

## PREAMBLE

by Graham S. Pearson\* & Nicholas A Sims†

### Introduction

1. The Ad Hoc Group (AHG) is considering measures to strengthen the Biological and Toxin Weapons Convention (BTWC) through a legally binding instrument. The pace of the AHG negotiations has quickened during the past year and there is now a clear political will to see the negotiation of the Protocol completed as soon as possible before the Fifth Review Conference in 2001. It is now evident that several Articles in the draft Protocol are now largely agreed and will not develop significantly from their current form although a certain amount of restructuring may be agreed at a later stage.

2. In Evaluation Paper No 1 in July 1999 it was concluded<sup>1</sup> that *"the majority of the Articles in the draft Protocol have now reached the stage when they have had multiple readings and are unlikely to change significantly during the coming months as the negotiations enter the end-game. It is therefore timely to commence the production of a series of Evaluation Papers which will consider Article by Article the current state of each Article of the Protocol."* By the end of 1999, Evaluation Papers had been prepared for 14 of the 23 Articles, over half of all the Articles of the Protocol. This Evaluation Paper continues this series by considering the Preamble on which the AHG has made progress with the current rolling text containing some 20 sets of square brackets.

### Preamble

3. In January 2000, the text<sup>2</sup> for the Preamble had developed further from its earlier versions with a regrouping of the paragraphs and now was as follows:

#### PREAMBLE

*The States Parties to this Protocol,*

*(1) Being Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, which was opened for signature on 10 April 1972, and entered into force on 26 March 1975, hereinafter referred to as the Convention,*

*[(2) Reaffirming their determination for the sake of all mankind to exclude completely the possibility of bacteriological (biological) agents and toxins being used as weapons,]*

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<sup>1</sup>Graham 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>

<sup>2</sup>United 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/50 (Part I), 11 February 2000, Geneva.

[(3) Determined for the sake of all peoples to exclude completely the possibility of the development, production, stockpiling, acquisition, retention or use of biological and toxin weapons through the implementation of this Protocol, furthering the principles and objectives of the Geneva Protocol of 1925 and the Convention,]

[(4) Reaffirming the purposes laid down in the preamble to the Convention,]

(5) Mindful of their obligations under the Convention and desiring to further its objectives,

[(6) Mindful of their obligations under the Convention never in any circumstances to develop, produce, stockpile or otherwise acquire or retain microbial or other biological agents or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes or weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict,]

(7) Determined to implement all the provisions of the Convention in a comprehensive and balanced manner,

[(8) Reaffirming the final declarations of the successive Review Conferences of the Convention,]

[(9) Noting the reaffirmation by the States Parties to the Convention at the Fourth Review Conference that the use by States Parties, in any way and under any circumstances, of microbial or other biological agents or toxins, that is not consistent with prophylactic, protective or other peaceful purposes, is effectively a violation of Article I of the Convention,]

OR

[(8+9) Considering the final declarations of the successive Review Conferences of the Convention, and noting the reaffirmation by the States Parties to the Convention at the Fourth Review Conference that the use by States Parties, in any way and under any circumstances, of microbial or other biological agents or toxins, that is not consistent with prophylactic, protective or other peaceful purposes, is effectively a violation of Article I of the Convention,]

[(10) Emphasizing that the use by States Parties in any way and under any circumstances of microbial or other biological agents or toxins, that is not consistent with prophylactic, protective or other peaceful purposes, is effectively a violation of Article I of the Convention,]

(11) Reaffirming that the [implementation of the provisions of the] Convention is essential for maintaining and enhancing regional and international peace and security [and development],

(12) Convinced that strengthening and enhancing the preamble and the provisions of the Convention, adopting specific measures to improve its implementation and effectiveness, and encouraging universal adherence to the Convention and this

*Protocol, will deliver significant benefits in terms of international security and development,*

*[(13) Determined to achieve effective progress toward the prohibition and complete elimination of all types of weapons of mass destruction,*

*(14) Determined also to achieve effective progress toward general and complete disarmament under strict and effective international control,]*

OR

*[(13+14) Determined to act with a view to achieving effective progress toward general and complete disarmament under strict and effective international control, including the prohibition of all types of weapons of mass destruction,]*

*[(15) Desiring to contribute to the realization and purposes of the Charter of the United Nations,]*

*(16) Reaffirming their adherence to the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925 (Geneva Protocol of 1925), [and their commitment to strictly comply with them,] [and calling upon all States to strictly comply with them,]*

*(17) Welcoming the entry into force of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, signed at Paris on 13 January 1993,*

*(18) Recognizing the significant advances in the field of biotechnology since the entry into force of the Convention, and the potential implications, both positive and negative, of these advances for the implementation and effectiveness of the Convention,*

*(19) Determined to ensure that all achievements in this field are used exclusively for the benefit of mankind,*

*[(20) Conscious of the apprehension arising from relevant scientific and technological developments as expressed by States Parties at Review Conferences of their use for purposes inconsistent with the objectives and the provisions of the Convention,]*

