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Having an NSD on this of the most things I've heard in years

Revision 1
1030 hours, 10 July 92

Ed C.

4pm

IMPACT OF THE CWC ON DOD BW VACCINE PROGRAM

Pursuant to the Steering Group's direction, the working group met on 9 July and reached agreement on a solution to unequivocally protect DOD's botulinum toxoid production without changing the text of the CWC. The following legal understandings, policy positions and substantive requirements for consent to any facility agreement will be included in an NSD as a complete package. It was agreed that if any part of the package failed to achieve interagency consensus (including legal review) and to be included in the NSD then DOD's concerns would not be protected and another solution would have to be considered and interagency approved before the USG announced its acceptance of the CWC text.

It is agreed that the Confidentiality Annex permits the USG to protect its vaccine facilities through appropriately phrased declarations and facility agreements that carefully regulate the taking of samples and the inspection of records. It is also agreed that the current model agreement on single-small scale facilities is not part of the agreed text, may be changed during the Preparatory Commission and, in any event, does not bind the USG in any way.

It is agreed that a facility agreement is required but is strictly a matter of negotiation between a State Party and the "Organization." It is agreed that a State Party cannot be bound to any part of a facility agreement without its consent and will not be in violation of the Convention if it fails to reach agreement on a facility agreement with the Organization provided that its proposals for the facility agreement are reasonable and consistent with the following provision of the Confidentiality Annex:

"States Parties may take such measures as they deem necessary to protect confidentiality, provided that they fulfil their obligations to demonstrate compliance in accordance with the relevant Articles and the Verification Annex."

It is agreed that the requirements for the facility agreement contained in the attached NSD are consistent with this provision and the object and purposes of the Convention.

It is also agreed that failure to reach agreement on a facility agreement will not result in a model agreement or another protocol being imposed upon a State Party by default for the purposes of a routine inspection. It is acknowledged that the USG may encounter some political pressure but will not be in violation of the treaty when it conducts itself as outlined in the attached NSD.

Discussions between OSD and ACDA before the working group meeting resulted in agreement that the actual amount of toxin weaponized by the USG in the 1960's was sufficient to be

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"production" and not "research and development" for the purposes of the CWC. Accordingly, these two agencies agree that, independent of whether botulinum toxin is ever placed on Schedule 1, the USG must declare its past weaponization of toxins given the definition of "chemical weapons production facility" in Article II, paragraph 8 (a) (ii).

There is no interagency consensus on the likelihood of botulinum toxin (BT) being placed on Schedule 1. However, it is understood that such consensus is not a prerequisite to the resolution of this matter since all agree that given the inability of the USG to unilaterally block the addition of BT a "worst case" assumption for decision-making purposes is appropriate given the stakes involved. It is understood that the USG will do everything it can to prevent BT from being placed on any of the Schedules if this contingency arises.

It is also agreed that this approach including the NSD should be approved at the Principal level before the USG gives its assent to the CWC text.

NATIONAL SECURITY DIRECTIVE

MEMORANDUM FOR THE VICE PRESIDENT
THE...

SUBJECT: PROTECTION OF BOTULINUM TOXOID (VACCINE) PRODUCTION AND IMPLEMENTATION OF THE CHEMICAL WEAPONS CONVENTION

The global ban on chemical weapons is an important component of our security structure. Its provisions are consistent with our national security needs ~~and its implementation should be equally consistent.~~ The United States faces a growing threat from biological weapons. I have determined that protection of the United States Armed Forces from this threat is essential.

I therefore direct that:

It is the policy of the United States to safeguard its botulinum toxoid (vaccine) program from any compromise by way of declarations or inspections under the Chemical Weapons Convention. ~~The provisions of the Convention allow it to do so without violating the Convention.~~ It is the policy of the United States to exercise its rights under the Convention to their fullest extent to protect this program.

In the event that an attempt is made to place botulinum toxin on any of the Schedules of Chemicals the USG will forcefully resist this attempt. It will press vigorously all arguments in opposition to such an addition in all available bilateral and multilateral fora.

In the event that botulinum toxin is placed on any of the Schedules

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of Chemicals, over United States objections, the United States will invoke the Confidentiality Annex to "take such measures as (it) deems necessary to protect confidentiality." The United States shall conclude a facility agreement with the Organization concerning the on-site inspection of its toxoid (vaccine) production facilities only if it contains provisions which prohibit the inspectors from coming into physical contact with any samples and from physically entering any room where samples are being taken or analyzed. In addition, records which would reveal the total amount of vaccine on hand or the types of strains protected against will be sanitized to prevent security compromise. The United States shall make the required declarations to the nearest 10 grams but at no time shall reveal information which would allow computation of its total vaccine stocks or reveal quality control problems which expose a potential vulnerability.

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It is United States policy that the above requirements for the facility agreement and the handling of records and declarations is reasonable and consistent with and in compliance with the CWC, in particular with the provision: "States Parties may take such measures as they deem necessary to protect confidentiality, provided that they fulfil their obligations to demonstrate compliance in accordance with the relevant Articles and the Verification Annex"

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