits: An Essential Portfolio*, University of Bradford, Briefing Paper No. 20, April 1999. Available on <http://www.brad.ac.uk/acad/sbtwc>

However, the frequency with which declared facilities receive such visits could with advantage vary between the different categories of declared facility. Furthermore, there are benefits in keeping declaration clarification procedures in respect of both declarations and regarding facilities that appear to meet the requirements for declaration but have not been declared **separate** from the Section *E Consultation, Clarification and Cooperation* provisions.

Developments during the September/October 1999 AHG Session

4. At the end of the June/July 1999 AHG Session⁵, there had been a complete reading of Article III *Compliance Measures* with the text being developed in a number of areas. There were now three sections under *D. Declarations*:

I. Submission of Declarations

[II. Follow-Up After Submission of Declarations]

III. Measures to Ensure Submission of Declarations

In respect of *I. Submission of Declarations*, the requirements for declarations had been developed with some streamlining and with some language from WP. 395 (Republic of Korea) and WP.389 and 393 (Finland on behalf of the EU) being incorporated in square brackets without discussion. *II. Follow-up after submission of declarations* had also been developed with the alternative title of transparency entering the heading (A) [*Randomly-Selected*][*Transparency*] *Visits* with the associated text being clarified through incorporation of headings such as *Benefits*. Likewise in (B) [*Declaration Clarification Procedures*][*And Voluntary Visit*] the language was clarified with new sub-headings such as *Consultations* and *Visit* appearing in the text. Section (C) *Voluntary Visits* saw the heading emerge from square brackets with text for different procedures depending on whether the voluntary visits are on the one hand to obtain technical advice on the implementation of declarations obligations or to obtain technical assistance under Article VII or, on the other hand, to resolve an ambiguity etc concerning a declaration or to resolve a specific concern as provided for under the consultations, clarification and cooperation procedures. As might be expected the principal difference between these two categories was in the mandate for the voluntary visit.

5. A particular development, which clearly reflected the experience of the OPCW in respect of CWC declarations, was the addition of a new section in Article III *D. Declarations* entitled *III. Measures to ensure submission of declarations*. The provisions in this section require the Director-General as soon as possible after the deadline for the submission of initial or annual declarations has passed to issue a written request to States Parties which have not submitted all their declarations and that the Director-General shall report to each session of the Conference of States Parties on the implementation of the declaration obligations. In addition, within square brackets, should a State Party not submit its initial or annual declarations within the [6] month period following the relevant deadline, then one or more of the following measures may be applied:

(a) *The State Party shall have no vote in the Conference of States Parties;*

⁵United Nations, *Procedural Report of the Ad Hoc Group of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction*, BWC/AD HOC GROUP/46 (Part I), 30 July 1999, Geneva.

(b) *The State Party shall not be eligible for election as a member of the Executive Council or, if already a member of the Executive Council, shall be suspended from membership of the Executive Council;*

(c) *The State Party may not invoke the declaration clarification procedure...or a facility investigation;*

(d) *The State Party may not request the Technical [Secretariat][Body] for technical assistance under Article VII other than assistance in the preparation of declarations;*

(e) *The State Party may not have access to the declarations of other States Parties;*

(f) *The State Party may not invoke those provisions on consultation, clarification and cooperation...;*

6. The ~~striketrough~~ text prepared by the Friend of the Chair on Compliance Measures in Part II⁶ contained language addressing the numbers of visits which proposed that "*at the start of each calendar year, the Director-General shall make initial provision, within an indicative total of all types of visits of [140][...], for two-thirds of the total to be allocated to transparency visits and one-third to be devoted to other visits pursuant to this Article.*" It also included provision for "*Each Review Conference...may revise the indicative total, taking into account, the resources available and the implementation of the Protocol.*" and required the Director-General to report to the Executive Council every three months on the implementation of visits and on the requests for visits. The Executive Council would be able to decide to adjust the initial allocations between the categories of visits, or, subject to the availability of resources, to increase the total for all visits.

7. This was the situation at the start of the September/October 1999 AHG session. This session saw particular developments in the submission of WP. 402⁷ proposing text for visits by the NAM and other States which in turn led to the draft Protocol language on visits being further elaborated.⁸

NAM and Other States WP. 402

6. This working paper made a number of proposals for revised text for *II. Follow-Up after Submission of Declarations* in *D. Declarations* as well as for *E. Consultation, Clarification and Cooperation*. It started by proposing that "*the Technical Secretariat shall:*

(a) *Process and analyze the declarations*

(b) *Conduct a limited number per year of randomly-selected visits to [declared][biodefence and BLA with the principle of proportionality] facilities,...*

⁶United Nations, *Procedural Report of the Ad Hoc Group of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction*, BWC/AD HOC GROUP/46 (Part II), 4 August 1999, Geneva.

⁷United Nations, "*Working Paper submitted by the NAM and other States, Proposed Text for Visits*", BWC/AD HOC GROUP/WP.402, 22 September 1999, Geneva.

⁸United Nations, *Procedural Report of the Ad Hoc Group of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction*, BWC/AD HOC GROUP/47 (Part I), 15 October 1999, Geneva.

(c) If it identifies any ambiguity, uncertainty, anomaly or omission of a purely technical nature, seek clarification from the State Party concerned,...

(d) Provide technical assistance to States Parties to help them compile individual facility and national declarations, if requested,..."