*[(21) Reaffirming the obligation of each State Party to the Convention under Article III not to transfer to any recipient whatsoever, directly or indirectly, and not in any way to assist, encourage, or induce any State, group of States or international organizations to manufacture or otherwise acquire any of the agents, toxins, weapons, equipment or means of delivery specified in Article I of the Convention,]*

*[(22) Concerned with the increasing gap between the developed and the developing countries in the field of biotechnology, genetic engineering, microbiology and other related areas,]*

(23) Desiring to promote international cooperation and exchange of bacteriological (biological) agents and toxins, and equipment, materials and scientific and technological information in the field of biotechnology for purposes not prohibited under the Convention to [enhance] [ensure] the economic and technological development of all States Parties [to the Protocol],

(24) Emphasizing the increasing importance of the implementation of the provisions of Article X of the Convention and the obligations of each State Party under that Article [as well as under Article VII of the Protocol], especially in the light of recent scientific and technological developments in the field of biotechnology, bacteriological (biological) agents and toxins for peaceful purposes, which have vastly increased the potential for cooperation between States to help to promote economic and social development, and scientific and technological progress [particularly in developing countries] [in conformity with interests, needs and priorities],

[(25) Recalling that, in accordance with the Declaration of Principles adopted at the United Nations Conference on Environment and Development, States should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technical knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies,]

[(26) Determined to promote international cooperation on all developments in the field of frontier science and high technology in areas relevant to the Convention, and urging the developed countries possessing advanced biotechnology and knowledge in such fields as medicine, public health and agriculture to adopt positive measures and to continue to promote technology transfer and cooperation on an equal and non-discriminatory basis, in particular with the developing countries, for the benefit of all mankind,]

(27) Convinced that to contribute as effectively as possible to the prevention of [the proliferation of] [weapons of mass destruction, including] biological and toxin weapons, and thereby to enhance international peace and security, all States Parties to the Convention should become States Parties to this Protocol,

(28) Convinced that the most effective way to ensure a world free of biological and toxin weapons is to strengthen the Convention through appropriate measures, [in particular] [including] through enhanced transparency and compliance provisions,

(29) Determined to strengthen and improve the effective implementation of the Convention,

Have agreed as follows:

Thus far, there has been no text provided in Part II by the Friend of the Chair for the Preamble.

4. The aim of the Preamble is to set out the hopes, aspirations and purposes of the Protocol and to set this in the context of relevant treaties. It is useful to compare the Preamble for the

Protocol with the Preamble to the BTWC<sup>3</sup> :

*The States Parties to this Convention,*

*Determined* to act with a view to achieving effective progress towards general and complete disarmament, including the prohibition and elimination of all types of weapons of mass destruction, and convinced that the prohibition of the development, production and stockpiling of chemical and bacteriological(biological) weapons and their elimination, through effective measures, will facilitate the achievement of general and complete disarmament under strict and effective international control,

*Recognizing* the important significance of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on June 17, 1925, and conscious also of the contribution which the said Protocol has already made, and continues to make, to mitigating the horrors of war,

*Reaffirming* their adherence to the principles and objectives of that Protocol and calling upon all States to comply strictly with them,

*Recalling* that the General Assembly of the United Nations has repeatedly condemned all actions contrary to the principles and objectives of the Geneva Protocol of June 17, 1925,

*Desiring* to contribute to the strengthening of confidence between peoples and the general improvement of the international atmosphere,

*Desiring also* to contribute to the realization of the purposes and principles of the United Nations,

*Convinced* of the importance and urgency of eliminating from the arsenals of States, through effective measures, such dangerous weapons of mass destruction as those using chemical or bacteriological (biological) agents,

*Recognizing* that an agreement on the prohibition of bacteriological (biological) and toxin weapons represents a first possible step towards the achievement of agreement on effective measures also for the prohibition of the development, production and stockpiling of chemical weapons, and determined to continue negotiations to that end,

*Determined* for the sake of all mankind, to exclude completely the possibility of bacteriological (biological) agents and toxins being used as weapons,

*Convinced* that such use would be repugnant to the conscience of mankind and that no effort should be spared to minimize this risk,

*Have agreed* as follows:

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<sup>3</sup>United Nations, *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction*, Resolutions adopted by the General Assembly, Official Records: Twenty-Sixth Session, 2826 (XXVI), 16 December 1971.

and with that to the Chemical Weapons Convention (CWC)<sup>4</sup>

## **PREAMBLE**

*The States Parties to this Convention,*

*Determined to act with a view to achieving effective progress towards general and complete disarmament under strict and effective international control, including the prohibition and elimination of all types of weapons of mass destruction,*

*Desiring to contribute to the realization of the purposes and principles of the Charter of the United Nations,*

*Recalling that the General Assembly of the United Nations has repeatedly condemned all actions contrary to the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925 (the Geneva Protocol of 1925),*

*Recognizing that this Convention reaffirms principles and objectives of and obligations assumed under the Geneva Protocol of 1925, and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction signed at London, Moscow and Washington on 10 April 1972,*

*Bearing in mind the objective contained in Article IX of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction,*

*Determined for the sake of all mankind, to exclude completely the possibility of the use of chemical weapons, through the implementation of the provisions of this Convention, thereby complementing the obligations assumed under the Geneva Protocol of 1925,*

