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THE FUTURE ROLE OF CONFIDENCE BUILDING MEASURES (CBMs)

Working Paper submitted by The Netherlands

SUMMARY

1. While considering the possible incorporation of CBMs into a legally binding instrument, it is important to distinguish between CBMs (politically binding) and legally binding measures to be included in the instrument.
2. A legally binding instrument may include both mandatory measures as well as voluntary measures.
3. CBMs are currently the only tools that provide some transparency and confidence between States Parties. Therefore existing CBMs need to be maintained untouched until a future legally binding instrument enters into force.
4. Some CBMs could be incorporated into a framework of mandatory measures within a legally binding instrument (such as CBMs A, F and G).
5. Other CBMs could be incorporated into a framework of voluntary measures within a legally binding instrument (such as CBMs B, D and E).
6. Furthermore, some CBMs may better remain CBMs (such as CBM C). The future role of CBMs that might not become part of a legally binding instrument, however, should better be left for consideration of the Fourth Review Conference. If this Conference considers them still useful, these CBMs will continue to apply for all States Parties. The Conference should also consider whether any amendments are necessary to the format and language of the CBM requirements.
7. In case a State Party decided not to ratify a future legally binding instrument, all existing CBMs remain politically binding for this State Party.

OBJECTIVE

The objective of the Ad Hoc Group is to consider appropriate measures, including possible verification measures, and draft proposals to strengthen the BTWC, to be included, as appropriate, in a legally binding instrument. In this context, the Ad Hoc Group shall, *inter alia*, consider (second tick of the AHG's mandate):

- The incorporation of existing and further enhanced confidence building and transparency measures, as appropriate, into the regime.

INTRODUCTION

The Second Review Conference in 1986 agreed to implement four Confidence Building Measures (CBMs) in order to provide or enhance openness and transparency of activities relevant to the Convention. A subsequent ad hoc meeting of scientific and technical experts from States Parties was held in 1987 in order to finalize the modalities for the exchange of information and data.

With a view to promoting increased participation and strengthening further the exchange of information the Third Review Conference in 1991 agreed to improve and extend the existing CBMs. Furthermore, the Third Review Conference decided to add three new CBMs.

Contrary to expectations there was limited participation in the exchange of data in the framework of CBMs. The response rate was disappointing, in numbers of return (less than 50% of all States Parties have provided a CBM information return since 1987) as well as regarding accuracy and detail.

One of the main causes for the disappointing response rate was that, although politically binding, States Parties are not legally required to submit CBM returns. In this respect, the Special Conference of States Parties to the BTWC, held in September 1994, decided to take further steps to strengthen the effectiveness and improve the implementation of the Convention. It established an Ad Hoc Group, open to all States Parties, which was mandated to consider, *inter alia*, the incorporation of existing and further enhanced CBMs into a legally binding instrument.

LEGALLY BINDING / POLITICALLY BINDING MEASURES

While considering the possible incorporation of CBMs into a legally binding instrument, it is important to distinguish between CBMs (which are by definition politically binding measures) and legally binding measures to be included in the instrument. However, a legally binding instrument could include both mandatory measures (e.g. declarations) as well as voluntary measures (e.g. multilateral information sharing).

A brief description and assessment of the seven existing CBMs will be given below. The CBMs are assessed in the light of the following questions:

- Which (elements of) CBMs could be incorporated into a legally binding instrument as (part of a wider framework of) mandatory measures?
- Which (elements of) CBMs could be incorporated into a legally binding instrument as (part of a wider framework of) voluntary measures?
- Which (elements of) CBMs would appear to be difficult to become part of a legally binding instrument and would better remain CBMs?

Improvement of those (elements of) CBMs that do not become part of a legally binding instrument would be a more appropriate subject to consider (examine and evaluate) at the Fourth Review Conference in 1996.

CONFIDENCE BUILDING MEASURE A

Part 1: Exchange of data on research centres and laboratories

Exchange of data, including name, location, scope and general description of activities, on research centres and laboratories that meet very high national or international safety standards established for handling, for permitted purposes, biological materials that pose a high risk or specialize in permitted biological activities directly related to the Convention.

This CBM might be transferred into a wider framework of mandatory declarations covering a broad range of BW-relevant activities. Identification of high containment facilities might be one of the triggers on the basis of which facilities could be selected for declaration. For that purpose the language should be made more precise. It is necessary to have a clear idea of the type of installation which would be the focus of mandatory measures.

This CBM could then be incorporated into a legally binding instrument as a mandatory measure.

Part 2: Exchange of information on national biological defence research and development programmes

In the interest of increasing the transparency of national research and development programmes on biological defence, the States Parties will declare whether or not they conducted such programmes. States Parties agreed to provide, annually, detailed information on their biological defence research and development programmes including summaries of objectives and costs of effort performed by contractors and in other facilities. If no biological defence research and development programme is being conducted, a "null" report will be provided.

This CBM might be transferred into a wider framework of mandatory declarations covering a broad range of BW-relevant activities, which should not be limited to research and

development. Military microbiology might be one of the triggers on the basis of which facilities could be selected for declaration. For that purpose the language should be made more precise.

This CBM could then be incorporated into a legally binding instrument as a mandatory measure.

CONFIDENCE BUILDING MEASURE B

Exchange of information on outbreaks of infectious diseases and similar occurrences caused by toxins

Exchange of information on outbreaks of infectious diseases and similar occurrences caused by toxins, and on all such events that seem to deviate from the normal pattern as regards type, development, place, or time of occurrence. The information provided on events that deviate from the norm will include, as soon as it is available, data on the type of disease, approximate area affected, and number of cases.