It goes on to provide that a State Party which identifies any ambiguity, uncertainty, anomaly or omission in the declaration of another State Party may seek clarification from the State Party concerned through Section E (Consultation, Clarification and Cooperation) or through initiating the clarification process.

7. Insofar as the visits schedule was concerned, it was proposed that *"the total number of all visits ... should not exceed [...] in each calendar year. At the end of each year, the Director-General should prepare a visits schedule for the following year which shall make initial provision for the conduct of [...] randomly-selected visits, [...] voluntary assistance visits and [...] voluntary clarification visits."* It then goes on to propose that *"If during the year, the number of invitations for voluntary assistance visits and/or voluntary clarification visits exceed the initial provision, the Director-General shall reduce the provision for randomly-selected visits in order to accommodate the extra visits...accordingly."*

8. The detailed provision for randomly-selected visits states that these *"shall be selected on a random basis by the Technical Secretariat from among all [declared][biodefence and BL4] facilities.... In selecting facilities to be visited, the Technical Secretariat shall use appropriate mechanisms to ensure that over a five-year period:*

(a) Such visits shall be spread among the broadest range of types of declared facilities, in terms of their scientific and technical characteristics;

(b) No State Party shall receive more than [...] such visits;

(c) No facility shall be subject to more than [...] such visits

(d) The prediction of when any particular facility will be subjected to such a visit shall be precluded;

(e) [Biodefence and BL4 facilities selected with the principle of proportionality.]"

Provision is also proposed for the randomly-selected visits, *"if so requested by the State Party to be visited..., the visit shall be extended by up to three days for the visiting team to provide the advice, information or assistance programmes requested by the State Party to be visited."*

9. Insofar as declaration clarification procedures are concerned, it is proposed that clarification in respect of any **declared** facility or activity may be carried out **either** through Section E (Consultation, Clarification and Cooperation) **or** through the declaration clarification procedures. If the clarification is in respect of any facility which is believed to meet the criteria for declaration and has not been declared, then clarification shall be sought through Section E (Consultation, Clarification and Cooperation).

10. The provision for voluntary assistance visits proposes that the State Party inviting the Technical Secretariat to make such a visit would indicate the purpose(s) of the visit by one or more of the following:

"(a) To obtain relevant technical assistance and information;

(b) To implement the technical cooperation and assistance programmes of the Organization;

(c) To obtain from the Technical Secretariat technical advice or information on the implementation of the declaration obligations of this protocol with respect to specific facilities."

It is further proposed that whilst the cost of scheduled voluntary assistance visits shall be borne by the Technical Secretariat, the costs of unscheduled voluntary assistance visits shall be shared by the inviting State Party and the Technical Secretariat.

11. **Analysis.** WP. 402 represented a significant step forward as it signified that the vast majority of the States Parties engaged in the negotiation of the Protocol accepted the **concept** of a package of visits. Clearly, although further work needed to be done on the detailed provisions for the precise nature of the visits within such a package, there was broad agreement on three types of visits:

a. Randomly-selected visits -- to all declared facilities or limited to biodefence and BL4 facilities.

b. Declaration clarification procedures comprising written request for clarification, followed, if necessary, by a consultative meeting and, if this failed to resolve the matter, by a visit to clarify the matter.

c. Voluntary visits to provide advice on the implementation of the declaration provisions of the Protocol or to provide technical assistance and cooperation.

12. In respect of randomly-selected visits, these should be to **all** declared facilities as it is only by such visits, albeit very infrequently, being to all declared facilities will the principal benefit of ensuring that declarations be complete and accurate be achieved. If any category of declared facilities is excluded from such randomly-selected visits, the quality of the declarations for that category can be expected to decline, and over time, become inaccurate and incomplete. Furthermore, it is worth noting that if randomly-selected visits are not made to all declared facilities, the opportunities for States to benefit from the extension of such visits by 1 to 3 days in order to provide technical information, advice and assistance would be significantly curtailed. The benefits from such extensions were demonstrated in the UK/Brazilian practice visit.⁹ Furthermore, if randomly-selected visits were to be limited to biodefence and BL4 facilities, many States Parties would never receive randomly-selected visits, as they would not have biodefence or BL4 facilities and hence would not benefit from the extension of such visits to provide technical information, advice and assistance and the implementation of Article X of the Convention would be impaired.

⁹Brazil and the United Kingdom, *Report of a Joint UK/Brazil Practice Non-Challenge Visit*, BWC/AD HOC GROUP/WP. 76, 18 July 1996, Geneva.

13. However, there are arguments for the frequency of randomly-selected visits to reflect the relevance of the facility to the Convention. It has been argued¹⁰ previously that there would be logic in visits to biodefence facilities -- and to past biological warfare facilities still within government ownership -- occurring more frequently than to other declared facilities.

14. Indeed, it is clear that the routine inspection regime of the OPCW¹¹ has a frequency of inspection that is related to the nature of the facility with the most frequent inspections being of Schedule 1 facilities (which generally are national chemical defence facilities). The next most frequent inspections are of Schedule 2 facilities (which generally produce precursors) and which, in turn, occur more frequently than inspections of Schedule 3 facilities or of facilities producing Discrete Organic Chemicals (DOCs). If the various categories of declarations for the BTWC Protocol are considered, biodefence facilities should be visited more frequently, past biological warfare facilities still within government ownership would be the next most frequent category. The most logical category for the least frequently visited facilities would be BL4 facilities because any such facility will be closely monitored and inspected by the State's national health and safety organization.

