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VISITS: AN ESSENTIAL PORTFOLIO

by

Graham S. Pearson

Introduction

1. The negotiations of the Ad Hoc Group (AHG) are currently paying particular attention to the role of visits which are seen as an essential element of the verification regime to strengthen the Biological and Toxin Weapons Convention (BTWC)¹. Although there has been much debate and discussion about the form that such visits should take, the negotiations have made progress to the point where a concept of visits is broadly accepted even though the precise composition of the portfolio of visits is not yet universally agreed.

2. The AHG negotiations have made progress and the details of what is currently in the rolling text of the Protocol and in the proposals for further consideration made by the Friends of the Chair are changing. It is critically important to stay abreast of the latest proposals -- and the changing terminology -- so that judgements and assessments of the developing regime are soundly based. There is a danger that the assessments of some outside commentators may be out of date as they are based on an earlier version of the draft Protocol.

3. It is important to recognize that the rolling text of the Protocol attached to the procedural reports of the AHG sessions is only **partially** updated when each new version is produced. This is because, at each AHG session, the time constraints are such that the Friends of the Chair are generally only able to consider a small part of the rolling text and, if there is sufficient time before the end of the session, report progress on that in their reports in the L series of documents entitled "Outcome of discussions". This updated version of part of the rolling text in the L series documents together with any other agreed changes to the rolling text are then incorporated into an updated complete rolling text into which the **remainder** of the rolling text is carried forward **unamended**. This means that different sections of the rolling text are at different stages of development.

4. The proposals for further consideration in Annex IV of the procedural reports in which strike-through text is used to show deletions from and bold text to show additions to the rolling text are important as they show the way in which the Friends of the Chair see their text evolving.

5. The January 1999 meeting was actively engaged on visits and made good progress in respect of visits both in regard to the language² in *Article III. D. Declarations II. Follow-up after Submission of Declarations A. Randomly-Selected Visits* as well as preparing text on *Declaration Clarification Procedures* (WP. 347) which will be discussed at the March/April 1999 AHG meeting. This latter text, although circulated as UK working paper 3473³, represented the result of consultation between the UK, France, Germany, Japan, South Africa and the United States. The WP. 347 language has been incorporated into the rolling text along with alternative language from a Chinese Working Paper (WP. 338)⁴ replacing all the previous text on clarification visits. This text will be discussed at the March/April 1999 session.

6. An important decision was taken in January 1999 to separate Visits and Investigations as these are quite distinct activities with very different purposes. The January 1999 rolling text has visits within *II Follow-up after Submission of Declarations* of Section *D Declarations* in *Article III Compliance Measures* and has "Investigations" as a final Section G of the same Article.⁵

7. As this Briefing Paper is addressing the portfolio of visits, it is important to outline the developments in terminology and to identify which text is the latest version so as to reduce the potential for confusion. The September/October 1998 meeting saw terminology in the rolling text (BWC/AD HOC GROUP/43, Part I⁶) in Article III for

- Random Visits
- Clarification Visits
- Request Visits
- Voluntary Visits

with language for random visits, clarification visits, voluntary visits and voluntary confidence-building visits. *Annex B Visits* contained text for random visits and clarification visits. In Part II (Annex IV of BWC/AD HOC GROUP/43) there was strikethrough text for Article III on Random Visits, Clarification Procedures, and Voluntary Request Visits.

8. The Working Papers distributed at the January meeting included several which related to visits. The South African paper (WP. 336)⁷ proposed language for voluntary visits, random visits, clarification visits (to declared facilities) and consultation visits (to undeclared facilities to determine whether they should be declared). An Iranian paper (WP.345)⁸ reported on a national trial visit and concluded that *"The random visit is considered to be a necessary measure within an effective compliance Protocol. The visiting team, with the cooperation of the visited State Party shall be able to validate the accuracy of declarations without interruption of the normal work of the facility."*

9. The January meeting saw negotiations by the Friend of the Chair on visits and the introduction of the term *"randomly-selected visits"* into the rolling text in place of the previous *"random visits"*. Later in the January meeting, a working paper by Brazil, Chile, New Zealand and Norway (WP. 346)⁹ proposed language for randomly-selected visits which incorporated language to allow for the implementation, as appropriate, of cooperation and assistance activities during the carrying out of the randomly-selected visits. This has been incorporated into the new rolling text for randomly-selected visits in Article III. The concept that randomly-selected visits could both promote the accuracy of declarations **and** serve to provide technical assistance and cooperation is indeed useful.

10. The table summarises the position that emerged from the January meeting¹⁰ in regard to language relating to visits in Article III.

| Article | AHG 44 (Part I) Terminology | Source |
|--|-----------------------------|--|
| III D Declarations II Follow-up after submission | A. Randomly selected visits | Negotiated during Jan 99 AHG. Also includes language from WP. 346 (Brazil, Chile, New Zealand, Norway) which has not yet been discussed. |

| | |
|---|---|
| B. Clarification Procedures and Voluntary Visit | From WP. 338 (China). Not yet discussed. |
| B.bis Declaration Clarification Procedures | From WP. 347 (UK) based on consultation between UK, France, Germany, Japan, South Africa and US. Not yet discussed. |
| C. Voluntary Visits | Negotiated during March 98 AHG |
| D. Voluntary Confidence-Building Visits | Negotiated during March 98 AHG |
| Voluntary Visits | From WP. 336 (South Africa). Not yet discussed. |

Annex B Visits is no more than a compilation of proposed text for randomly-selected visits, clarification visits and consultation visits; it should be noted that none of this material on the more detailed aspects of visits has so far been discussed. In Part II (Annex IV of BWC/AD HOC GROUP/44) there is strikethrough text for Article III on *II Follow-up after Submission of Declarations* which includes the term "*Transparency Visits*" which is a proposed replacement for the current term "*randomly-selected visits*".

11. Consequently, at the March/April AHG session negotiations will focus on the language in the rolling text of *Article III* for Declaration Clarification Procedures and Voluntary Visits. Annex B will be amended at a later date to reflect the outcome of the negotiations on the Article III language.

12. This Briefing Paper considers the relationship between the various types of visits being proposed, identifies their benefits and shows how together they form an essential portfolio for the future BTWC Protocol regime.

The Purpose of Visits

13. It is now evident that visits are **only** concerned with ensuring that the obligations of the Protocol are met and are **not** associated with addressing concerns about compliance with the **Convention**, and in particular with Article I of the Convention. Any such concerns about compliance with the Convention will be addressed in the Protocol through Consultation, Clarification and Cooperation and, should these not resolve the matter, through Investigations. Visits are thus **non-confrontational** and **non-accusatory**. Their quite distinct non-confrontational nature has been made clearer by the inclusion of visits in the *Follow-Up after Submission of Declarations* section of *Article III Compliance Measures*.

14. There are numerous objectives that have been proposed for visits -- **all** falling within the context of the obligations under the Protocol:

- to ensure complete and accurate declarations
- to provide assistance in preparing national declarations
- to address uncertainties, ambiguities and omissions in declarations
- to provide cooperation assistance in biosafety, good manufacturing practice (GMP) etc
- to facilitate trade by building confidence and thus enabling constraints to be removed.