*Recognizing the prohibition, embodied in the pertinent agreements and relevant principles of international law, of the use of herbicides as a method of warfare,*

*Considering that achievements in the field of chemistry should be used exclusively for the benefit of mankind,*

*Desiring to promote free trade in chemicals as well as international cooperation and exchange of scientific and technical information in the field of chemical activities for purposes not prohibited under this Convention in order to enhance the economic and technological development of all States Parties,*

*Convinced that the complete and effective prohibition of the development, production, acquisition, stockpiling, retention, transfer and use of chemical weapons, and their*

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<sup>4</sup>Organization for the Prohibition of Chemical Weapons, *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction*, Available on the web at <http://www.opcw.nl>

*destruction, represent a necessary step towards the achievement of these common objectives,*

*Have agreed as follows:*

5. As might be expected, the Preamble to the Comprehensive Test Ban Treaty (CTBT) is less comparable because of the difference between the purposes on the one hand of the BTWC, its Protocol and the CWC and, on the other hand, of the CTBT. Nevertheless, for completeness, the CTBT Preamble<sup>5</sup> is reproduced here:

#### *PREAMBLE*

*The States Parties to this Treaty (hereinafter referred to as "the States Parties"),*

*Welcoming the international agreements and other positive measures of recent years in the field of nuclear disarmament, including reductions in arsenals of nuclear weapons, as well as in the field of the prevention of nuclear proliferation in all its aspects,*

*Underlining the importance of the full and prompt implementation of such agreements and measures,*

*Convinced that the present international situation provides an opportunity to take further effective measures towards nuclear disarmament and against the proliferation of nuclear weapons in all its aspects, and declaring their intention to take such measures,*

*Stressing therefore the need for continued systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goal of eliminating those weapons, and of general and complete disarmament under strict and effective international control,*

*Recognizing that the cessation of all nuclear weapon test explosions and all other nuclear explosions, by constraining the development and qualitative improvement of nuclear weapons and ending the development of advanced new types of nuclear weapons, constitutes an effective measure of nuclear disarmament and non-proliferation in all its aspects,*

*Further recognizing that an end to all such nuclear explosions will thus constitute a meaningful step in the realization of a systematic process to achieve nuclear disarmament,*

*Convinced that the most effective way to achieve an end to nuclear testing is through the conclusion of a universal and internationally and effectively verifiable comprehensive nuclear test-ban treaty, which has long been one of the highest priority objectives of the international community in the field of disarmament and non-proliferation,*

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<sup>5</sup>*Comprehensive Nuclear-Test-Ban Treaty.* Available at <http://www.ctbto.org/ctbto/pdf/cbten.pdf>

*Noting the aspirations expressed by the Parties to the 1963 Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water to seek to achieve the discontinuance of all test explosions of nuclear weapons for all time,*

*Noting also the views expressed that this Treaty could contribute to the protection of the environment,*

*Affirming the purpose of attracting the adherence of all States to this Treaty and its objective to contribute effectively to the prevention of the proliferation of nuclear weapons in all its aspects, to the process of nuclear disarmament and therefore to the enhancement of international peace and security,*

*Have agreed as follows:*

## **Evaluation**

6. The current text for the Preamble has developed from that proposed in two Working Papers submitted in July 1997 by the United States<sup>6</sup> and Australia<sup>7</sup> which comprised 10 and 15 paragraphs respectively as well as the later version proposed in a Working Paper submitted in April 1999 by Australia<sup>8</sup> which comprised 9 paragraphs. The current version comprises some 29 paragraphs.

7. The Preamble for the Protocol contains paragraphs that fall into two broad categories -- paragraphs that reflect those in the preamble of the BTWC and CWC, and paragraphs that refer to specific purposes of the Convention. It is convenient to consider them in the sequence in which they currently appear in the draft Protocol<sup>9</sup>.

8. The sequence of the paragraphs is a logical one. The initial paragraphs, 1 to 12, emphasize the Convention which it is the purpose of the Protocol to strengthen whilst the next paragraphs, 13 to 17, place the Protocol in related contexts, outside the Convention. These *internal* and *external* sections are followed by a combination of internal and external references in paragraphs 18 to 26 which stress the development content (Article X) of the BTWC and related contexts outside the Convention. A final section, paragraphs 27 to 29, leads in to Article I of the Protocol. Although the number of paragraphs is likely to be reduced from the present 29 when overlaps and duplications are eliminated, the Preamble will still be much longer than those of the BTWC, CWC and CTBT, each of which confines its Preamble to a mere 10 paragraphs. In this evaluation, the preambular paragraphs are considered in four groups: internal section, related contexts, development section and the final section leading in to Article I of the Protocol.

9. It is also noted that further preambular paragraphs are frequently, for quite understandable reasons, added at a late stage in the negotiation of a treaty, as part of a compromise over the main text or operative part of the treaty. A good example is in the seventh paragraph of the

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<sup>6</sup> United States of America, *Working Paper submitted by the United States of America, Preamble*, BWC/AD HOC GROUP/WP.176, 21 July 1997.

