

# Formal Consultative Meeting 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

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## 2022 Meeting

Geneva, 26 August and 5-9 September 2022

Item 6 of the agenda

**Respective outstanding questions by the Russian Federation to the United States and to Ukraine concerning the fulfilment of their respective obligations under the Convention in the context of the operation of biological laboratories in Ukraine**

## **Remarks by H.E. Ambassador Li Song and Questions to the United States at the Formal Consultative Meeting of the Biological Weapons Convention**

### **Submitted by China**

Mr. Chair,

1. The Chinese delegation congratulates you on your assumption of the Chairpersonship of the Formal Consultative Meeting, and expresses our appreciation to you for proceeding the meeting in an orderly manner. We fully support your work and are prepared to work together with all the other delegations to address relevant compliance concerns through this meeting.

Mr. Chair,

2. Biosecurity knows no borders. The Global Security Initiative, proposed by President Xi Jinping of China, underscored the need to work together to maintain peace and stability in the world, and to jointly respond to global challenges such as biosecurity. China looks forward to working with all parties to further strengthen the authority and effectiveness of the Biological Weapons Convention (BWC) through this meeting.

3. China has always advocated for the complete prohibition and thorough destruction of all weapons of mass destruction. We are deeply concerned by the questions raised by the Russian Federation regarding the activities of the United States in violation of the BWC. In fact, the international community has long been concerned about the military biological activities of the US. In this regard, China supports the States Parties to conduct deliberation of the concerns in a serious manner in accordance with Articles V and VI of the Convention as well as the Final Declarations of the Second and Third Review Conferences, so as to reach conclusions that can stand the test of history, and take necessary follow-up actions.

Mr. Chair,

4. This meeting has been highly valued and widely participated by the States Parties to the BWC, which reflects their determination to collectively address the challenges of biosecurity and biosafety under the current complex international situation, their willingness to respect and utilize the existing mechanisms of the BWC, their commitment to clarify and address major compliance concerns, and their common desire to ensure the effective functioning of the Convention.

5. In the course of the meeting, the Chinese delegation has listened tentatively to the presentations made by the Russian delegation, as well as the response by the US and Ukraine



regarding their cooperation of biological laboratories in the territory of Ukraine. The presentations and interactions of the three delegations are conducive for all parties to enhance their understanding of relevant issues from different perspectives. However, like some other delegations, my delegation believes that a series of specific questions raised by Russia have not yet received pointed response from the US. As a State Party and depositary of the Convention, the US should face up to international concerns, set an example of compliance, and make more comprehensive and in-depth clarifications to the series of questions and materials presented by Russia, so as to give the BWC States Parties and the international community a clear answer.

6. The course of the meeting indicates that, despite the presentations and clarifications between the parties directly involved, it is obviously difficult for the States Parties to reach a definitive conclusion. The relevant questions put forward by Russia, as well as the extensive explanatory materials provided by the US and Ukraine deserve serious study by capitals of the States Parties. We therefore look forward to continued consultations on the related specific issues, and encourage other States Parties to submit further written comments or questions to facilitate further clarification. On the basis of the development of the meeting in the past two days, the Chinese delegation has also put together a list of questions, which will be submitted as a working document of this meeting together with my remarks.

7. As for follow-ups to this meeting, we believe that States Parties could consider, based on the consultations and clarifications, conducting technical assessments through expert groups, and consider, if necessary, the possibility of an international independent investigation into the military biological activities of the US. It is worth to note that all the above-mentioned measures lead to a sole purpose, that is to comprehensively clarify all concerns, to ensure full and strict implementation of the BWC, and to uphold the authority and effectiveness of the Convention.