15. The WP. 402 proposals for the visits schedule are such that if the number of assistance or clarification visits to be higher than those scheduled then the number of randomly-selected visits would be required to be reduced correspondingly -- and there is no safeguard to ensure that the numbers of randomly-selected visits did not reduce to zero. It would be inefficient and ineffective to devise a regime in which the package of visits could be artificially skewed so as to eliminate any one category. Such a reduction in the numbers of randomly-selected visits would also have the effect of sharply reducing the opportunities for the inspected State Party to request an extension of such a visit for the provision of technical advice or for technical cooperation and assistance. As has been argued previously¹², the number of declaration clarification procedures, which may result in visits, can be expected to decrease with time as States Parties gain experience in compiling complete and accurate declarations. Likewise, the number of voluntary visits to provide advice on the implementation of the declaration provisions of the Protocol can also be expected to decrease. It would therefore be prudent to avoid setting any absolute limit for the number of visits, of whatever category, as there should be incentives for the future organization to develop efficient procedures for carrying out visits making the best use of its resources for the benefit of all States Parties to the Protocol.

16. The proposal to invoke the provisions of Section E (Consultation, Clarification and Cooperation) in order to address ambiguities, uncertainties, anomalies or omissions in **declarations** tends to confuse the useful separation that had been emerging **between** on the one hand, the Follow-up after the Submission of Declarations, **and**, on the other hand, the Consultation, Clarification and Cooperation procedures which were perceived as the first

¹⁰Graham S. Pearson, *The Ad Hoc Group: Past Biological Weapons Facilities*, in Erhard Geissler et al (eds), *Conversion of Past BTW Facilities*, Kluwer Academic Publishers, Dordrecht, 1998. Graham S. Pearson, *Past Biological Weapons Facilities: An Opportunity for the Ad Hoc Group*, ASA Newsletter 97-6, 4 December 1997, p.1, 16-17. Graham S. Pearson, *The Strengthened BTWC Protocol: An Integrated Regime*, University of Bradford, Briefing Paper No. 10, July 1998. Available on <http://www.brad.ac.uk/acad/sbtwc>

¹¹Organization for the Prohibition of Chemical Weapons, *OPCW Annual Report 1998*. See also Organization for the Prohibition of Chemical Weapons, *Draft Medium-Term Plan 2000-2003*, Conference of States Parties, Fourth Session, 28 June - 2 July 1999, C-IV/DEC/CRP.32, 2 July 1999.

¹²Graham S. Pearson, *Visits: An Essential Portfolio*, University of Bradford, Briefing Paper No. 20, April 1999. Available on <http://www.brad.ac.uk/acad/sbtwc>

stages addressing "any matter which may cause concern about possible non-compliance with the obligations of the Protocol or the Convention." and which may lead to an Investigation.

The Draft Protocol -- October 1999

17. The outcome of the September/October 1999 AHG session was the tenth version of the draft Protocol¹³ which had been developed from the previous July 1999 version taking into account Working Paper No 402 and other changes resulting from the discussions during the September/October session. In Section II *Follow-Up after Submission of Declarations* a number of paragraphs emerged from square brackets whilst other areas continued within square brackets. The text in paragraph 3 now provides that "the Technical Secretariat shall:

[(a) Process and analyse the declarations;]

[(b) Conduct a limited number per year of [randomly-selected visits][transparency visits] to [declared][biodefence and BL4 with the principle of proportionality] facilities,...]

[(c) If it identifies in the declaration of a State Party any ambiguity, uncertainty, anomaly or omission [of a purely technical nature] related solely to the content of the declaration, seek clarification from the State Party concerned,...]

(d) Provide technical assistance to States Parties to help them compile individual facility and national declarations including, if requested, by means of visiting a State Party..."

18. A new section, entitled *Visit schedule*, in paragraph 5, states that

"The total number of all visits ... should not exceed [30][75][140][...] in each calendar year. At the end of each year, the Director-General should prepare a visits schedule for the following year which shall make initial provision for [the conduct of ... [randomly-selected visits][transparency visits], ... voluntary assistance visits and ... [[voluntary] clarification visits]] [two-thirds of the total to be allocated to [randomly-selected visits][transparency visits] and one-third to be allocated to other visits pursuant to this Article]." It then goes on to require that The Director-General shall submit the schedule containing the details for voluntary assistance visits and [[voluntary] clarification visits] already known, to the Executive Council at its first session each year."

This goes on, in paragraph 6, to make provision that "*[Each [Review Conference ...] [Conference of States Parties] may revise the figure for the [indicative total][respective totals], taking into account the resources available and the implementation of the Protocol.]"*

19. Alternative language is provided in paragraph 8 or paragraph 9 for a mechanism under which the allocated number of visits in the different categories during the year can be adjusted either by the Executive Council or by the Director-General.

¹³United Nations, *Procedural Report of the Ad Hoc Group of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction*, BWC/AD HOC GROUP/47 (Part I), 15 October 1999, Geneva.