<sup>7</sup> Australia, *Working Paper submitted by Australia, Preamble*, BWC/AD HOC GROUP/WP.191, 24 July 1997.

<sup>8</sup> Australia, *Working Paper submitted by Australia, Preamble*, BWC/AD HOC GROUP/WP.364, 6 April 1999.

<sup>9</sup> United 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/50 (Part I), 11 February 2000, Geneva.



CWC Preamble, "*Recognizing the prohibition, embodied in the pertinent agreements and relevant principles of international law, of the use of herbicides as a method of warfare,*" which was added in June 1992 as an acceptable substitute for making any reference to herbicides in the Articles of the CWC.<sup>10</sup>

10. Should the Preamble to the Protocol be used for this purpose, probably at a late stage in the negotiation of the Protocol, it will be important to preserve the logical structure of the Preamble through minimizing disruption to the sequence of paragraphs.

#### *Internal Section*

11. Paragraphs 1 to 12 anchor the purpose of the Protocol firmly in those of the BTWC and provide a statement of the reasons for the importance of the Convention in its own right. The statement could be rendered more concise: paragraphs (9) and (10) are effectively alternatives, as is (8+9) and paragraphs (2) and (3) duplicate much of their content. Paragraph (6) would no longer duplicate the content of paragraph (5) if the words *Article I of* were to be introduced before *the Convention* in the first line, thereby making paragraph (6) significantly more specific than paragraph (5). We also recommend an abbreviation of paragraph (3) so that the BTWC Protocol and the 1925 Geneva Protocol are not prematurely introduced in this section of the Preamble, to the detriment of the emphasis on the Convention alone.

12. The first paragraph, which is out of square brackets, is unexceptionable as it emphasizes, as might be expected, that the States Parties **to the Protocol** are necessarily Parties to the Convention.

13. The second paragraph, currently within square brackets, reaffirms the determination set out in the ninth paragraph of the BTWC using identical language. It is similar to the sixth paragraph in the CWC although that paragraph goes on to add the words *through the implementation of the provisions of this Convention, thereby complementing the obligations assumed under the Geneva Protocol of 1925*. We would recommend removal of the current square brackets. Although the Preamble could be shortened by deletion of this paragraph without loss to the substance of the Preamble as its content is included more generally in the fourth paragraph and more specifically in the third paragraph, it is recognised that as with the Final Declaration of the Fourth Review Conference there is a wish to make it unequivocally clear that the use of biological agents and toxins as weapons is completely excluded.

14. The third paragraph, in square brackets, is similar to but stronger, through the explicit mention of *the development, production, stockpiling, acquisition, retention or use*, than the language in the ninth paragraph of the BTWC preamble which is limited to *the possibility of ... being used as weapons*. It is likewise stronger than the sixth paragraph of the CWC. This paragraph would be more effective in its present context if it terminated at *weapons* and we recommend this amendment.

15. The fourth, fifth, sixth and seventh paragraphs, of which the fourth and sixth are in square brackets, reaffirm the purposes laid down in the Preamble to the BTWC, remind of the obligations undertaken under the BTWC and determine to implement all the provisions of the BTWC in a comprehensive and balanced manner. We would recommend the insertion of

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<sup>10</sup> Walter Krutzsch and Ralf Trapp, *A Commentary on the Chemical Weapons Convention*, Dordrecht, Martinus Nijhoff, 1994, pp. 8 - 10.

*Article I of before the Convention* in the first line of paragraph (6) to make this paragraph significantly more specific than paragraph (5).

16. The eighth and ninth paragraphs and the alternative (8+9), all in square brackets, reaffirm the Final Declarations of the Review Conferences and note the reaffirmation by the Fourth Review Conference concerning use in any way and under any circumstances as being a violation of Article I. The alternative (8+9), also in square brackets, is weaker in that it only considers and does not reaffirm the final declarations of the successive Review Conferences. We consequently do not recommend the alternative (8+9).

17. The tenth paragraph, in square brackets, largely reiterates what was said in the ninth paragraph using a different form of words which does not refer to the Fourth Review Conference. Our preference would be to remove the square brackets from the eighth and the tenth paragraphs and to delete the ninth and the (8+9) paragraphs.

14. The eleventh paragraph, now emerging from square brackets, reaffirms that the BTWC is essential for international peace and security. The first clause within square brackets [implementation of the provisions of the] was added in the November 1999 consideration of the Preamble; it effectively refers to the fact that the Protocol will facilitate the implementation of the provisions of the Convention. The second clause within square brackets [and development] extends the relevance of the Convention beyond maintaining and enhancing regional and international peace to development; this effectively refers to the inclusion within the Protocol of measures to implement Article X of the Convention. Our view is that this paragraph would largely repeat what is expressed in paragraph (12) if the clauses within square brackets were retained, but that with those clauses deleted it would be more effective. We therefore recommend that this paragraph be left in its shorter form as a simple reaffirmation.

15. The twelfth paragraph, out of square brackets, expresses the conviction that the Protocol will deliver significant benefits in terms of international security and development, and recalls the importance of encouraging universal adherence to both the Convention and the Protocol for this purpose.