Although this CBM yields relevant information for the Convention, it cannot easily be incorporated into a legally binding instrument as a mandatory measure as identification of unusual outbreaks of infectious diseases is difficult given the range of uncertainties involved.

It might, however, be transferred into a wider framework of voluntary measures of a legally binding instrument in order to give States Parties the opportunity to provide the inspectorate information on outbreaks of infectious diseases in order to:

- prevent suspicion of violating the Convention by providing openness;
- request the inspectorate to investigate the cause of the unusual outbreak of disease.

Perhaps the WHO could provide specific information to the Conference of States Parties on certain unusual outbreaks of infectious diseases.

If a future legally binding instrument will include a measure for the investigation of unusual outbreaks of disease, the incorporation of CBM B into a legally binding instrument as a mandatory measure might be considered. For that purpose the scope of this CBM should be more focussed.

CONFIDENCE BUILDING MEASURE C

Encouragement of publication of results and promotion of use of knowledge

Encouragement of publication of results of biological research directly related to the Convention, in scientific journals generally available to States Parties, as well as promotion of use for permitted purposes of knowledge gained in this research.

It would appear to be difficult to transfer this CBM into a legally binding instrument. One of the problems is defining which publications of results of biological research are directly related to the Convention. Most relevant publications are already publicly available.

Secondly, if no further selection and precision is applied, this measure might yield too large an amount of information to be effective as part of the instrument.

It would be better to leave this measure in the framework of CBMs. The Fourth Review Conference should further consider whether any amendment is necessary to the format and language of this CBM.

CONFIDENCE BUILDING MEASURE D

Active promotion of contacts

Active promotion of contacts between scientists, other experts and facilities engaged in biological research directly related to the Convention, including exchanges and visits for joint research on a mutually agreed basis.

Contacts between scientists and exchange visits on a voluntary base, with mutual agreement of both facilities (States Parties) could contribute to assisting States Parties in their efforts to implement the legally binding instrument and to improve national biosafety standards. Furthermore, personnel of a future inspectorate could assist States Parties to implement the legally binding instrument.

This CBM might be incorporated into the instrument as part of a wider framework of voluntary measures. The usefulness of this measure might be improved if the language is further precised in order to increase the relevance of this measure for the BTWC.

CONFIDENCE BUILDING MEASURE E

Declaration of legislation, regulations and other measures

As an indication of the measures which they have taken to implement the Convention, States Parties shall declare whether they have legislation, regulations or other measures.

(a) *to prohibit the development, production, stockpiling, acquisition or retention of microbial or other biological agents, or toxins, weapons, equipment and means of delivery, specified in Article I of the Convention, within their territory or anywhere under their jurisdiction or control;*

(b) in relation to the export or import of microorganisms pathogenic to man, animals and plant or of toxins in accordance with the Convention.

It might be difficult to incorporate this CBM into a legally binding instrument. This measure might yield too large an amount of information to be effective as part of the instrument, and it may therefore be better to leave this measure largely to the framework the CBMs. However, it may be possible to incorporate some information on national regulations directly connected with the national implementation of the Convention and a future legally binding instrument in any declarations measure within a legally binding instrument. If focussed, this CBM may be incorporated into a legally binding instrument as a voluntary measure.

CONFIDENCE BUILDING MEASURE F

Declaration of past activities in offensive and/or defensive biological research and development programmes

In the interest of increasing transparency and openness, States Parties shall declare whether or not they conducted any offensive and/or defensive research and development programmes since 1 January 1946.

This CBM might certainly be transferred into a wider framework of mandatory declarations covering a broad range of BW-relevant activities. Past activities in biological defence might be one element of "military microbiology" to be declared under a future legally binding instrument. This part of CBM F might be incorporated into a legally binding instrument as a mandatory measure, as part of military microbiology to be declared.

Mandatory declaration of past offensive BW-programmes is more difficult to achieve. Although such information is highly relevant, States Parties might hesitate to declare past activities in offensive programmes. This problem may be overcome if the declaration requirement was not explicitly divided into information on "defensive" and "offensive" elements. Instead, a more generic/descriptive account could be required, titled, e.g. "declaration of past BW related programmes".

CONFIDENCE BUILDING MEASURE G

Declaration of vaccine production facilities

To further increase the transparency of biological research and development related to the Convention and to broaden scientific and technological knowledge as agreed in Article X, each State Party will declare all facilities, both governmental and non-governmental, within its territory or under its jurisdiction or control anywhere, producing vaccines licensed by the State Party for the protection of humans.

This CBM might be transferred into a wider framework of mandatory declarations covering a broad range of BW-relevant activities. This CBM might be an element of the provisions on declaration of production facilities under a future legally binding instrument. The mandatory declaration could be extended to include veterinary vaccine production facilities.

This CBM might be incorporated into the instrument as a mandatory measure. A more precise definition and scope of this measure would, however, be required in order to avoid the pitfalls relating to confidential commercial information.

RELATIONSHIP BETWEEN CBMs AND A FUTURE LEGALLY BINDING INSTRUMENT

States Parties will need to consider the possible relationship between the existing CBMs and a future legally binding instrument. In this respect, a two tier system seems inevitable, because:

- CBMs are currently the only tools that provide some transparency and confidence between States Parties. Therefore existing CBMs need to be maintained until a legally binding instrument enters into force;
- The future role of CBMs that might not become part of a legally binding instrument, however, should better be left for consideration of the Fourth Review Conference. If this Conference considers them still useful, these CBMs will continue to apply for all States Parties. The Conference should also consider whether any amendments are necessary to the format and the language of the CBMs requirements;
- In case a State Party decided not to ratify a future legally binding instrument, all existing CBMs remain politically binding for this State Party.