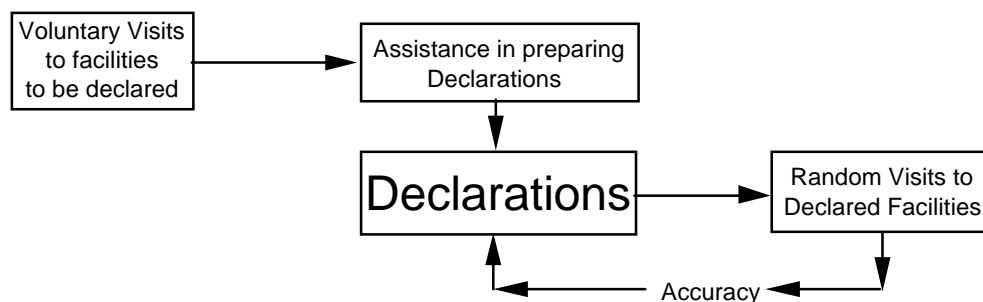
15. A central objective for visits is to ensure that declarations are both complete and accurate. It is clear that a regime based **solely** on declarations and investigations of concerns about compliance with the Convention would result in a situation in which there would be little national incentive to ensure complete and accurate declarations. Over time declarations would become likely to be less transparent and less effective in building confidence. Infrequent unscheduled visits are a remarkably efficient means of providing States Parties with a strong incentive to provide complete and accurate declarations as they would recognize that there was a finite chance that they would receive such a visit.

16. There is a useful analogy in the area of self-assessment income tax schemes such as those operated in the UK and the US. Under self-assessment, individuals are required to complete their own tax return (ie declaration) and submit this by a due date; a financial penalty is incurred if the due date is not met. The individual knows that the tax authority will select a number of returns at random on which to make further inquiries and this provides a strong incentive to the individual to make an accurate tax return.

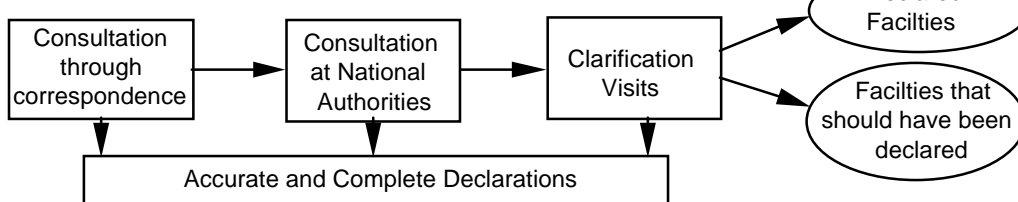
17. In Briefing Paper No. 1811¹¹ the different roles of three types of visits were shown schematically as:

DECLARATIONS & VISITS

Accurate Declarations



Ambiguities, Anomalies & Omissions in Declarations



In this Briefing Paper the various types of visit are considered further in the light of the developments in the January AHG session in order to examine what visits need to be incorporated into the portfolio of visits within the Protocol. These are considered in the same sequence as in the rolling text: randomly-selected visits, clarification visits, request visits and voluntary visits.

Randomly-Selected Visits (Transparency Visits)

18. The negotiations at the January 1999 AHG saw the rolling text for randomly-selected visits move forward losing several square brackets. In addition, the rolling text now includes alternative language taken from Brazil, Chile, New Zealand and Norway WP.346. For the purposes of this Briefing Paper, text is taken from the strikethrough text in Annex IV in Part II which has been prepared by the Friend of the Chair for further consideration. The purpose of random visits and their nature are clearly set out and are primarily to confirm, in cooperation with the State Party, that declarations are consistent with obligations under the Protocol:

"Purpose

7. The Technical [Secretariat][Body] shall conduct...a limited number per year of randomly-selected visits, which shall be confidence building in nature, to declared facilities.... The purpose of these visits shall be to confirm, in cooperation with the State Party to be visited, that declarations are consistent with the obligations under this Protocol, to enhance transparency of declared facilities and activities, to promote accuracy of declarations, to ensure that the Technical [Secretariat][Body] acquires and retains a comprehensive and up-to-date understanding of the different types of facilities and activities declared globally, to provide, as requested and appropriate, technical advice or information, and to implement, as appropriate, technical assistance and cooperation activities or programmes, if requested by the State Party and the facility. "

19. The number of randomly-selected visits to be carried out each year will also be very small, and will be limited for any particular State Party:

"Selection of facilities

37. There shall be no more than [20][50][60][100] transparency visits per calendar year to declared facilities selected randomly by the Technical [Secretariat][Body] from among all declared facilities. In selecting facilities to be visited, the Technical [Secretariat][Body] shall use appropriate mechanisms to ensure that, over a five year period:

(a) such visits shall be divided between each category of declarable facilities in approximate proportion to the total number of declared facilities in each category,

(b) no State Party shall receive more than 10 such visits,

(c) such visits are fairly distributed among regional groups of State Parties [on the basis of the number of declared facilities],

(d) no facility shall be subject to more than two such visits,]

(e) The prediction of when any particular facility will be subjected to such a visit will be precluded,

(f) The scientific and technical characteristics of the facility to be visited and the nature of the activities to be carried out there may be taken into account.

The mechanism of selection shall be approved by the first Conference of States Parties and may be amended by future Conferences of States Parties."

As to which of the declared facilities within a State party would receive the random visit, the text makes it clear that the frequency of random visits will reflect the numbers of facilities declared in each of the categories of declared facilities. Such a process would result in an equitable distribution of visits amongst the States Parties yet they would indeed be so infrequent as to impose little additional burden bearing in mind that the purpose is solely to confirm that the declaration, which contains no commercial proprietary information, is indeed consistent with the obligations under the Protocol.

20. In addition, the size of the visit team will be small:

"Appointment of visiting team

19. The Director-General shall appoint the members of the visiting team from among only the full-time staff of the Technical [Secretariat][Body]...taking into account the specific nature of the facility to be visited....The Director-General shall limit the size of the visiting team to the minimum necessary for the proper fulfilment of the mandate. In any event the team shall not exceed four members. No national of the State Party to be visited shall be a member of the visiting team."

and the duration of the visit would be limited:

"Duration

11. Transparency visits may last up to two days except in the case of such visits to biodefence facilities which may last up to three days....The duration of the visit may be extended if the visited State Party and the visiting team so agree."

12. The extension of the duration of the visit for reasons related to the implementation of technical assistance and cooperation activities or programmes shall not exceed [2] days and be defined by the terms and conditions of implementation of cooperation and assistance activities or programmes during the visit. If the State Party or the visited facility request further extension of the duration of the visit, it shall be agreed within those terms and conditions."

It is thus evident that the likelihood of a declared facility being subject to a random visit is small, and that visit will be primarily to confirm the accuracy of its declaration and, if so requested by the visited State Party, to provide technical advice and information or to implement technical assistance and cooperation activities. It will be carried out by a small team in a limited period.

21. During any transparency visit a wide range of precautions to protect commercial proprietary information have been incorporated into the text. These include:

"33. The visited State Party shall provide the access necessary at the visited facility for the visiting team to fulfill its mandate. The nature and extent of access to a particular area or areas shall be negotiated between the visiting team and the visited State Party."