#### *Related Contexts*

16. Preambular paragraphs (13) to (17) place the Protocol in related contexts, outside the Convention. The order of the paragraphs here resembles that of the CWC in respect of four of its first five preambular paragraphs: weapons of mass destruction, general and complete disarmament; Charter of the United Nations; Geneva Protocol; CWC. There is, however, no equivalent to the third preambular paragraph of the CWC, which recalled condemnation by the General Assembly of all actions contrary to the principles and objectives of the Geneva Protocol.

17. In the past, there has sometimes been a 'contest of contexts' over which context should take priority. The Drafting Committee at the BTWC First Review Conference experienced such a contest over just these above named contexts -- disarmament, UN texts, Geneva Protocol, CWC (then still the goal of BTWC Article IX) -- at its meeting on 19 March 1980<sup>11</sup>, when it was still trying to finalize the order of paragraphs in the preamble to the Final

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<sup>11</sup> Nicholas A. Sims, *The Diplomacy of Biological Disarmament: Vicissitudes of a Treaty in Force, 1975-85*, London: Macmillan; New York: St. Martin's Press, 1988, pp 129 - 30.

Declaration of that Review Conference. The order of paragraphs proposed in this section of the Protocol Preamble should be the more acceptable for having been the sequence followed in the CWC.

18. The thirteenth paragraph, in square brackets surrounding both (13) and (14), uses closely similar but somewhat stronger language to that in the first phrase of the first paragraph of the BTWC Preamble. The thirteenth paragraph is stronger through the insertion of *complete* before the word *elimination*.

19. The fourteenth paragraph, also in the square brackets surrounding both (13) and (14), uses closely similar language to that at the end of the first paragraph of the BTWC Preamble. This language is essentially identical to that in the final phrase of the fourth paragraph of the CTBT.

20. The alternative paragraph (13 + 14), in square brackets, uses language that is closely similar to that in the first and last clauses of the first paragraph of the BTWC. It is identical with the first preambular paragraph of the CWC except that it omits the phrase *and elimination* which is found in both the CWC and the BTWC Preambles. The Protocol paragraph is therefore weaker than its equivalent paragraphs in the BTWC and CWC Preambles, as it only emphasizes the *prohibition* and not the *elimination of all types of weapons of mass destruction*. We recommend the addition of the words *and elimination* after *the prohibition of* should this combined paragraph be retained. However, we note the emphasis being placed elsewhere on making progress in the implementation of Article VI of the Nuclear Non-Proliferation Treaty in which "*Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to...nuclear disarmament...*" Consequently, we recommend that the two separate paragraphs (13) and (14) should emerge from square brackets as this will result in greater clarity in the Preamble and that the combined paragraph should be deleted.

21. The fifteenth paragraph, surprisingly within square brackets, is identical to the sixth paragraph of the BTWC and to the second paragraph of the CWC. In their commentary on that CWC paragraph, Krutzsch and Trapp<sup>12</sup> identify the following UN purposes and principles as those to the realization of which the CWC should contribute: "*elimination of the danger of war, elimination of the threat and use of force from international life, the sovereign equality of States, peaceful settlement of disputes.*" and the contribution of the BTWC Protocol is likely to be similar. We recommend removal of the square brackets.

22. The sixteenth paragraph, out of square brackets although with two final clauses within square brackets, is broadly similar to the first part of the second paragraph of the BTWC although the sixteenth paragraph usefully emphasizes the adherence of States Parties to the principles and objectives of the Geneva Protocol. The penultimate clause emphasizes the commitment to strictly comply with these principles and objectives whilst the final clause calls upon all States and not just States Parties to strictly comply with these principles and objectives.

23. It should be noted that the language of "*principles and objectives*" was employed in the third and fourth paragraphs of the BTWC Preamble in order to accommodate those states, not yet parties to the Geneva Protocol, which could nevertheless identify themselves with its

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<sup>12</sup> Walter Krutzsch and Ralf Trapp, *A Commentary on the Chemical Weapons Convention*, Dordrecht, Martinus Nijhoff, 1994, pp. 7 - 8.

principles and objectives. Among them was the United States where, from 1970 to 1974, the Geneva Protocol was once again awaiting the Senate's advice and consent to ratification.<sup>13</sup>

24. Since 1975, when the United States ratified the Geneva Protocol, there has been no difficulty expanding the phrase, as in the preambular paragraph 4 of the CWC, to *principles and objectives of and obligations assumed under* the Protocol. We recommend the addition of *and obligations assumed under* in the first line of paragraph (16). The square bracketed portion of the paragraph would then need to be expanded thus:

***and calling upon all States to comply strictly with the principles and objectives of that Protocol and upon all States Parties to that Protocol to comply strictly with their obligations assumed under it.***

and the square brackets removed. The words "*to comply strictly*" are drawn from the third preambular paragraph of the BTWC itself. They are preferable to the split infinitive "*to strictly comply*" found in the current text drafted for the BTWC Protocol. We have used *that Protocol* to make it clear that the reference is to the Geneva Protocol and not the BTWC Protocol.