8. During the meeting, many delegations highlighted the importance of strengthening international cooperation in biological areas in accordance with Article X of the BWC. China supports all these propositions. Meanwhile, I would like to point out that the implementation of the obligations under the BWC, the prohibition of biological weapons on the one hand and the promotion of international cooperation on the other, are mutually reinforcing and not in contradiction with each other. Any undue restriction to international cooperation in the fields of peaceful use under the pretext of non-proliferation should be opposed, while activities prohibited by the BWC under the guise of biosecurity cooperation need to be prevented.

Mr. Chair,

9. The convening of the meeting in itself further testified the importance and urgency of strengthening the BWC mechanism. In this regard, the Chinese delegation would like to make two propositions:

10. First, the Confidence-Building Measures mechanism need to be strengthened. Voluntary transparency is of great significance for enhancing mutual trust and addressing concerns. China continues to advocate adding the item “military biological activities conducted by a State Party on the territory of other States” in the CBM form. We have noticed that the US has made some clarifications on its military biological activities in various occasions, but they have not completely addressed the concerns of the international community. In addition, many inconsistencies have emerged during its clarification process, which fully demonstrates the necessity of adding the above-mentioned item and realizing continued announcements. It is our hope that the US, as the country with the largest number of military biological activities, will support the proposal and take the lead to make the voluntary announcement.

11. Second, the verification mechanism of the BWC should be negotiated and established in an early manner. The meeting clearly indicates that major root cause of the current situation is the lack of mutual trust among the parties concerned and ultimately the lack of a verification mechanism for the BWC. We once again call upon all States Parties to work towards the same direction to facilitate the Ninth Review Conference to establish an Ad Hoc Group, so as to recommence negotiations on a legally binding verification protocol based on the 2001 draft that was close to consensus. In this regard, we urge, once again, the US to

desist from being the only country blocking the process and actively support and participate in the above- mentioned negotiation.

Thank you, Mr. Chair.

## Annex

### Questions to the United States Concerning its Military Biological Activities

Based on documents<sup>1</sup> submitted by the Russian Federation and the initial response made by the United States, China would like to raise the following questions to the U.S. regarding its compliance with the obligations under the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (BWC):

Document 1 shows that, the United States Department of Defense (U.S. DoD) and the Ukrainian Ministry of Health (Ukrainian MoH) signed the Agreement Concerning Cooperation in the Area of Prevention of Proliferation of Technology, Pathogens, and Expertise that could be Used in the Development of Biological Weapons in August 2005 (hereinafter referred to as the “2005 Agreement”).

Article IV, Paragraph 4 of the 2005 Agreement specifies that the Ukrainian MoH shall consolidate and store all dangerous pathogens at designated laboratories with cooperation ties with the U.S. DoD.<sup>2</sup> Paragraph 5 of the same article prescribes that the Ukrainian MoH shall transfer to the U.S. DoD requested copies of dangerous pathogen strains as well as the data generated by the infectious disease surveillance network.<sup>3</sup> The Ministry of Defence of the Russian Federation (Russian MoD) revealed that over 16,000 biological samples were taken from Ukraine.<sup>4</sup> As clarified by the U.S., sample transfers between the U.S. and Ukraine have been infrequent, and such exchanges of pathogen samples and data are considered essential for international cooperation.<sup>5</sup>

Q: How many pathogens and data have been obtained and transferred from Ukraine by the U.S.? Which facilities, including those belonging to the military, were the pathogens and data stored within the U.S.? And what are the purposes or uses for the storage of such pathogens and data?

Article V, Paragraph 1 of the 2005 Agreement specifies that the U.S. DoD has the right to audit and examine material, training of personnel, and services provided to facilities in Ukraine.<sup>6</sup> Paragraph 2 of the same article prescribes that the U.S. DoD representatives also

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<sup>1</sup> For convenience, the documents will be referred to as “*document 1-9*” respectively in the following paragraphs.

<sup>2</sup> “The Ministry of Health of Ukraine or its designated agent shall consolidate and store all dangerous pathogens at secure centralized laboratories designated in writing by the Parties that have received or are receiving the U.S. Department of Defense assistance under this Agreement.” Article IV, Paragraph 4, *2005 Agreement*.