34. *If any of the activities proposed by the visiting team...are not possible because of national security, commercial proprietary, good laboratory or good manufacturing practices or health and safety considerations, the visited State Party make every reasonable effort to provide alternative means to demonstrate that the submitted declarations are in compliance with the obligations of this Protocol...*

35. *The visited State Party shall have the right [, taking into account the obligation to cooperate with the visiting team in the fulfilment of the purpose of the visit,] to take specific measures to protect sensitive information. Such measures may include, for example, the following:*

- (a) Removal of sensitive papers from direct view;*
- (b) Shrouding of sensitive displays, stores and equipment;*
- (c) Shrouding sensitive pieces of equipment, such as computer or electronic systems;*
- (d) Logging off of computer systems and turning off data indicating devices;*
- (e) Using random selective access techniques whereby the team is requested to select a given percentage or number of buildings of their choice to investigate, the same principle can apply to the interior and contents of sensitive buildings or documents;*

(h) The visited State Party may at any time during the visit identify products and processes in which it has a proprietary interest....It may request that if a specific piece of information is released to the team, it should be accorded the most stringent protection measures by the organization."

22. Additionally, it is clear that **there will be no sampling** unless offered by the facility :

*"28. Sampling shall **not** be conducted **unless offered by the visited State Party [and visited facility personnel]** and deemed useful by the visit team. Any mutually agreed sampling and analysis shall be performed by facility personnel in the presence of the visiting team and representatives of the visited State Party. The visiting team shall not seek to remove samples from the facility." [Emphasis added]*

24. Finally, even the visit team's report is subject to comment by the facility and access to it is strictly limited:

"43. Within 24 hours of the completion of the visit, the visiting team shall provide to representatives of the visited State Party a short preliminary report in written form. The preliminary report shall only contain the factual findings of the visiting team. The preliminary report shall be signed by the visiting team leader. In order to indicate that he/she has taken note of the contents of the preliminary report, the representative of the visited State Party shall sign the preliminary report."

44. *Not later than 14 days after the visit, the visiting team shall prepare a short draft report in accordance....The draft report shall be considered confidential.*

45. *The visiting team shall submit a short final report, [which shall be confidential,] to the Director-General not later than 28 days after the visit...*"

25. Should following the transparency visit there be any outstanding questions regarding the declaration, the following provision is made:

"46. In cases where inaccuracies, incompleteness or ambiguities are discovered during the visit, the Director-General [shall][may inform the Executive Council which shall] consider [in consultation with the visited State Party,] what, if any, further action is required."

26. **Analysis.** Transparency visits are **non accusatory** and have **no** association whatsoever with any consideration as to whether or not the particular declared facility being visited is in compliance. They will clearly be infrequent, short and carried out by a small team with a mandate primarily to confirm that the declaration for a declared site is consistent with the obligations under the Protocol. In addition, if so requested by the visited State Party, the visiting team will provide technical advice and information or implement technical assistance and cooperation activities. Given that declarations will not include commercial proprietary or national security information, transparency visits carried out solely by full-time staff of the future BTWC Organization will present no risk to either commercial proprietary information or to national security information.

27. The concept that transparency visits might be extended, if so requested by the visited State party, to provide advice and information or implement technical assistance or cooperation activities was shown to be practicable some three years ago in the UK/Brazil practice visit¹² which examined the practicalities of such visits including the role of declarations and explored the opportunities to address Article X cooperation. The visit lasted for 2.5 days and involved a team of four. In respect of the latter aspect, WP. 76, made the general observation that such visits:

"... can create a working environment that may be conducive to international cooperation in various fields, especially those that may have a direct bearing on the visited state's capacity to demonstrate compliance with the BTWC. An NCV can help determine whether the state can ensure adequate control over all relevant facilities in the biological field on its territory or under its jurisdiction or control."

WP. 76 goes on to discuss the relationship between "compliance" and "cooperation" and concludes that:

"As long as there are clear boundaries between on-site activities and formal discussion of cooperative aspects, then there is no reason why NCVs should not address both aspects. Indeed there may be occasions where there is a clear overlap and both cooperative and compliance aspects can complement each other during the course of on-site activities."

Consequently, the concept of transparency visits being extended to address cooperative aspects is both practicable and beneficial.

28. It is thus apparent that the prospect that a declared site will receive a transparency visit, albeit very infrequently, will bring significant benefits to the Protocol:

- a. First, States Parties will be given an incentive to ensure that all declarations for declared facilities are accurate and complete and no State Party would wish to be found by a random visit to have made an inaccurate or incomplete declaration;
- b. Second, States Parties will be able to request, if they so wish, that the visiting team provide technical advice and information or implement technical assistance and cooperation activities;
- c. Third, over time the increased confidence in the accuracy and completeness of declarations will increase transparency and build confidence in compliance;
- d. Fourth, such transparency visits to facilities within States Parties will over time ensure that the future BTWC Organization has a better understanding of the approaches taken by that State Party in regard to activities relevant to the Convention. Consequently, the BTWC Organization will be better able to reach more accurate judgements regarding activities within that State Party than if the Organization had never visited that State; and,
- e. Finally, a would-be violator of the BTWC would be very unlikely to carry out prohibited activities at a declared facility.

Consequently, transparency visits although infrequent and entailing the use of only a small amount of the resources of the BTWC Organization are highly effective in ensuring that declarations are accurate and complete thereby ensuring that their contributions to transparency and building confidence are maximised. Transparency visits will also contribute to enhancing technical assistance, cooperation and exchange thereby bringing direct benefits to the visited State Party. They are thus a highly cost effective means of strengthening the Convention and building confidence in compliance.

Clarification Visits

29. The language in the rolling text in *Article III Compliance Measures D. Declaration II. Follow-up after submission of Declarations* includes the provision that:

[3. In order to ensure that the declarations submitted by States Parties are fully consistent with their obligations set out in this Article, the Technical Secretariat shall:...

[(b) Analyse the declarations and, if it identifies any ambiguity, uncertainty, anomaly or omission, seek clarification from the State Party concerned, as set out in section B below...]

In addition, provision is made for States Parties to seek clarification either directly or by requesting in writing to the Director-General that the matter be clarified:

"4. A State Party which has received a copy of a declaration of another State Party and which identifies in it any ambiguity, uncertainty, anomaly or omission may seek clarification directly from the State Party concerned or through the Technical

[Secretariat][Body] ...[and/or it may initiate the clarification process set out in section B below...by submitting a written request to the Director-General]"

Such clarification procedures can apply to either declared or facilities that should have been declared.

30. In section B, the current rolling text has two alternative sets of language relating to clarification visits. One set is taken from WP.347, which although circulated as UK working paper 34713¹³, represented the result of consultation between the UK, France, Germany, Japan, South Africa and the United States whilst the second is from a Chinese Working Paper (WP. 338)¹⁴. Together these replace all the previous text on clarification visits.

31. In this Briefing Paper, consideration is given first to the WP.347 language (as this is more closely related to the previous rolling text and to the strikethrough text in Annex IV produced after the September/October AHG session) and then to that from WP.338.

32. Declaration Clarification Procedures. Section B commences by setting out procedures for the written exchange of information which states that:

"If any State party...considers that there is any possible ambiguity, uncertainty, anomaly or omission concerning the declaration(s) submitted by a State party or identifies any facility which it believes meets the criteria for declaration...and that facility has not been included in the declaration(s) concerned, it may submit a request in writing to the Director-General to initiate the clarification procedures set out in this section. The request shall include all relevant information on which it is based including, in the case of the possible omission of a facility from a declaration, the reasons why it is believed that the facility may be required to be declared and a delimitation of the location of the facility."

It then goes on to state that upon receipt of such a request, or if as a result of its own examination, the Technical Secretariat:

"considers that there is any ambiguity, uncertainty, anomaly or omission concerning the declaration(s) submitted by a State Party [or identifies any facility which it believes meets the criteria for declaration...and that facility has not been included in the declaration(s) concerned], the Technical [Secretariat][Body] shall in the first instance submit a written request for clarification from the State Party concerned. The request shall include all relevant information on which it is based including, in the case of the possible omission of a facility from a declaration, the reasons why it is believed that the facility may be required to be declared and a delimitation of the location of the facility."