25. The seventeenth paragraph, out of square brackets, welcomes the entry into force of the CWC.

#### *Development Section*

26. Preambular paragraphs (18) to (26) stress the development content (Article X) of the BTWC and related contexts outside the BTWC, such as the Rio 1992 Declaration of Principles in paragraph (25). The emphasis on the development content (Article X) is unsurprising given the specific mention of Article X in the mandate of the Ad Hoc Group. Paragraph (21) provides some balance by emphasizing the obligations of Article III of the Convention.

27. The eighteenth paragraph, out of square brackets, recognizes the significant advances in biotechnology since 1975 and their potential implications for the implementation and the effectiveness of the Convention.

28. The nineteenth paragraph, out of square brackets, is similar, although stronger as the Protocol language is *Determined*, to that language in the eighth paragraph of the CWC which uses *Considering* in regard to achievements in the field of chemistry.

29. The twentieth paragraph, within square brackets, refers back obliquely to the important statements in the Final Declarations of successive Review Conferences which reaffirm that the undertaking given by all States Parties in Article I is sufficiently comprehensive to cover all relevant scientific and technological developments. It is this language which ensures that the scope of the prohibition remains unequivocally all-embracing. This paragraph would be strengthened if this were made clearer by the addition at the end of the words "***and of their reaffirmation that Article I is sufficiently comprehensive to cover all such developments.***" Our recommendation is that these words should be added and the square brackets removed.

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<sup>13</sup> The United States had signed the Geneva Protocol on 17 June 1925 but it was removed from the agenda of the Senate in 1947 and not restored to the agenda until 1970.

30. The twenty-first paragraph, within square brackets, reaffirms and reiterates the non-transfer obligation on States Parties to the Convention under Article III. This reiteration provides balance to the emphasis in paragraphs (23) and (24) on promoting international cooperation and exchange and the obligations under Article X of the Convention. Our recommendation is that the square brackets should be removed.

31. The twenty-second paragraph, within square brackets, refers to *the increasing gap* between the developed and developing countries in the field of microbiology. This reiterates the language of Final Declaration of the Fourth Review Conference<sup>14</sup> which under Article X said that *The Conference...notes with concern the increasing gap between the developed and the developing countries in the field of biotechnology, genetic engineering and microbiology and other related areas*. Our recommendation is that the square brackets should be removed.

32. The twenty-third paragraph, largely out of square brackets, promotes international cooperation and exchange to *[enhance][ensure]* the economic and technological development of all States Parties *[to the Protocol]*. We recommend adoption of the word *enhance* rather than *ensure* as international cooperation and exchange alone cannot *ensure* the economic and technological development of all States Parties to the Protocol. We also recommend removal of the square brackets from the phrase *to the Protocol* as it is particularly through becoming a State Party to the Protocol that the objective of this preambular paragraph will be achieved.

33. The twenty-fourth paragraph, largely out of square brackets, emphasizes the increasing importance of the implementation of the provisions of Article X of the Convention. It has square brackets around the words *[as well as under Article VII of the Protocol]* which extend the reference to the obligations of each State Party under Article X. Our view is that this extension is inappropriate in a preambular paragraph and consequently the phrase within square brackets is best deleted. Square brackets are also round the final words of this paragraph *[particularly in developing countries][in conformity with interests, needs and priorities]*. This language also reiterates language from the Final Declaration of the Fourth Review Conference<sup>15</sup> which in respect of Article X stated that *...which have vastly increased the potential for cooperation between States to help to promote economic and social development, and scientific and technological progress, particularly in developing countries, in conformity with their interests, needs and priorities*. We would recommend adoption of the same language as in the Final Declaration of the Fourth Review Conference.

34. The twenty-fifth paragraph, still within square brackets, recalls the Declaration of Principles at the Rio summit of 1992. Our view is that the square brackets should be removed as it is appropriate to note that there are initiatives other than the Protocol to promote capacity-building and to encourage technical exchanges and the transfer of technologies.

35. The twenty-sixth paragraph, still within square brackets, is thus largely similar to

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<sup>14</sup>United Nations, *Fourth Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction*, Geneva, 25 November - 6 December 1996, BWC/CONF.IV/9, Geneva, 1996. Final Declaration, Part II, p. 23.

<sup>15</sup>United Nations, *Fourth Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction*, Geneva, 25 November - 6 December 1996, BWC/CONF.IV/9, Geneva, 1996. Final Declaration, Part II, p. 23.

language from the Final Declaration of the Fourth Review Conference<sup>16</sup> which in respect of Article X stated that *The Conference urges all States Parties actively to continue to promote international cooperation and exchange with States Parties in the peaceful uses of biotechnology, and urges all States Parties possessing advanced biotechnology to adopt positive measures and to continue to promote technology transfer and cooperation on an equal and non-discriminatory basis, in particular with the developing countries, for the benefit of all mankind.* The preambular paragraph seeks to broaden the scope of this paragraph by the words *all developments in the field of frontier science and high technology in areas relevant to the Convention.* It then goes on to urge *the developed countries* rather than *the States Parties possessing advanced biotechnology* to adopt positive measures. It also broadens the language from *possessing advanced biotechnology* to *possessing advanced biotechnology and knowledge in such fields as medicine, public health and agriculture.* Our recommendation would be to amend this paragraph to follow more closely the language of the Fourth Review Conference although we would support the use of the broader scope in retaining the words *possessing advanced biotechnology and knowledge in such fields as medicine, public health and agriculture.*