<sup>3</sup> “The Ministry of Health of Ukraine shall transfer to the U.S. Department of Defense requested copies of dangerous pathogen strains collected in Ukraine for cooperative biological research in the centralized laboratories in Ukraine and in U.S. Department of Defense-designated laboratories in the United States for prophylactic, protective or other peaceful purposes...The Ministry of Health of Ukraine shall share with the U.S. Department of Defense data generated by the infectious disease surveillance network of the Ministry of Health of Ukraine or its designated agents in order for the Parties to better detect, diagnose and monitor disease outbreaks in Ukraine.” Article IV, Paragraph 5, *2005 Agreement*.

<sup>4</sup> “The U.S. and its allies have managed to export at least 16,000 bio-samples from Ukraine...” Briefing of the Chief of Nuclear, Biological, Chemical and Radiological Defence Troops of the Russian Federation Lieutenant General Igor Kirillov, September 3, 2022.

<sup>5</sup> “Sample transfers under the 2005 Agreement...have been infrequent and always conducted with the consent of the Ukrainian government...Such exchanges of pathogen samples and data are considered essential for international cooperation...” *Response by the United States of America to the request by the Russian Federation for a Consultative Meeting under Article V of the BWC*, August 22, 2022, pp 5-6.

<sup>6</sup> “The U.S. Department of Defense has the right to audit and examine material, training of personnel, and services provided in accordance with this Agreement to facilities in Ukraine for the duration of the Umbrella Agreement.” Article V, Paragraph 1, *2005 Agreement*.

have the right to participate in all aspects of implementation and related activities at facilities in Ukraine.<sup>7</sup>

Q: What measures has the U.S. taken to ensure the peaceful nature of its biological activities in Ukraine? How exactly did the U.S. “audit and examine” activities and what were the results and conclusions of such activities? If the U.S. is capable of ensuring its compliance with the BWC obligations through “audits and examination”, why does the U.S. still insist on opposing negotiation of a verification protocol under the BWC and refuse to accept international verification? How can the U.S. prove its compliance with the BWC in the absence of a verification mechanism?

Article 7, Paragraph 2B of the 2005 Agreement specifies that information marked or designated by the U.S. DoD as “sensitive” should be withheld from public disclosure by the Government of Ukraine.<sup>8</sup> Paragraph 4 of the same article prescribes that access to certain information and technology considered “state secret of Ukraine” may be provided to the U.S. DoD.<sup>9</sup>

Q: What are the criteria for the U.S. government in determining “sensitive information”? How much of such “sensitive information” has been withheld from disclosure to the public till now? Are those “sensitive information” and related activities consistent with the BWC? In what way can the U.S. prove itself in compliance with the BWC?

According to document 2 (Plan to Provide Technical Assistance to Certain Recipients of the Ministry of Defense of Ukraine (Contract HDTRA1-08-D-0007-0004)), in order to further implement the 2005 Agreement, the U.S. Defense Threat Reduction Agency has directly financed several biological facilities in Ukraine under the “Cooperative Biological Engagement Program”(CBEP) with a private contractor Black & Veatch Special Projects Corp. responsible for its implementation.<sup>10</sup> According to another report issued by the working group of the Ukrainian MoH in December 2018 (document 3),<sup>11</sup> the Ukrainian I. Mechnikov Anti-Plague Scientific and Research Institute of the Ministry of Health of Ukraine (involved in the CBEP) was inspected and found to possess a significant collection of dangerous pathogens (such as anthrax).<sup>12</sup> The Institute had a laboratory accident (employee infection) in April 2017,<sup>13</sup> and was found to have a number of issues regarding laboratory biosafety, such as violation of recommended conditions for the storage of virus collection,<sup>14</sup> lack of

<sup>7</sup> “The U.S. Department of Defense representatives shall also have the right to participate in all aspects of implementation of contracts and related activities at facilities in Ukraine pursuant to the terms of this Agreement.” Article V, Paragraph 2, *2005 Agreement*.