The requested State Party is required to provide the clarification in writing no later than 20 days after receipt of the request.

33. The text goes on to say that if within 14 days of receipt of the written response either the initiating State Party, for reasons which it shall set out in writing to the Technical Secretariat, or the Technical Secretariat itself considers that the written response does not resolve the matter, then the Technical Secretariat shall submit to the requested State Party:

"a written request for a consultative meeting between the staff of the Technical [Secretariat][Body] and representatives, which may include representatives of the facility concerned, of the requested State Party, in order to resolve the matter."

Unless otherwise agreed by the Technical Secretariat and the requested State Party, the consultative meeting shall take place at the offices of the National Authority of the requested State party, beginning no later than 10 days after the receipt of the request for such a meeting, and its duration shall not exceed 48 hours.

34. If either the Technical Secretariat or the initiating State Party consider that the consultative meeting has not resolved the matter:

"the Technical [Secretariat][Body], if the Director-General is satisfied that a visit is justified and that all reasonable steps have been taken to clarify the matter..., or the initiating State Party, may propose that a clarification visit be conducted at the facility concerned..."

The Director-General shall submit to the requested State Party in writing a proposal to conduct a clarification visits to the facility concerned for the sole purpose of resolving the matter, including an explanation of why it is considered that the clarification procedures have not resolved the matter..."

35. The requested State Party shall, no later than [48] hours after receipt of a proposal for a clarification visit, inform the Director-General which of the following responses it wishes to make:

"(a) Invite the Technical [Secretariat][Body] to proceed with a clarification visit as proposed..."

(b) Request the Technical [Secretariat][Body] to submit the proposal to conduct a clarification visit, including all relevant information...to the Executive Council for review...as a matter of procedure at its next regular session. The Director-General shall so inform the Executive Council within [12] hours of receipt of the requested State Party's response; or

(c) Decline the proposal if the requested State Party considers that it has made every reasonable effort to resolve the matter through the procedures provided for in this Article. The requested State Party shall submit a written explanation for its decision to the Director-General. The Director-general shall inform the Executive Council within [12] hours of receipt of the requested State party's response,...The Executive Council shall consider the matter at its next regular session...and decide as a matter of substance on any further action."

36. **Clarification Visits.** The direct relationship between such visits and declarations is reaffirmed in the mandate for clarification visits:

"Mandate

*44. The Director-General shall issue a mandate to the visiting team. The mandate shall be **limited to clarifying the issue related to the declaration** of the*

requested State Party and that was the subject of the consultative meeting..."
[Emphasis added]

37. As with random visits, the number of clarification visits is strictly limited and their impact on any one State Party is also carefully circumscribed unless the State Party has failed to submit its initial declaration:

"Numbers of Visits

35. [In preparing a draft implementation plan of clarification visits, the Technical [Secretariat][Body][In deciding whether to proceed with a clarification visit, the Executive Council] shall ensure that the total number of clarification visits through one fiscal year shall not exceed [20] and that a State Party shall not receive more than two visits through the same fiscal year. [However, the limitation of two visits per one State Party per fiscal year shall not apply to the State Party which has not submitted its initial declaration...]"

The number of visits that a State Party might receive is thus limited to a maximum of two per year unless the State Party has not declared its initial declaration. The requirement in the text is for declarations to be submitted by States Parties "not later than [180] days after this Protocol enters into force for it..." Once a State Party has made its initial declaration then the limitation of two clarification visits a year will apply. In practice, it is clear that most requests for clarification of ambiguities, uncertainties, anomalies and omissions will only occur **after** a State Party has made a declaration. The existence of the limitation provides a useful incentive to States Parties to make their initial declarations and the provision for clarification visits provides a useful safeguard against the possibility that a State Party might fail to submit its initial declarations for an extended period, which if not addressed through clarification visits might result in growing concerns about the lack of transparency regarding activities that should have been declared within that State Party.

38. Furthermore, the visiting team will be limited to full-time staff of the Technical Secretariat and the size of the team will be small:

"47. ...The Director-General shall limit the size of the visiting team to the minimum necessary for the proper fulfilment of the mandate. In any event, the team shall not exceed [5] members."

and the duration of the visit would be limited:

"42. The period of the visit shall not exceed 48 hours...The period of visit may be extended once for a further period of 48 hours by agreement between the visiting team and the representatives of the visited State Party."

39. A particular difference between clarification and transparency visits is that the text sets out in some detail how an implementation plan shall be prepared by the Technical Secretariat for clarification visits and this shall be submitted to the Executive Council for consideration at its quarterly meetings at which it shall be adopted unless the Executive Council "decides against adopting it by [a two-thirds majority][a majority] of its members." As might be expected, reports of clarification visits are to be made to the Executive Council under certain circumstances.

"[Preparation of implementation plan of clarification visits]"

32. *In cases where the matter cannot be resolved within [14] days through the consultations ...which may include the consultations in capitals., the Technical [Secretariat][Body] shall prepare a draft implementation plan of clarification visits listing the facilities of States parties to which the Technical Secretariat considers it necessary to conduct visits in order to ensure accurate declarations....*

33. *In preparing a draft implementation plan of clarification visits, the Technical [Secretariat][Body] shall pay due regard to the following priorities:*

(a) First priority facilities: any facilities of States Parties not having submitted their initial declarations;

(b) Second priority facilities: any undeclared facilities of States Parties having submitted their initial declarations;

(c) Third priority facilities: any declared facilities of States parties.

The draft implementation plan is to be submitted to the Executive Council for examination and consideration at their quarterly sessions. A copy will also go to the State Parties whose facilities are proposed to be visited in the plan as well as to any State Party which may have initiated the request for a clarification visit. After consideration by the Executive Council, the Director-General shall inform all States Parties of the implementation plan of clarification visits after its adoption by the Executive Council.

40. As with randomly-selected visits, precautions to protect sensitive installations and to prevent disclosure of confidential business information and data and national security information not related to the object and purpose of the mandate have been incorporated into the text. These include:

(a) Removal of sensitive papers from office spaces

(b) Shrouding of sensitive displays, stores and equipment;

(c) Shrouding sensitive pieces of equipment, such as computer or electronic systems;

(d) Logging off of computer systems and turning off data indicating devices;

(e) Using random selective access techniques whereby the team is requested to select a given percentage or number of buildings of their choice to investigate, the same principle can apply to the interior and contents of sensitive buildings or documents;....

(h) The visited State Party may at any time during the visit identify products and processes in which it has a proprietary interest....It may request that if a specific piece of information is released to the team, it should be accorded the most stringent protection measures by the Organization."

Again, it is clear that **there will be no sampling** unless offered by the facility :

*"50 Sampling shall not be conducted **unless offered by the visited State Party** [and visited facility personnel] and deemed useful by the visiting team. Any*

mutually-agreed sampling and analysis shall be performed by facility personnel in the presence of the visiting team and representatives of the visited State Party. The visiting team shall not seek to remove the samples from the facility." [Emphasis added].

41. Finally, there are again mechanisms that provide for rapid comment on the visit team's draft report by the visited State Party:

"65. Not later than 14 days after the end of the visit, the visiting team shall prepare a draft report The draft report shall be considered confidential. The draft report shall be submitted to the visited State Party. The visited State Party may submit to the Technical [Secretariat][Body] any written comments on the draft report not later than 14 days after receipt of the draft report. In particular it may identify any information or data which in its view is not related to the clarification concern contained in the mandate or, due to its confidential nature, should not be contained in the final version of the report."