36. It is, however, pertinent to ask whether it is necessary, or desirable, to repeat essentially three statements from the Final Declaration of the Fourth Review Conference in paragraphs (22), (24) and (26) as well as to express closely similar aspirations in paragraph (23). After all, paragraph (8) has already reaffirmed the final declarations of the successive Review Conferences. Our recommendation is that these five paragraphs (22) to (26) should be reordered so that the sequence is (22), (25), (24) and (26) and thereby progresses from the *concerned* to the *determined* as well as from the general to the specific. We recommend that paragraph (23) be dropped as this adds little to the substance and is weaker than (26).

#### *Final Section*

37. Preambular paragraph (27) emphasizes the desirability of all States Parties to the BTWC becoming parties to the Protocol. Paragraph (28) stresses the importance of the measures in the Protocol to strengthen the Convention leading to the final paragraph (29) which by recalling the mandate of the Ad Hoc Group to *strengthen the effectiveness and improve the implementation* serves to lead into the Articles, or operative part, of the Protocol. All three paragraphs (27) to (29) are out of square brackets although there are words within square brackets within the first two paragraphs.

38. The twenty-seventh paragraph, largely out of square brackets, encourages all States Parties to the Convention to become States Parties to the Protocol. The initial language *to contribute as effectively as possible to the prevention of [the proliferation of] [weapons of mass destruction, including] biological and toxin weapons,* appears weak as there is no mention of *prohibition* or of *elimination* which are already in paragraphs (13) and (13 + 14). We would recommend strengthening (27) to read:

(27) ***Convinced** that to contribute as effectively as possible to the **prohibition and complete elimination** of biological and toxin weapons, and thereby to enhance international peace and security, all States Parties to the Convention should become*

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<sup>16</sup> United Nations, *Fourth Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction*, Geneva, 25 November - 6 December 1996, BWC/CONF.IV/9, Geneva, 1996. Final Declaration, Part II, p. 23.

*States Parties to this Protocol,*

39. The twenty-eighth paragraph, largely free of square brackets, refers to the strengthening of the Convention *through appropriate measures, [in particular] [including] through enhanced transparency and compliance provisions.* As we have noted in our evaluation<sup>17</sup> of Article IX The Organization, this language is much weaker than in the comparable CWC and the CTBT language. We would recommend strengthening this to read

(28) *Convinced that the most effective way to ensure a world free of biological and toxin weapons is to strengthen the Convention through appropriate measures, including provisions for international verification of compliance with such measures,*

40. The twenty-ninth paragraph, out of square brackets, (29) *Determined to strengthen and improve the effective implementation of the Convention,* then leads into the Protocol. There is much to be said for using language in *Article I General Provisions* to achieve a smoother transition from the Preamble into that Article. This could be achieved by a paragraph in which States Parties *undertake to strengthen the Convention through appropriate measures, including provisions for international verification of compliance with such measures,*

#### **Strikethrough text for the Preamble**

41. It is recommended that the Preamble should read as follows:

#### *PREAMBLE*

*The States Parties to this Protocol,*

(1) *Being Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, which was opened for signature on 10 April 1972, and entered into force on 26 March 1975, hereinafter referred to as the Convention,*

~~f(2) *Reaffirming their determination for the sake of all mankind to exclude completely the possibility of bacteriological (biological) agents and toxins being used as weapons,*~~

~~f(3) *Determined for the sake of all peoples to exclude completely the possibility of the development, production, stockpiling, acquisition, retention or use of biological and toxin weapons, through the implementation of this Protocol, furthering the principles and objectives of the Geneva Protocol of 1925 and the Convention,*~~

~~f(4) *Reaffirming the purposes laid down in the preamble to the Convention,*~~

(5) *Mindful of their obligations under the Convention and desiring to further its objectives,*

f(6) *Mindful of their obligations under **Article I** of the Convention never in any*

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<sup>17</sup> Ian R. Kenyon, Graham S. Pearson & Nicholas A. Sims, *Article IX: The Organization*, Evaluation Paper No 14, University of Bradford, January 2000, p 7. Available on <http://www.brad.ac.uk/acad/sbtwc>

*circumstances to develop, produce, stockpile or otherwise acquire or retain microbial or other biological agents or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes or weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict,}*

(7) Determined to implement all the provisions of the Convention in a comprehensive and balanced manner,

~~{(8) Reaffirming the final declarations of the successive Review Conferences of the Convention,}~~

~~{(9) Noting the reaffirmation by the States Parties to the Convention at the Fourth Review Conference that the use by States Parties, in any way and under any circumstances, of microbial or other biological agents or toxins, that is not consistent with prophylactic, protective or other peaceful purposes, is effectively a violation of Article I of the Convention,}~~