20. Under *[Randomly-selected Visits][Transparency Visits]*, provision is made in paragraph 17 for the selection of facilities to receive such visits. This states that *"During the course of each calendar year, each [declared][biodefence and BL4] facility to receive a [randomly-selected visit][transparency visit] shall be selected on a random basis by the Technical Secretariat from among all [declared][biodefence and BL4] facilities. The mechanism of selection shall be approved by the first Conference of States Parties and may be amended by future Conferences of States Parties."* It then continues to elaborate further the selection process by stating that *"In selecting facilities to be visited, the Technical Secretariat shall [make sure that no State Party receives more than one such visit per year][use appropriate mechanisms to ensure that over a five-year period:*

(a) Such visits shall be spread [among the broadest possible range of][over the two]types of [declared][biodefence and BL4] facilities, in terms of their scientific and technical characteristics;

[(b) No State Party shall receive more than [10][...] such visits;]

[(c) No State Party shall receive more than ... such visits per year;]

[(d) Such visits are [fairly][equitably] distributed among regional groups of States Parties...]

[(e) Such visits shall be spread over a broad geographic range among a large number of States Parties;]

[(f) No regional group shall receive more than ... such visits;]

(g) No facility shall be subject to more than [2][...] such visits;

[(h) The prediction of when any particular facility will or will not be subjected to such a visit shall be precluded;]

[(i) Biodefence facilities and BL4 facilities selected with the principle of proportionality.]]

21. The duration is specified in paragraph 18 in that *"[Randomly-selected visits][Transparency visits] may last for up to two [consecutive working] days."* with provision for this to be extended if the visited State Party and the visiting team so agree. In addition, *"if so requested by the State Party to be visited, the visit may be extended by up to [1][3] days for the visiting team to provide technical advice or information, [or implement technical assistance and cooperation activities or programmes as specified in Article VII, Section D, paragraph 17,] requested by the State Party to be visited."*

22. In regard to (B) *Declaration Clarification Procedures*, provision is made that *"Concerns related to the declaration of a State Party shall [,as a rule,] be sought to be resolved **either** through the process of consultation, clarification and cooperation as provided for in ... section E of this Article, **or** through the procedures set out in this section."*[Emphasis added]. Language within square brackets addresses ambiguities, uncertainties, anomalies or omissions relating **both** to declared facilities **and** to facilities which are believed meet the criteria for declaration and which have not been included in the declaration.

23. Further alternatives, in square brackets, are provided for the initiation of a clarification visit or the offering of a voluntary clarification visit. Provision is included for Executive Council consideration under a number of circumstances such as if the requested State Party has declined to offer a clarification visit.

24. In contrast, (C) *Voluntary Assistance Visits* is relatively free of square brackets. The language provides for "*Each State Party may... invite the Technical Secretariat to undertake a visit(s) to a facility(ies) on its territory.... In its invitation the State Party shall indicate the purpose(s) of the visit, which shall be ... one or more of the following:*

[(a) To obtain relevant technical assistance and information;]

(b) [To obtain technical assistance and information on the subjects specified in Article VII ... and, as appropriate,][to implement the technical cooperation and assistance programmes of the Organization];

(c) To obtain from the Technical Secretariat technical advice or information on the implementation of the declaration obligations of this protocol with respect to specific facilities."

Insofar as the costs are concerned, paragraph 126 states that "*The costs of scheduled voluntary assistance visits incurred by the Technical Secretariat shall be borne by the Technical Secretariat. [The costs of additional voluntary assistance visits shall be shared by the visited State Party and the Technical Secretariat.]*"

25. As might be expected, Section *E Consultation, Clarification and Cooperation* has become more complicated. The draft Protocol in July 1999 stated in paragraph 1 that the States Parties shall consult and cooperate "*on any matter which may be raised relating to the object and purpose of the Convention, or the implementation of the provisions of this Protocol and to clarify and resolve any matter which may cause concern about possible non-compliance with the [basic] obligations of this Protocol or the Convention.*" The October 1999 draft Protocol extends the last few words of this sentence so that it now provides that States Parties shall consult and cooperate "*on any matter which may be raised relating to the object and purpose of the Convention, or the implementation of the provisions of this Protocol and to clarify and resolve any matter which may cause concern about possible non-compliance with the [basic] obligations of this Protocol[, including cases where a State Party identifies any [declared] facility on the territory or under the jurisdiction or control of another State Party [which it believes meets the criteria for declaration...and that facility has not been declared,]] or the Convention.*"

The Strikethrough Proposals -- October 1999

26. Before analysing the draft Protocol as it has emerged from the September/October 1999 AHG session, it is useful to examine the ~~striketrough~~ proposals for further consideration by

the Friend of the Chair in Part II of the procedural report¹⁴. This proposes that in Section II *Follow-Up after Submission of Declarations* the text in paragraph 3 should be amended so as to read "the Technical Secretariat shall:

~~{(a) Process and analyse the declarations;}~~ **Make a purely technical analysis of declarations;**

~~{(b) Conduct a limited number per year of [randomly-selected visits][transparency visits] visits to [declared][biodefence and BL4 with the principle of proportionality] facilities,...}~~

~~{(c) If it, in its analysis pursuant to paragraph 3 (a) above, identifies in the declaration of a State Party any ambiguity, uncertainty, anomaly or omission [of a purely technical nature]} related solely to the content of the declaration **submitted by a State Party**, seek clarification from the State Party concerned,...}~~

~~{(d) Provide technical assistance to States Parties to help them compile individual facility and national declarations including, if requested, by means of visiting a State Party...}~~