Likewise provision is made for the draft final report to be submitted to the Director-General, the visited State party and, if applicable, the initiating State party, no later than seven days after receipt of such comments. Comments can then be submitted to the Director-General within seven days after receipt of the draft final report.

42. The final report shall be submitted to the Executive Council for its consideration should the Director-General of the initiating State party consider that the matter to be clarified has not been resolved or if the clarification visit resulted from the provisions reproduced in (b) and (c) of paragraph 35 above.

43. **Alternative proposals.** The rolling text also includes language taken from the Chinese WP. 338 for clarification procedures and voluntary visit. This proposes that:

"Any concern related to the declared facility of a State Party shall be first sought to be resolved through the process of consultation, clarification and cooperation as provided for in ... section E of this Article. The State Party to which the concern is related may volunteer for the Technical [Secretariat][Body] to conduct a visit to the facility in question with a view to resolving the concern."

The language requires the invitation to visit the facility to be addressed to the Director-General in "standardized written form, as soon as possible but no later than ... after completion of the prior consultation..." It goes on to say that the Director-General shall issue "a standard mandate which shall be limited to resolving the specific declaration concern. The mandate shall be made available to the representative of the State Party to be visited immediately upon arrival of the visiting team at the point of entry." The size of the visiting team shall be limited to "the minimum necessary but in no case exceeding [4]." The duration is currently unspecified as being "no more than ... working days unless extended by agreement between the visiting team and the State Party to be visited."

44. **Analysis.** These alternative proposals are based upon the procedures in Article III Section E *Consultation, Clarification and Cooperation* which as currently drafted provide for the States Parties to "*consult and cooperate, directly among themselves, or through the Organization...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." It is, however, clear that section E is concerned with both the Convention and the Protocol and consequently a process associated with section E is going to be much more politically charged than a process that is clearly limited, from the outset, to clarification of declarations under the Protocol.

45. As it is widely recognized that the aim of the Protocol is to provide a regime to strengthen the BTWC with a range of graduated responses, there are advantages in a structure in which there is a low key, non-political approach to the clarification of any possible ambiguity, uncertainty, anomaly or omission concerning declarations submitted by a State Party. The appreciation being gained from the OPCW is that several of the declarations received from States Parties do contain errors of various types ranging from typographical and editorial errors up to more significant ones arising from the State Party interpreting the declaration requirement in a different way from the Technical Secretariat.¹⁵ Most of these errors are resolved through correspondence with the State Party although it is believed that a few have been resolved through a visit. Consequently, the alternative proposals based on section E together with a voluntary visit do not meet the objective of a procedure which enables ambiguities and uncertainties to be resolved in a non-political way. However, the proposals for declaration clarification procedures do meet this objective and are the subject of further analysis below.

46. Declaration clarification procedures, whether in regard to declared facilities or to facilities that should have been declared, are clearly focussed on ensuring that declarations are free from ambiguities, uncertainties, anomalies or omissions with the aim of promoting accuracy and comprehensiveness in future declarations. There is no association whatsoever with consideration as to whether or not the facility is in compliance with the Convention.

47. The examination by the future BTWC Technical Secretariat of the declarations received from States Parties can be expected to result in the identification of apparent discrepancies between different elements in the declaration because of the ease with which internal inconsistencies can enter any compilation of documents. Furthermore, the future BTWC Technical Secretariat to be professionally credible must stay abreast of advances in relevant science and maintain its awareness of the developments around the world in the fields of microbiology and virology. Consequently, in maintaining its professional competence, it would read relevant technical journals such as *Nature Biotechnology* and academic and other surveys of relevant subjects in particular countries and regions so as to be aware of activities in most if not all the States Parties. Increasing amounts of information are becoming available on the internet about activities and facilities in many countries. From such an awareness, the Technical Secretariat -- or other States Parties -- may become aware of facilities that appear to meet the criteria for declaration and will wish to clarify the situation.

48. It should be recalled that the architecture of the declaration requirements is designed to ensure that the **most** relevant facilities are declared and **not** all possible facilities. A number of surveys of national microbiological activities have been reported to the AHG. The results for Canada¹⁶, the Netherlands¹⁷, United Kingdom¹⁸, Italy¹⁹ and the five Nordic Countries²⁰ can be summarised as follows:

| Trigger used | Canada | Netherlands | UK | Italy | Nordic |
|-------------------------|-----------|---------------------------------|-----------|-----------------|---------|
| Military biodefence | Yes | Yes | - | Yes | Yes |
| Biocontainment | + other | BL 4 | + other | BL 4 | + other |
| Listed agents | Not alone | Not alone | Not alone | + other | Yes |
| Genetic modification | Not alone | Not alone | Not alone | Not alone | Yes |
| Production microbiology | Yes | + listed agents + biocontain | Not alone | + listed agents | + other |
| Aerobiology | + other | + listed agents + biocontain | - | + listed agents | + other |

Most of the surveys give an indication of the number of facilities which would need to be declared if certain triggers, or combinations of triggers, were to be used to capture those facilities of most relevance to the Convention. In these surveys, the triggers or combinations used generally included military biodefence and BL 4 containment as stand alone triggers and production microbiology in combination with work on listed agents as one of several combined triggers. The numbers to be declared if triggers such as these were to be used can be summarised as:

| | Canada | Netherlands | UK | Italy | Nordic |
|-------------------------------------|----------|-------------|----|-------|--------|
| Number of facilities to be declared | 30 to 50 | [Tens] | - | 40 | 50 |

The broad conclusion that emerges is that the number of facilities in each country that would need to be declared under triggers chosen to capture those facilities of most relevance to the Convention would be relatively limited with numbers of the order of 10s in each country. More recently, the Austrian/UK contribution²¹ to the EU seminar for the pharmaceutical industry on 13 May 1998 said that *"the number of facilities in individual EU countries that would need to be declared can probably be measured in tens rather than hundreds."* It is clear that numbers in the 10s are being considered for most European countries.

49. It is evident that whatever criteria are finally selected as triggers for declarations under the future BTWC Protocol, there will always be facilities that fall on the borderline between meeting the criteria for declaration and just falling outside these criteria. Such "facilities that should have been declared" are likely to result from mistakes and inadvertent omissions. There needs to be a non-political non-accusatory procedure for clarifying such issues.

50. The declaration clarification procedure would start with an exchange of correspondence that may resolve the matter. If not the next stage would be a consultative meeting in the offices of the National Authorities which may again resolve the matter. Only if these earlier stages fail to resolve the matter, will a clarification visit be proposed. States Parties can, if they believe that they have taken all reasonable steps to resolve the matter, refuse such a clarification visit although such a refusal will be reported to the Executive Council to decide on any further action. In addition, all clarification visits will be carried out under an implementation plan which will have been adopted by the Executive Council and the results of the clarification visit in due course will be reported to the Executive Council.

51. The priority in that implementation plan will focus first on facilities within States Parties that have failed to make their initial declarations, then on facilities that should have been declared within other States Parties and finally on declared facilities of States Parties. This rightly put the onus on States Parties to make their initial declarations, and then to ensure that all facilities which should be declared are indeed declared. Because of the nature and focus of clarification visits on accurate declaration, it can be expected that the number of clarification visits will reduce over time as States Parties gain experience in compiling their national declarations.