OR

~~{(8+9) Considering the final declarations of the successive Review Conferences of the Convention, and noting the reaffirmation by the States Parties to the Convention at the Fourth Review Conference that the use by States Parties, in any way and under any circumstances, of microbial or other biological agents or toxins, that is not consistent with prophylactic, protective or other peaceful purposes, is effectively a violation of Article I of the Convention,}~~

(9) ~~{(10) Emphasizing that the use by States Parties in any way and under any circumstances of microbial or other biological agents or toxins, that is not consistent with prophylactic, protective or other peaceful purposes, is effectively a violation of Article I of the Convention,}~~

(10) ~~{(11) Reaffirming that the ~~{implementation of the provisions of the}~~ Convention is essential for maintaining and enhancing regional and international peace and security ~~{and development}~~,}~~

(11) ~~{(12) Convinced that strengthening and enhancing the preamble and the provisions of the Convention, adopting specific measures to improve its implementation and effectiveness, and encouraging universal adherence to the Convention and this Protocol, will deliver significant benefits in terms of international security and development,}~~

(12) ~~{(13) Determined to achieve effective progress toward the prohibition and complete elimination of all types of weapons of mass destruction,}~~

(13) ~~{(14) Determined also to achieve effective progress toward general and complete disarmament under strict and effective international control,}~~

OR

~~{(13+14) Determined to act with a view to achieving effective progress toward general and complete disarmament under strict and effective international control,}~~



~~including the prohibition of all types of weapons of mass destruction,]~~

(14)~~(15)~~ Desiring to contribute to the realization and purposes of the Charter of the United Nations,]

(15)~~(16)~~ Reaffirming their adherence to the principles and objectives of **and obligations assumed under** the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925 (Geneva Protocol of 1925), ~~and their commitment to strictly comply with them,]~~ **and calling upon all States to comply strictly with the principles and objectives of that Protocol and upon all States Parties to that Protocol to comply strictly with their obligations assumed under it, ~~them,]~~**

(16)~~(17)~~ Welcoming the entry into force of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, signed at Paris on 13 January 1993,

(17)~~(18)~~ Recognizing the significant advances in the field of biotechnology since the entry into force of the Convention, and the potential implications, both positive and negative, of these advances for the implementation and effectiveness of the Convention,

(18)~~(19)~~ Determined to ensure that all achievements in this field are used exclusively for the benefit of mankind,

(19)~~(20)~~ Conscious of the apprehension arising from relevant scientific and technological developments as expressed by States Parties at Review Conferences of their use for purposes inconsistent with the objectives and the provisions of the Convention, **and of their reaffirmation that Article I is sufficiently comprehensive to cover all such developments,]**

(20)~~(21)~~ Reaffirming the obligation of each State Party to the Convention under Article III not to transfer to any recipient whatsoever, directly or indirectly, and not in any way to assist, encourage, or induce any State, group of States or international organizations to manufacture or otherwise acquire any of the agents, toxins, weapons, equipment or means of delivery specified in Article I of the Convention,]

(21)~~(22)~~ Concerned with the increasing gap between the developed and the developing countries in the field of biotechnology, genetic engineering, microbiology and other related areas,]

~~(23) Desiring to promote international cooperation and exchange of bacteriological (biological) agents and toxins, and equipment, materials and scientific and technological information in the field of biotechnology for purposes not prohibited under the Convention to [enhance] [ensure] the economic and technological development of all States Parties [to the Protocol],~~

(22)~~(25)~~ Recalling that, in accordance with the Declaration of Principles adopted at the United Nations Conference on Environment and Development, States should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific

*and technical knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies,}*

*(23)(24) Emphasizing the increasing importance of the implementation of the provisions of Article X of the Convention and the obligations of each State Party under that Article ~~[as well as under Article VII of the Protocol]~~, especially in the light of recent scientific and technological developments in the field of biotechnology, bacteriological (biological) agents and toxins for peaceful purposes, which have vastly increased the potential for cooperation between States to help to promote economic and social development, and scientific and technological progress ~~[particularly in developing countries]~~ ~~[in conformity with **their** interests, needs and priorities]~~,*

*(24)(26) Determined to promote international cooperation on all developments in the field of frontier science and high technology in areas relevant to the Convention, and urging **all States Parties** ~~the developed countries~~ possessing advanced biotechnology and knowledge in such fields as medicine, public health and agriculture to adopt positive measures and to continue to promote technology transfer and cooperation on an equal and non-discriminatory basis, in particular with the developing countries, for the benefit of all mankind,}*

*(25)(27) Convinced that to contribute as effectively as possible to the **prohibition and complete elimination of** ~~prevention of [the proliferation of] [weapons of mass destruction, including]~~ biological and toxin weapons, and thereby to enhance international peace and security, all States Parties to the Convention should become States Parties to this Protocol,*

*(26)(28) Convinced that the most effective way to ensure a world free of biological and toxin weapons is to strengthen the Convention through appropriate measures, **including provisions for international verification of such measures,** ~~[in particular] [including] through enhanced transparency and compliance provisions,~~*

*(27)(29) Determined to strengthen and improve the effective implementation of the Convention,*

*Have agreed as follows:*