27. No substantive amendments are proposed to the *Visit schedule*, in paragraph 5, which still contains the range of alternative numbers of visits. The provision for revision by Review Conferences in paragraph 6 is streamlined to read: "~~{Each {Review Conference ...} {Conference of States Parties} may revise the figures for the **categories of visits pursuant to paragraphs 3 and 5 of this section**[indicative total][respective totals], taking into account the resources available and the implementation of the Protocol.}~~"

28. The provision for the selection of facilities under [*Randomly-selected Visits*][*Transparency Visits*] **Visits** in paragraph 17 is slightly modified although many of the options are retained. The proposal states that "During the course of each calendar year, each [declared][biodefence and BL4] facility to receive a [randomly-selected visit][transparency-visit] **visit shall be selected on a random basis by the Technical Secretariat from among all [declared][biodefence and BL4] facilities. The mechanism of selection shall be approved by the first Conference of States Parties and may be amended by future Conferences of States Parties.**" It then continues to elaborate further the selection process by stating that "~~In selecting facilities to be visited, the Technical Secretariat shall [make sure that no State Party receives more than one such visit per year]~~~~{use appropriate mechanisms to ensure that over a five-year period:~~

(a) Such visits shall be spread [among the broadest possible range of][over the two]types of [declared][biodefence and BL4] facilities, in terms of their scientific and technical characteristics;

~~{(b) No State Party shall receive more than [10]{...} such visits;}~~

~~{(c) No State Party shall receive more than -- [1] such visits per year;}~~

¹⁴United Nations, *Procedural Report of the Ad Hoc Group of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction*, BWC/AD HOC GROUP/47 (Part II), 20 October 1999, Geneva.

[(d) Such visits are ~~fairly~~~~equitably~~ distributed as widely as possible among [the regional groups of States Parties...][a broad geographic range of a large number of States Parties];]

~~[(e) Such visits shall be spread over a broad geographic range among a large number of States Parties;]~~

[(f) No regional group shall receive more than ... such visits;]

[(g) No facility shall be subject to more than [2][...] such visits;

[(h) The prediction of when any particular facility will or will not be subjected to such a visit shall be precluded;]

[(i) Biodefence facilities and BL4 facilities selected with the principle of proportionality.]]

29. The text relating to duration is tidied up in paragraph 18 to read "~~Randomly selected visits~~~~Transparency visits~~ **Visits pursuant to this section** may last for up to two ~~consecutive working~~ days." with provision for this to be extended if the visited State Party and the visiting team so agree. In addition, "if so requested by the State Party to be visited, the visit may be extended by up to [1][3] days for the visiting team to provide technical advice or information, ~~for to implement~~ **provide any of the** technical assistance and cooperation activities ~~or contained in the programmes as specified in Article VII, Section D, paragraph 17,~~ requested by the State Party to be visited."

30. Under (B) *Declaration Clarification Procedures*, the language in paragraph 62 regarding the addressing of concerns is essentially unchanged as is the language within square brackets addresses ambiguities, uncertainties, anomalies or omissions relating **both** to declared facilities **and** to facilities which are believed meet the criteria for declaration and which have not been included in the declaration.

31. In respect of (C) *Voluntary Assistance Visits* one of the purposes for such visits is tidied up so that paragraph 119 would read "Each State Party may... invite the Technical Secretariat to undertake a visit(s) to a facility(ies) on its territory.... In its invitation the State Party shall indicate the purpose(s) of the visit, which shall be ... one or more of the following:

[(a) To obtain relevant technical assistance and information;]

*(b) ~~To obtain technical assistance and information on the subjects specified in Article VII ... and, as appropriate,~~~~to implement the technical cooperation and assistance programmes of the Organization~~ **To provide any of the technical assistance and cooperation activities contained in programmes as specified in Article VII, ... ;***

(c) To obtain from the Technical Secretariat technical advice or information on the implementation of the declaration obligations of this protocol with respect to specific facilities."

Insofar as the costs are concerned, paragraph 126 would be amended to read "*The costs of scheduled voluntary assistance visits incurred by the Technical Secretariat shall be borne by*

the Technical Secretariat. ~~¶The costs of additional voluntary assistance visits additional to those provided in the initial schedule pursuant to paragraph 5 shall be shared by the visited State Party and the Technical Secretariat.¶~~"

32. No ~~strike through~~ text is provided in Part II for Section *E Consultation, Clarification and Cooperation*.

33. **Analysis.** The draft Protocol in Part I has consequently moved forward and now incorporates the proposals put forward in the NAM and other States WP 402. It is a real step forward to have agreement on the concept of a package of visits made up of:

- a. Randomly-selected visits;
- b. Declaration clarification procedures;
- c. Voluntary assistance visits.

There are, however, a number of significant points of detail where further development is necessary.

34. *Randomly-selected visits.* The divergence here lies between whether such visits should be selected from all declared facilities or the selection limited to biodefence and BL4 facilities. As the purpose of infrequent randomly-selected visits is to ensure that declarations are complete and accurate, it would be quite illogical to only carry out such visits to one or two categories of declared facility as this would imply that completeness and accuracy are unimportant in respect of other categories of declarations. For an effective and efficient regime, **all** declared facilities need to be the subject of infrequent randomly-selected visits.