<sup>8</sup> “Information marked or designated by the U.S. Department of Defense as ‘sensitive’ should be withheld from public disclosure by the Government of Ukraine.” Article 7, Paragraph 2B, *2005 Agreement*.

<sup>9</sup> “During implementation of this Agreement, access to certain information and technology considered ‘state secret of Ukraine’ may be provided to the U.S. Department of Defense in accordance with the provisions of the ‘Law of Ukraine on State Secret’.” Article 7, Paragraph 4, *2005 Agreement*.

<sup>10</sup> “...in order to further implement the provisions of the implementing Agreement (of 2005), the U.S. Defense Threat Reduction Agency...signed a contract HDTRA1-08-D-0007-004 of 6 March 2015 under the ‘Cooperative Biological Engagement Program’(CBEP) with Black & Veatch Special Projects Corp...for the implementation of the Technical Assistance Project for the institutions of the Ministry of Defense of Ukraine...” Document 2, p. 1.

<sup>11</sup> Report on the Results of Inspection Regarding Storage Procedures for the Microbial Strain Collection of National Heritage (Property).

<sup>12</sup> “The Institute’s museum possesses a significant collection of human pathogens, which is partially classified as a scientific facility of national heritage.” Document 3, p. 8.

<sup>13</sup> “In April 2017, while working in the laboratory with the museum strain of tick-borne encephalitis virus, an accident occurred, which resulted in an employee becoming infected, indicating an insufficient level of ensuring the biological safety requirements while working with biological material in the institute’s laboratories.” Document 3, p. 5.

<sup>14</sup> “The Institute violates recommended conditions for the storage of virus collection (e.g., in 2017, arboviruses were stored at the temperature of -35°C instead of the required -70°C for at least 4 months).” Document 3, p. 8.

documented information regarding the state of the collection strains,<sup>15</sup> as well as uncertainty of strains' intended purposes.<sup>16</sup>

Q: The U.S. has repeatedly claimed that the purpose of its cooperation with Ukraine is “to reduce and eliminate biological threat”,<sup>17</sup> why has it failed to ensure the biosafety of the facilities involved in the cooperation in Ukraine? How many funds provided by the U.S. were invested in ensuring laboratory biosafety? Have the U.S. cooperation projects in Ukraine been implemented according to U.S. domestic biosafety standards? Has the U.S. ever concealed relevant risks and accidents from the Ukrainian side?

Document 4 (The Project (Program) Registration Card No. 3253-10) shows that, under the CBEP, the U.S. DoD has invested \$31,807,000 (estimated value) in Ukraine, mainly “to ensure rapid response to outbreaks of particularly dangerous diseases in order to safely collect, process, store and transport clinical samples”.<sup>18</sup> The initial investment of the CBEP in Ukraine was about \$2,535,000, and then following investments have been postponed, or increased with the cooperation list amended several times since 2015. And an additional funding of \$29,272,000 was made in 2017.<sup>19</sup>

Q: Why did the U.S. significantly increase its funds in 2017? What areas were the additional investments mainly used for? Did these investments cover the costs of shipping biological samples from Ukraine to the U.S.?

Document 5 (Project Agreement P781, Wild Birds and Avian Influenza Virus, and Risk of Emerging Infections from Insectivorous Bats in Ukraine and Georgia) shows that, the U.S. has conducted several bio-research projects such as P-781 (insectivorous bats) and UP-4 (migratory birds) in Ukraine.

Q: Are U.S. bio-research projects conducted in Ukraine prohibited by domestic laws of the U.S.?