52. Clarification visits are thus concerned with implementation of the Protocol through promoting accurate and complete declarations. They are **not** addressing concerns about compliance with the Convention. They bring significant benefits to the Protocol:

a. First, States Parties will be given an incentive to ensure that their initial declarations are made in a timely way, that their declarations are accurate and complete and that all facilities which should be declared are indeed declared;

b. Second, over time declaration clarification procedures, including clarification visits, will give States Parties an increased confidence in the accuracy and completeness of declarations as ambiguities, uncertainties, anomalies or omissions in declarations will have been successfully addressed thereby increasing transparency and building confidence in compliance; and,

c. Finally, a would-be violator of the BTWC would be very unlikely to carry out prohibited activities at either a declared facility or at one which should have been declared as that facility might be the subject of a clarification visit initiated either by the Technical Secretariat or at the request of another State Party.

Consequently, clarification visits, although likely to decrease in number over time, entailing the use of only a small amount of the resources of the BTWC Organization are highly effective in ensuring that States Parties make their initial declarations and that declarations are indeed accurate and complete thereby increasing the contribution made by declarations to transparency and building confidence in compliance. They consequently complement randomly-selected visits and are a highly cost effective means of strengthening the Convention and building confidence in compliance.

Voluntary Visits

53. The current rolling text in Article III Visits currently contains text for Voluntary Visits and for Voluntary Confidence-Building Visits which has not been recently discussed together with newer text taken from the January 1999 South African WP. 336 for Voluntary Visits. Each of these is considered in turn.

54. The text in (C) *[Voluntary Visits]* provides for each State Party to "*[request][volunteer for][invite] the Organization to undertake visits to facilities on its territory... in order to fulfil one or more of the following objectives:*

[(a) To help compile individual facility and national declarations [and/or to clarify a specific ambiguity that may be contained in it;]

[(b) To further the cooperation and assistance provisions of this Protocol;]

[(c) To resolve a specific concern related to declarations, including any ambiguity;]

[(d) To resolve a specific concern, as provided for in ... section E of this Article on consultation, clarification and cooperation.]

The language, with many square brackets, goes on to require the Director-General to decide on the implementation of such visits in accordance with criteria and guidelines approved by the Executive Council and taking account of the availability of resources within the Technical Secretariat and the nature and purpose of the visit.

55. *[(D) Voluntary Confidence-Building Visits* is less developed stating simply that *"For the purpose of confidence-building, the number, intensity, duration, timing and mode of voluntary visits to particular facilities shall be arranged and agreed between States Parties..."* As such visits do not involve the Organization, they are clearly bilateral between the State Parties concerned and their contribution to building confidence in compliance is clearly limited.

56. The more recent language from WP.336 is for [Voluntary Visits]. This sets out that *"Each State Party may invite the Technical [Secretariat][Body] to undertake a visit(s) to a facility(ies) on its territory.... In its invitation, the inviting State Party shall indicate the purpose of the visit."* It goes on to state that *"the purposes of voluntary visits may include, inter alia:*

(a) To promote confidence;

(b) To obtain assistance from the Technical [Secretariat][Body] in the implementation of the Protocol, such as fulfilment of declaration obligations, and to obtain assistance in specific areas such as biosafety standards and good laboratory and manufacturing practices, and to further the cooperation and assistance provisions of this Protocol:

(c) To, in the context of the consultation, clarification and cooperation provisions of this Protocol, help clarify a specific ambiguity that may be contained in a declaration, or resolve a particular concern."

57. The Director-General shall, *"in consultation with the Executive Council, consider the invitation, taking into account, inter alia, the resource implications and the nature and purpose of the visit, the detailed arrangements that have been agreed to, for the visits, and whether the objectives of the visit can be fulfilled through these arrangements."* In addition, the language states that *"The costs of the visit shall be shared by the inviting State Party and the Technical [Secretariat][Body]."* Finally, the report of the visit *"prepared jointly by the visiting team in cooperation with the visited State party,"* shall be submitted to the Director-General who *"shall submit the report to the Executive Council for consideration."*

58. **Analysis.** Comparison of the alternative language in the current rolling text for voluntary visits shows that the purposes are broadly similar. For this analysis, it is useful to identify and consider the following discrete purposes for voluntary visits

(a) to provide assistance in compiling individual facility and national declarations

- (b) to resolve any ambiguities related to declarations
- (c) to further the cooperation and assistance provisions of the Protocol
- (d) to resolve a particular concern

recognizing that the current rolling text language frequently combines some of these elements.

59. *Assistance in compiling declarations.* Voluntary visits made by the Organization to provide such assistance would help States Parties meet their obligations to provide declarations under the Protocol. It is evident from the OPCW experience²² that a particular concern has been the tardiness with which States Parties have submitted their initial declarations. One month after entry into force -- when the initial declarations were due -- only 33 States Parties out of 87 had submitted their initial declarations. By March 1999, the OPCW had received initial declarations from 91 States Parties (75%) yet 30 States Parties had yet to provide their initial declaration and so comply with their most basic obligation under the CWC. The requesting of a visit to assist in compiling declarations would add to the building of trust and confidence as it would demonstrate that the State Party concerned took its obligations seriously by asking the Organization for assistance in making its declarations. As such visits will **directly** contribute to the building of confidence in compliance with the Protocol and with the Convention, it is suggested that the costs of such assistance visits should not be borne solely by the State Party but might be shared with or borne by the Organization. After all, the OPCW budget provides support²³ for National Authorities and national implementation including on-site assistance to National Authorities by experts dispatched by the Secretariat. Nevertheless, over time as the accession to the Protocol approaches universality, the number of requests to the BTWC Organization for such voluntary visits would decrease as States Parties gained experience in compiling their national declarations.

60. *Resolution of ambiguities relating to declarations.* Voluntary visits at the invitation of a State Party have a far less clear role in regard to resolving specific concerns related to declarations. It would be unrealistic to expect a State Party to invite a visit to a specific facility unless the State Party was confident that its declaration was indeed consistent with its obligations under the Protocol. Consequently, such voluntary visits will have only a very limited role to play in building transparency and confidence in compliance in that it would clearly be open to States Parties at any stage in the declaration clarification procedure to invite the Technical Secretariat to visit the facility in question to resolve the ambiguity, anomaly, uncertainty or omission. Such an invitation to visit will also contribute to building trust and confidence as it would indicate that the State Party would welcome the assistance of the organization in resolving the ambiguity. The detailed arrangements for such a voluntary visit should parallel those proposed for visits in the declaration clarification procedures.

61. However, it would not be a credible approach to expect the Organization to be able to request visits to address ambiguities in declarations using a voluntary, case by case, approach as it would not contribute to the building of trust and confidence. Likewise any suggestions that voluntary visits should take place on a bilateral basis, outside the auspices of a future BTWC Organization, are retrograde steps as such a bilateral process would add nothing to building confidence between all States Parties to the Protocol that accurate and complete declarations are being submitted.

62. A regime based on declarations and voluntary visits alone would be ineffective on several grounds:

- Not all States Parties would volunteer such visits
- Those that did offer such visits would limit them to those facilities that had declarations that the State Party was certain were consistent with the Protocol.