35. Indeed, if the limited information¹⁵ available about the number of biodefence and BL-4 facilities in the information submitted by States Parties under the CBMs (Confidence Building Measures) agreed at the Second and Third Review Conferences is examined, the inadequacy of randomly-selected visits occurring only to such facilities becomes apparent. Although it needs to be recognized that just over half of the States Parties have made such declarations and the information provided is variable, the 1997 CBM returns included some 43 biodefence facilities. 32 of these were in Western countries (19 in the USA), 1 in China, 1 in India, 9 in Russia. Insofar as BL-4 maximum containment facilities are concerned, 48 were declared in the 1997 declarations. 37 of these were in Western countries, 1 in Belarus, 2 in Cuba, 2 in the Czech Republic, 1 in Mongolia, 1 in Poland, 1 in Russia, 2 in the Slovak Republic, 1 in South Africa. Based on the 1997 CBM returns, if randomly-selected visits were to be limited to biodefence and BL-4 facilities, only 90 facilities might be visited of which 68 would be in Western countries and the only NAM and other countries which might be receive a visit would be a single facility in China, India, Mongolia and South Africa and 2 in Cuba.

36. However, each **category** of declared facility does not need to be subject to the same frequency of randomly-selected visits. It is worth recalling that the frequency of visits under

¹⁵Iris Hunger, *Article V: Confidence Building Measures*, in Graham S. Pearson & Malcolm R. Dando (eds), *Strengthening the Biological Weapons Convention: Key Points for the Fourth Review Conference*, Department of Peace Studies, University of Bradford, September 1996. Available on <http://www.brad.ac.uk/acad/sbtwc> Iris Hunger, *Private communication*, November 1999, Max Delbruck Centre for Molecular Medicine, Berlin.

the CWC varies with the category of the facility. The 1998 Programme and Budget figures¹⁶ included information on assumed inspection frequencies for budgetary purposes:

Category of Facility	Frequency of inspections
Chemical weapon production facility	
closed or converted	2.5 per year on average
partially destroyed	Once every two years
Schedule 1 chemical	Once every two years
Schedule 2 chemical	Once every three years
Schedule 3 chemical	A limited number

An analysis of the figures in the OPCW Programme and Budget 2000¹⁷ shows the planned average frequencies for the year 2000:

Category of Facility	Number of facilities	Number of inspections	Frequency of Inspection
Chemical weapon production facility	41	66	8 months
Schedule 1 chemical			
SSSF	7	7	Annually
Other	28	18	Biannually
Schedule 2 chemical			
Initial	57	57	
Routine	121	10	
Schedule 3 chemical	429	34	3 + 5% sites ≤ 20*
DOC/PSF	5500	6	3 + 5% sites ≤ 20*

* The number of inspections per year per State Party for plant sites producing Schedule 3 chemicals or DOCs is a combined limit. The Convention states in respect of Schedule 3 plant sites that *"the combined number of inspections shall not exceed three plus 5 per cent of the total number of plant sites declared by a State Party under both this Part and Part VIII of this Annex [the part relating to DOCs], or 20 inspections, whichever of these two figures is the lower."* Consequently, for a State Party with a combined total of Schedule 3 and DOCs plant sites of 20, the limit would be a total of 3 + 5% of 20 = 4 inspections. If it had a combined total of 100 such plant sites, the limit would be 3 + 5% of 100 = 8 inspections. It is noted that the combined ceiling of 20 visits for Schedule 3 and DOCs plant sites will only come into effect when the State Party has in excess of 340 Schedule 3 and DOC plant sites.

37. The different priorities assigned to Schedule 1, Schedule 2, Schedule 3 and DOC facilities reflect the different risks to the Convention. As was noted in Briefing Paper No 11¹⁸, for the purposes of the Article VI declarations, the CWC Annex on Chemicals sets out three schedules, which together list 43 species or families of chemical: 12 in Schedule 1

¹⁶Organization for the Prohibition of Chemical Weapons, *Programme and Budget and Working Capital Fund*, Conference of States Parties, Second Session, 1 - 5 December 1997, C-II/DEC/CRP.1/Rev.2, 19 November 1997.

¹⁷Organization for the Prohibition of Chemical Weapons, *Programme and Budget 2000*, Conference of States Parties, Fourth Session, 28 June - 2 July 1999, C-IV/DEC.23, 2 July 1999.

¹⁸J P Perry Robinson, *The CWC Verification Regime: Implications for the Biotechnological & Pharmaceutical Industry*, Briefing Paper No. 11, University of Bradford, July 1998. Available on <http://www.brad.ac.uk/acad/sbtwc>

(including saxitoxin and ricin, as well as blister and nerve gases and intermediates thereof), 14 in Schedule 2, and 17 in Schedule 3 (including hydrogen cyanide, which as a toxic agent of biological origin is a toxin within the meaning of the Biological Weapons Convention). Of the 43, 27 are precursors and 16 are toxicants. Each of the chemicals has been scheduled because it is deemed to pose a risk to the object and purpose of the Convention, the chemicals in Schedule 1 a *high* risk, and those in Schedule 2 a *significant* risk. The scheduling also reflects the degree of industrial application of the listed chemicals, those in Schedule 3 being ones *produced in large commercial quantities* and those in Schedule 1 *having little or no use for purposes not prohibited under this Convention*.