Document 7 (United States Patent No. 8,967,029 B1) indicates that, the U.S. Patent and Trademark Office (USPTO) conferred a patent for a “toxic mosquito aerial release system” in March 2015. The system is designed as an unmanned aerial vehicle for the aerial release of mosquitoes infected with toxic or highly contagious agents and viruses,<sup>20</sup> so as to administer deadly diseases (such as malaria) to wipe out and disable the enemy at a minimal cost.<sup>21</sup> The patent document states that, the system “could later be adapted for military uses should legal restraints be altered or eliminated.”<sup>22</sup> As clarified by the U.S., subsequent investigations confirmed that no such device was constructed.<sup>23</sup>

Q: The U.S. is a State Party to the BWC. Why did the USPTO issue such a patent, which “could later be adapted for military uses”? The U.S. clarified that the patent application was

<sup>15</sup> “The Institute lacks documented information regarding the actual state of the collection strains and their suitability for use, especially given the absence of evidentiary record regarding the need to maintain a large number of test-tubes with different passages of the same strains.” Document 3, p. 8.

<sup>16</sup> “The issue of their intended purpose/use has not been resolved and the accompanying documentation has not been properly formalized.” Document 3, p. 9.

<sup>17</sup> “The purpose of the 2005 Agreement is explicitly to reduce and eliminate the risk of biological weapons development and proliferation.” Response by the United States of America to the request by the Russian Federation for a Consultative Meeting under Article V of the BWC, August 22, 2022, p. 4.

<sup>18</sup> Document 4, p. 1.

<sup>19</sup> Document 4, p. 2.

<sup>20</sup> “With the toxic mosquito aerial release system, large masses of people can be immunized or enemy troops can now be wiped out or rendered useless without having to risk or endanger our own troops.” “For military purposes, the mosquitoes may be used to deliver an agent such as malaria to create sickness, or they could use much more toxic or highly contagious agents and viruses.” Document 7, p. 4.

<sup>21</sup> “It is a way to administrative curative or immunological injection, to administer calmativ agents, or to administer deadly disease to wipe out and disable the enemy at a minimal cost.” Document 7, p. 4.

<sup>22</sup> Document 7, p. 3.

<sup>23</sup> “Subsequent investigation has confirmed that no such device was constructed in the case of this particular patent.” Response by the United States of America to the request by the Russian Federation for a Consultative Meeting under Article V of the BWC, August 22, 2022, p. 9.

filed by a private entity rather than the U.S. government.<sup>24</sup> Nevertheless, did the patent applicant have U.S. military background or receive U.S. official support or assistance during the research process? The U.S. explained that “production of such an invention for use as a weapon would violate the relevant laws implementing the U.S. obligations under the BWC.”<sup>25</sup> Did the U.S. government ever inform the patent applicant of this legal requirement? Has the U.S. Government ever applied similar patents and technologies to military production or uses? The U.S. has repeatedly raised “compliance concerns” to other country’s “bio-research” in its previous Reports of Adherence to and Compliance with Arms Control, Nonproliferation, and Disarmament Agreements and Commitments. By the same logic, does the “bio-research” related to this patent also constitute a “compliance concern”? The Third, Fourth, Sixth, Seventh and Eighth Review Conferences have noted that “experimentation” beyond normal needs is inconsistent with Article I of the BWC.<sup>26</sup> Did the patent-related research cover such experiments?

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<sup>24</sup> “...this one was filed by a private entity and not on the behalf of the United States government.” U.S. Statement to the Article V Consultative Meeting Under the BWC, September 5, 2022, p. 1.

<sup>25</sup> U.S. Statement to the Article V Consultative Meeting Under the BWC, September 5, 2022, p. 2.

<sup>26</sup> “Experimentation involving open-air release of pathogens or toxin harmful to humans, animals and plants that have no justification for prophylactic, protective or other peaceful purposes is inconsistent with the undertakings contained in Article I.” Additional understandings and agreements reached by previous Review Conferences relating to each article of the Convention (BWC/CONF.IX/PC/5), January 10, 2022, p. 4.