The scope of such voluntary visits would be limited to specific facilities within a few States Parties. There would be no incentive to States Parties in general to ensure that all declarations were accurate and complete as States Parties would know that none of their facilities would be visited unless they volunteered a visits. The net effect of such a regime would be that over time States Parties would decide what they would include in declarations and the situation would approach that which pertains at present in regard to declarations under the Confidence Building Measures (CBMs) in which individual States decide how much or how little information to submit resulting in the very variable and patchy CBM responses. Consequently, the CBMs add little if anything to building confidence and transparency as those States which provide comprehensive information under the CBMs tend to provide information in the public domain anyway about those facilities. Thus a regime based on declarations and voluntary visits alone could well create a false sense of security and would clearly fail to build transparency, trust and confidence.

63. As declarations are basically the fundamental obligation under the Protocol which contributes directly towards building confidence in compliance, there needs to be an integrated clarification mechanism, incorporating consultation and visits, through which ambiguities can be resolved rapidly in a non-political way.

64. *Cooperation and assistance provisions of the Protocol.* Voluntary visits could well contribute to the implementation of the cooperation and assistance provisions of the Protocol. However, the contributions of such visits to the building of trust and confidence would be limited and indirect as States Parties would invite such visits only to those facilities at which cooperation and assistance was required. Furthermore, the detailed arrangements for visits **solely** to implement the cooperation and assistance provisions of the Protocol would be structured accordingly and would not address the accuracy of declarations for the facility.

65. *Resolution of particular concerns.* The language in the current rolling text is ambiguous as to the type of concerns to be resolved through such a voluntary visit. These concerns might be about compliance with the Protocol or with the Convention. Although it will always be an option for a State Party to invite the Organization to make a visit to resolve a particular concern, the contribution of such voluntary visits will be extremely limited as they cannot replace the visits element in a regime in which there are declarations, visits to check on the accuracy of declarations and in a low key way to resolve ambiguities in declarations together with provisions for consultation, clarification and cooperation in regard to concerns regarding compliance with the Convention which may result in the mounting of an investigation.

66. Suggestions have been made by some that there might be a role for voluntary visits to facilities to which imports of dual-use materials or equipment have been made. Clearly such facilities might either be declared facilities under the Protocol or other facilities that do not have to be declared. Voluntary visits to such facilities could contribute to building confidence that dual-use materials and equipment are not being misused. However,

consideration would need to be given to how such confidence could be maintained over time as a single one-off visit could result in a false sense of confidence.

67. **Voluntary visits -- Conclusions.** It is concluded that there is a clear role for voluntary visits to assist States Parties in compiling their declarations. As such visits directly contribute to the implementation of the Protocol regime it is considered that the costs of such visits should be borne by the Organization. Voluntary visits can also assist in implementing the assistance and cooperation provisions of the Protocol; as their contribution to the Protocol regime is less direct, the costs might be shared between the Organization and the State Party. Visits at the invitation of States during the declaration clarification procedure would effectively short-cut the normal procedure and thus contribute directly to improving the efficiency of the Organization; the costs of such visits should be borne by the Organization. Visits at the invitation of States for other purposes, such as building confidence in regard to dual-use materials and equipment, should be borne by the State Party.

A Visits Portfolio

68. There are clear arguments for a portfolio of different types of visits which are **all** non-confrontational and are concerned with achieving the efficient and effective implementation of the Protocol. It is very clear that a regime comprising **only** of declarations and investigations will be ineffective and will not meet the objective of establishing a regime which over time builds confidence and trust between States Parties to the BTWC that they are in compliance with that Convention. In such a limited regime, declarations would fall into disrepute as errors would not be corrected and there would be no incentive to States parties to ensure that their declarations were both complete and accurate.

69. As declarations are the fundamental baseline element of the regime to strengthen compliance with the Convention, it is vital that the regime contains measures that will efficiently **and** effectively ensure that declarations are both complete and accurate. Visits will provide such a measure in a highly efficient way. Various assessments²⁴ ²⁵ of the likely size of the future BTWC Organization have concluded that the strength would be around 200 with an annual budget of some \$30 M less than half the size and budget of the OPCW. These assessments show that the number of inspectors would be in the range of 50 to 70 and would be able to carry out about 100 visits a year, based on visiting teams of about four spending two days on-site for each visit.

70. It is thus realistic to consider a portfolio of about 100 visits and to examine what mix of visits might be expected in such a portfolio. There are basically three types of visits:

- a. Transparency visits/Randomly-selected visits
- b. Declaration clarification visits
- c. Voluntary visits -- which fall into several categories:
 - (i) assistance in compiling individual facility and national declarations
 - (ii) resolve any ambiguities related to declarations
 - (iii) further the cooperation and assistance provisions of the Protocol

- (iv) to resolve a particular concern

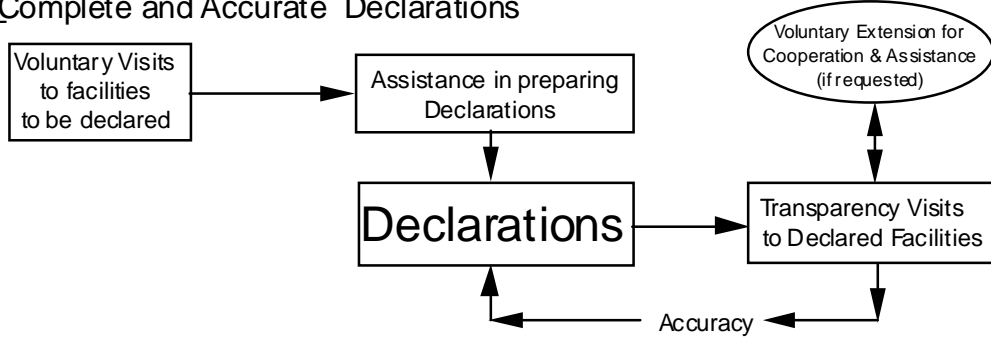
71. The frequency of some visits will vary with time after entry into force of the Protocol as States Parties gain experience in compiling declarations and in achieving accurate and complete declarations. Thus the number of voluntary visits to provide assistance in compiling facility and national declarations will decrease and, over time, approach zero. Likewise, the number of declaration clarification visits will also decrease, as the ambiguities, omissions and uncertainties in declarations will decrease, and, over time, approach zero. The number of voluntary visits to resolve any ambiguities related to declarations will also decrease and, over time, approach zero.

72. There are two categories of visits which can be expected to increase over time. First, the number of transparency visits should increase, as the numbers of declaration clarification and declaration assistance visits decrease, up to the limit that the future BTWC Organization is capable of carrying out in each year. Secondly, the voluntary visits to further the cooperation and assistance provisions of the Protocol can also be expected to increase as the number of States Parties to the Protocol increases. The concept in the draft Protocol that transparency visits might, at the request of the visited State Party, be extended to address cooperation and assistance provisions is an effective and efficient way of enhancing the benefits to States Parties. This is demonstrated by the experience that has been gained by the OPCW that substantial savings can be achieved by the carrying out of sequential inspections²⁶.

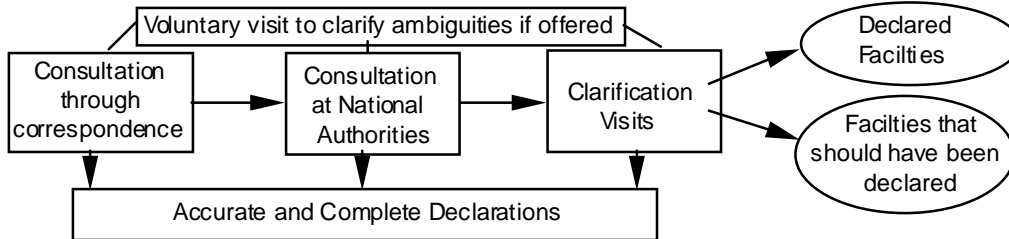
73. The various types of visits -- transparency, declaration clarification, voluntary declaration assistance, voluntary declaration clarification and voluntary cooperation and assistance visits -- together contribute to an effective **and** efficient regime.