38. It would therefore be logical for the different **categories** of declared facility in the Protocol regime to have a different frequency for randomly-selected visits reflecting the potential risk to the Convention. As with the CWC regime where converted chemical weapon production facilities and the Schedule 1 chemical facilities -- which are generally chemical defence facilities -- receive more frequent inspections, there would be logic in converted past BW facilities which still remain in government ownership and biodefence facilities being subject to a higher frequency of randomly-selected visits.¹⁹ The maximum (BL4) and high (BL3) containment facilities could have the least frequent visits as such facilities are generally subject to intensive national health and safety inspections. It is also well known that containment is **not** a prerequisite for a prohibited programme and consequently there is no logic requiring high containment facilities to be **more** frequently inspected by the BTWC Organization. Although the triggers for declarations under the Protocol have not been finalised, it is possible to draw up a possible listing in order of frequency of randomly-selected visits which might look as follows:

Category of Facility	Frequency of randomly-selected visits
Converted past BW facilities in government ownership	Most frequent
Current Defensive Programmes/ Activities	Most frequent
Vaccine Production Facilities	More frequent
Other Production Facilities	More frequent
Work with Listed Agents and/or Toxins	Less frequent
Other Facilities	Less frequent
High Biological Containment (BL-3) Facilities	Least frequent
Maximum Biological Containment (BL-4) Facilities	Least frequent

Although four different frequencies have been shown above, this could be simplified into three frequencies by merging the middle two frequencies (more and less frequent) into a single intermediate frequency. It needs to be emphasised, however, that **all categories** of declared facilities should receive randomly-selected visits as this promotes complete and accurate declarations for all facilities.

39. The selection process for randomly-selected visits is set out in current draft Protocol text as follows:

¹⁹Graham S. Pearson, *The Ad Hoc Group: Past Biological Weapons Facilities*, in Erhard Geissler et al (eds), *Conversion of Past BTW Facilities*, Kluwer Academic Publishers, Dordrecht, 1998. Graham S. Pearson, *Past Biological Weapons Facilities: An Opportunity for the Ad Hoc Group*, ASA Newsletter 97-6, 4 December 1997, p.1, 16-17. Graham S. Pearson, *The Strengthened BTWC Protocol: An Integrated Regime*, University of Bradford, Briefing Paper No. 10, July 1998. Available on <http://www.brad.ac.uk/acad/sbtwc>

"During the course of each calendar year, each [declared][biodefence and BL4] facility to receive a [randomly-selected visit][transparency visit] shall be selected on a random basis by the Technical Secretariat from among all [declared][biodefence and BL4] facilities. The mechanism of selection shall be approved by the first Conference of States Parties and may be amended by future Conferences of States Parties."

It then continues to elaborate further the selection process by stating that

"In selecting facilities to be visited, the Technical Secretariat shall [make sure that no State Party receives more than one such visit per year][use appropriate mechanisms to ensure that over a five-year period:

(a) Such visits shall be spread [among the broadest possible range of][over the two]types of [declared][biodefence and BL4] facilities, in terms of their scientific and technical characteristics;

[(b) No State Party shall receive more than [10][...] such visits;]

[(c) No State Party shall receive more than ... such visits per year;]

[(d) Such visits are [fairly][equitably] distributed among regional groups of States Parties...]

[(e) Such visits shall be spread over a broad geographic range among a large number of States Parties;]

[(f) No regional group shall receive more than ... such visits;]

(g) No facility shall be subject to more than [2][...] such visits;

[(h) The prediction of when any particular facility will or will not be subjected to such a visit shall be precluded;]

[(i) Biodefence facilities and BL4 facilities selected with the principle of proportionality.]]

40. It is recommended that this text should be amended so as to remove the language:

a. preventing a single State Party from receiving one such visit a year because such an arrangement would mean that one a State Party had received such a visit, it would then know that it would not receive a further visit during the same year, thereby contravening the requirement to preclude the *prediction of when any particular facility will or will not be subjected to such a visit.*

b. limiting such visits to biodefence and BL-4 facilities as randomly-selected visits need to be made to **all** categories of declared facilities. However, language could usefully be introduced requiring the frequency with which different categories of declared facilities should reflect the risk posed to the Convention.

c. limiting the number of visits to a State Party to an absolute number. A formula linking the number of visits to the number of facilities declared by a State Party would appear to be preferable provided the minimum number is not so small as to negate the non-predictability requirement. Over a five year period, a number of five or more is needed to achieve this.

41. The selection process in the Protocol text could usefully be developed to read as follows:

"In selecting facilities to be visited, the Technical Secretariat shall ~~make sure that no State Party receives more than one such visit per year~~ use appropriate mechanisms to ensure that over a five-year period:

(a) Such visits shall be spread ~~among the broadest possible range of~~ ~~the two~~ types of ~~declared~~ ~~biodefence and BLA~~ facilities, in terms of their scientific and technical characteristics;

*~~(b) No~~ **The number of visits to a State Party shall not exceed more than 5 plus 5 per cent of the total number of facilities declared by the State Party or 20 visits, whichever of these two figures is the lower; receive more than** ~~10~~ ~~such visits;~~*

~~(c) No State Party shall receive more than ... such visits per year;~~

(c) Such visits are distributed among the categories of declared facilities to reflect the risk posed by that category of facilities to the Convention;

~~(d) Such visits are~~ ~~fairly~~ ~~equitably~~ distributed among regional groups of States Parties...