DECLARATIONS & VISITS

Complete and Accurate Declarations



Declaration Clarification Procedures



74. The portfolio of visits totalling some 100 visits a year would comprise primarily transparency visits and cooperation and assistance visits. The balance of the portfolio would be made up of declaration clarification visits along with voluntary visits for declaration assistance and for resolving declaration ambiguities. The numbers of these would be expected to decrease over time. An earlier assessment²⁷²⁸ of the frequency of visits, which assumed that biological defence and past biological weapons facilities still in government ownership would be visited every couple of years, concluded that the frequency of visits would be as follows* :

| Facilities | Number of facilities | Frequency of visits | Visits per year |
|----------------------------------|----------------------|-----------------------|-----------------|
| Biological defence | 40 | 0.5/year | 20 |
| Past BW facilities | 20 | 0.5/year | 10 |
| Transparency visits | 2500 | < 2/year per State | 20 --> 70 |
| Declaration clarification visits | 2500 | as necessary | 20 --> 0 |
| Declaration assistance visits | 160 | as requested by State | 30 --> 0 |

If the biological defence and past BW facilities visits are not separated out but simply included under the transparency visits, the numbers would become:

| Facilities | Number of facilities | Frequency of visits | Visits per year |
|----------------------------------|-----------------------------|----------------------------|------------------------|
| Transparency visits | 2500 | < 2/year per State | 50 --> 100 |
| Declaration clarification visits | 2500 | as necessary | 20 --> 0 |
| Declaration assistance visits | 160 | as requested by State | 30 --> 0 |

75. Such a portfolio and frequency of visits would be effective **and** efficient in ensuring that declarations -- the central foundation of the strengthened regime -- are both complete and accurate. Without such visits, there would be no basis for States Parties having confidence that declarations are either complete or accurate and, indeed, there would be a real danger that over time States Parties would become lax in the attention paid to making their annual declarations thereby defeating the objective of the Protocol of building increased confidence in compliance with the Convention.

CONCLUSIONS

76. It is clear that visits are **only** associated with ensuring that the obligations of the **Protocol** are met and are **not** associated with concerns about compliance with Article I of the BTWC, **nor** with Consultation, Cooperation and Clarification, **nor** with Investigations.

77. States Parties rightly envisage multiple objectives for visits and hence the requirement is to craft a portfolio of visits that meets all requirements as efficiently and effectively as possible:

- ensure complete and accurate declarations
- provide assistance in preparing national declarations
- provide cooperation assistance in biosafety, GMP, etc
- facilitate trade by building confidence to remove restraints

78. Useful lessons can be learnt from the experience of the OPCW which has shown that sequential visits within a State Party or within a region to keeping costs down. The possibility of a transparency -- randomly selected -- visit, although very infrequent, provides a **strong** incentive to ensure that declarations are both complete and accurate.

79. It needs to be recalled that the aim is to declare the **most** relevant facilities **not** all **possible** facilities. In developed European countries, the number per country is likely to be of the order of no more than 30 or 40. This objective of only declaring the most relevant facilities will aid accuracy as it reduces the numbers to be declared. Nevertheless, there are always going to be facilities on the fringe -- should they be declared or not -- hence "facilities that should have been declared" as well as mistakes and accidental omissions. Such fringe facilities will be identified by the Technical Secretariat or another State Party in a number of ways:

- Information age -- web sites
 - increasing information about everything
- Academic and other surveys of specific subjects
 - of particular countries or regions
- National, regional and international conferences

The Technical Secretariat has to be professionally credible to be effective and hence must stay abreast of advances in relevant science -- hence study literature such as *Nature Biotechnology* as well as attend relevant professional conferences.

80. There is a need for a portfolio of visits comprising basically three types:

- a. Transparency (randomly-selected) visits
- b. Declaration clarification visits
- c. Voluntary visits -- which fall into several categories:
 - (i) assistance in compiling individual facility and national declarations
 - (ii) resolve any ambiguities related to declarations
 - (iii) further the cooperation and assistance provisions of the Protocol
 - (iv) to resolve a particular concern

The requirement for most of these apart from transparency visits can be expected to decrease over time. The Protocol needs to accommodate a flexible portfolio which should realistically accommodate about 100 visits a year based on probable size of BTWCO.

11Graham 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>

22United 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/44, 29 January 1999, Geneva.

33United Nations, "Working Paper submitted by the United Kingdom of Great Britain and Northern Ireland", BWC/AD HOC GROUP/WP.347, 19 January 1999, Geneva.

44United Nations, "Working Paper submitted by China, Clarification Procedures and Voluntary Visits", BWC/AD HOC GROUP/WP. 338, 7 January 1999, Geneva.

55The September/October rolling text (BWC/AD HOC GROUP/43, 15 October 1998) had "Visits and Investigations" together as a final Section F of *Article III Compliance Measures*.

66United 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/43, 15 October 1998, Geneva.

77United Nations, "Working Paper submitted by South Africa, Visits", BWC/AD HOC GROUP/WP. 336, 5 January 1999, Geneva.

88United Nations, "Working Paper submitted by the Islamic Republic of Iran, Report on a National Trial Visits to a Vaccine and Serum Production Facility", BWC/AD HOC GROUP/WP. 345, 14 January 1999, Geneva.

99United Nations, "Working Paper submitted by Brazil, Chile, New Zealand and Norway, Proposed Language for the Section on Randomly-Selected Visits and Annex B", BWC/AD HOC GROUP/WP. 346, 5 January 1999, Geneva.

1010United 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/44, 29 January 1999, Geneva.

1111Graham 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>

1212United Nations, "Working Paper submitted by Brazil and the United Kingdom of Great Britain and Northern Ireland, Report of a Joint UK/Brazil Practice Non-Challenge Visits", BWC/AD HOC GROUP/WP. 76, 18 July 1996, Geneva.

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- 1414 United Nations, "*Working Paper submitted by China, Clarification Procedures and Voluntary Visits*", BWC/AD HOC GROUP/WP. 338, 7 January 1999, Geneva.
- 1515 Organization for the Prohibition of Chemical Weapons, *Report of the Organisation on the Implementation of the Convention (29 April - 31 December 1997)*, Conference of the States Parties, C-III/3, 20 November 1998. See, for example, the section on 'Declarations under Article VI' paras 5.23 to 5.33 which indicates lack of consistency in data in one area and incomplete declarations in another for discrepancies identified in the declared information.
- 1616 Canada, *Discussion Paper on Declarations: List of Agents and Combinations of Criteria*, BWC/AD HOC GROUP/WP. 6, 28 November 1995.
- 1717 The Netherlands, *The Relevance and Effectiveness of (Combinations of) Criteria for Declaration*, BWC/AD HOC GROUP/WP.10, 28 November 1995.
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- 1919 Italy, *National Survey in the Microbiological Activities*, BWC/AD HOC GROUP/WP. 146, 18 March 1997.
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- 2828 Graham S. Pearson, *The Protocol to Strengthen the BTWC: An Integrated Regime*, Politics and Life Sciences, September 1998, 189-201.
- *The terminology previously used has been updated for clarity.