~~(e) Such visits shall be spread over a broad geographic range among a large number of States Parties;~~

~~(f) No regional group shall receive more than ... such visits;~~

~~(g) No facility shall be subject to more than~~ ~~2~~ ~~such visits;~~

~~(h) The prediction of when any particular facility will or will not be subjected to such a visit shall be precluded;~~

~~(i) Biodefence facilities and BLA facilities selected with the principle of proportionality.~~

42. *Declaration Clarification Procedures.* Insofar as ambiguities, uncertainties, anomalies and omissions relating to declared facilities are concerned, although there are some differences in the detail, there is a considerable similarity in the approach. Following correspondence and, if this fails to resolve the issue, a consultative visit, then should the matter still be unresolved then a clarification visit should either be requested or invited. The differences between a voluntary and a requested clarification visit are not as great as might seem as a requested clarification visit can be declined by the requested State Party if it considers that it has made every reasonable effort to resolve the matter. In such a case, the matter will be referred to the Executive Council.

43. The principal divergence relates to facilities that should have been declared. One approach is to separate out clarification of any ambiguities, uncertainties, anomalies or omissions relating to facilities that appear to meet the criteria for declaration but which have not been declared into Section *E Consultation, Clarification and Cooperation* which had, hitherto, been primarily concerned with concerns about possible non-compliance and was a procedure that would be followed prior to a request for an investigation. As there has been much confusion over the role of visits -- which are non-confrontational and non-accusatory -- there is much to be said for **not** suggesting that clarification of any ambiguities, uncertainties, anomalies or omissions relating to facilities that appear to meet the criteria for declaration but which have not been declared should be addressed in a section **outside** Section *II Follow-Up to Submission of Declarations*. The logical place to address any ambiguities, uncertainties, anomalies or omissions relating to declarations, including **omissions from declarations**, is in Section *II Follow-Up to Submission of Declarations*.

44. In the general context of clarification of declarations, it should be noted that the OPCW Annual Report 1998²⁰ in its account of inspections carried out at Schedule 1 facilities notes that 12 such facilities had been inspected and states that "By the end of 1998 the need for **amended** declarations was the main issue identified by the Secretariat as requiring further attention." [Emphasis added]. In respect of Schedule 2 facilities, the report notes that 68 Schedule 2 plant sites were inspected and goes on to state "The need for **amended** declarations was the main issue identified as requiring further attention in Schedule 2 inspection final inspection reports in 1998." [Emphasis added]. 13 Schedule 3 plant sites were inspected and it was again noted that "... the need for **amended** declarations to be submitted by the inspected States Parties was the main issue identified as requiring further attention." [Emphasis added]. It is thus evident from the OPCW experience that visits under the Protocol are likely to result in the identification of the need for amended declarations. Consequently, clarification of declarations will be somewhat frequent, at least during the early stages of the new regime. The value of infrequent randomly-selected visits to ensure that declarations are complete and accurate is thus clear.

45. *Voluntary assistance visits*. The current text is tightly limited in that the extension of the randomly-selected visits may be limited to "*technical assistance and cooperation activities or programmes as specified in Article VII, Section D, paragraph 17*" and there is similar language for voluntary assistance visits, albeit without yet specifying specific paragraphs although it is clear that the intention is to specify particular paragraphs, "*To obtain technical assistance and information on the subjects specified in Article VII, paragraphs ...*". It is noted that whilst the draft Protocol refers to paragraph 17 of Article VII, it is paragraph 18 that is headed "*Cooperation and assistance in the context of visits*". This illustrates the desirability of not being unduly restrictive. It would be better to refer to Article VII and not to a specific paragraph. After all, the programme and budget of the future BTWC Organization will be controlled and approved by the Conference of the States Parties.

Concluding Remarks

46. It is a significant step forward that the Protocol now includes provision for a portfolio of visits -- comprising randomly-selected visits, declaration clarification procedures and voluntary assistance visits -- which are supported by the majority of the States engaged in the

²⁰Organization for the Prohibition of Chemical Weapons, *OPCW Annual Report 1998*.

negotiations. Insofar as randomly-selected visits are concerned these must be to **all categories** of declared facilities. Limitation to one or more categories would significantly impair the benefits from such visits of ensuring that all declarations are both accurate and complete and would also curtail the benefits from extension of such visits to enable technical information, advice and assistance to be provided. However, the frequency with which declared facilities receive randomly-selected visits could with advantage vary between the different categories of declared facilities -- with past biological weapons facilities still remaining in government ownership and biodefence facilities receiving the highest frequency of visits and other facilities, such as the BL4 facilities, receiving the lowest frequency of visits.

47. There are also advantages in keeping declaration clarification procedures **separate** from the provisions of Section *E Consultation, Clarification and Cooperation* which are best regarded as being concerned with non-compliance aspects and the forerunner of a possible investigation. It needs to be recognised that initially States Parties will inadvertently make errors and omissions in compiling their declarations. A low key non-confrontational non-accusatory process is the best way of resolving such errors and omissions whether relating to declarations or to what appear to meet the requirements for declaration but have not been declared. Afterall, having such a low key declaration clarification procedure does not in any way remove from any State Party the right that it has to raise a matter under Section *E Consultation, Clarification and Cooperation* should it feel that it has a concern about non-compliance.