

**FIFTH REVIEW CONFERENCE 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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PROPOSALS

Working paper by the United States of America

ARTICLE I

1. The Conference notes the importance of Article I as the provision which defines the scope of the Convention. The Conference reaffirms its support for the provisions of this Article.
2. The Conference reaffirms that the Convention prohibits the development, production, stockpiling, other acquisition or retention of microbial or other biological agents or toxins harmful to plants and animals, as well as humans, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes.
3. The Conference reaffirms that the use by the States Parties, in any way and under any circumstances, of microbial or other biological agents or toxins, that is not consistent with prophylactic, protective or other peaceful purposes, is effectively a violation of Article I of the Convention.
4. The Conference condemns the recent use of anthrax as a tool of terrorism and finds these acts reprehensible.
5. The Conference reaffirms the undertaking in Article I never in any circumstances to develop, produce, stockpile or otherwise acquire or retain weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict, in order to exclude completely and forever the possibility of such use.
6. The Conference also reaffirms that the Convention unequivocally covers all microbial or other biological agents or toxins, naturally or artificially created or altered, as well as their components, whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes.
7. The Conference, conscious of apprehensions arising from relevant scientific and technological developments, *inter alia*, in the fields of microbiology, biotechnology, molecular biology, genetic engineering, and any applications resulting from genome studies,

and the possibilities of their use for purposes inconsistent with the objectives and the provisions of the Convention, reaffirms that the undertaking given by the States Parties in Article I applies to all such developments.

8. The Conference notes that experimentation involving open-air release of pathogens or toxins harmful to humans, animals or plants that have no justification for prophylactic, protective or other peaceful purposes is inconsistent with the undertakings contained in Article I.

9. The Conference appeals through the States Parties to their scientific communities to lend their support only to activities that have justification for prophylactic, protective and other peaceful purposes, and refrain from undertaking or supporting activities which are in breach of the obligations deriving from provisions of the Convention.

10. The Conference emphasizes, once more, the vital importance of full implementation by all States Parties of all the provisions of the Convention, especially Articles I, II, and III. The Conference calls upon non-compliant BWC States Parties to terminate their offensive biological weapons programmes and comply fully with their obligations. The Conference also calls upon States Signatories pursuing offensive biological weapons programmes to terminate these programmes. The Conference agrees that the application of the Convention is in the interest of all States Parties and that any non-compliance with its provisions could undermine confidence in the Convention.

ARTICLE III

The Conference recognizes the key importance of Article III and welcomes the statements which States that have acceded to the Convention have made to the effect that they have not transferred agents, toxins, weapons, equipment or means of delivery as specified in Article I of the Convention, to any recipient whatsoever and have not furnished assistance, encouragement or inducement to any State, group of States or international organizations to manufacture or otherwise acquire them. The Conference affirms that Article III is sufficiently comprehensive to cover any recipient whatsoever at international, national or subnational levels.

The Conference notes that a number of States Parties stated that they have taken concrete measures to give effect to their undertakings under this Article and in this context also notes statements made by States Parties at the Conference about the legislative or administrative measures they have taken since the Fourth Review Conference. The Conference calls for appropriate measures by all States Parties. Transfers relevant to the Convention should be authorized only when the intended use is for purposes not prohibited under the Convention.

The Conference notes that national export licensing measures should be an effective means of implementing obligations under Article III to avoid the possibility of inadvertent supply of any item, which could be used in a BW programme.

The Conference reiterates that the provisions of this Article should not be used to impose restrictions and/or limitations on the transfers for purposes consistent with the objectives and purposes of the Convention of scientific knowledge, technology, equipment and materials under Article X.

The Conference stresses that terrorists or terrorist groups must be prevented from acquiring, through transfers, biological agents, toxins, weapons, equipment or means of delivery.

MEASURES TO STRENGTHEN ARTICLE IV

I. National Criminal Legislation Supplemented by an Enhanced Extradition Regime

1. The Conference reaffirms the commitment of States Parties to take the necessary national measures, in accordance with their constitutional processes, to ensure the prohibition and prevention of the development, production, stockpiling, acquisition, or retention of the biological agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention anywhere within their territory, under their jurisdiction or under their control, in order to prevent their use for purposes contrary to the Convention.

2. The Conference encourages States Parties to enact measures to ensure suspected or known terrorist organizations or groups are precluded from acquiring biological agents or toxins specified in Article I of the Convention anywhere within their territory, under their jurisdiction or under their control. Noting the recent horrific increase in the magnitude of terrorist attacks and the use of anthrax for terrorist purposes, the Conference stresses the need for a prompt worldwide response to the rapidly increasing threat of biological attacks by non-state actors and encourages States Parties that may not yet have done so to enact such measures immediately, in accordance with their constitutional processes.

3. The Conference urges all States Parties to enact national criminal legislation as part of their implementation of Article IV of the BWC. The Conference recommends that such legislation include provisions making it a criminal offense, punishable by imprisonment and fines, for anyone to conduct any activity prohibited by Articles I, II, or III of the BWC.

4. The Conference calls on States Parties to commit to enhance their ability to prosecute or extradite individuals for biological weapons offenses. The Conference recommends that this be achieved by acting to extend application of currently available bilateral extradition agreements to biological weapons offenses by amending existing agreements, practice or procedure, or passing legislation, as appropriate, or, where possible, by creating new bilateral agreements for extradition of such individuals.

5. The Conference urges States Parties to consider national legislation that requires those who possess particularly dangerous biological agents to report their possession to a competent governmental authority.

II. Standards for Security of Pathogenic Microorganisms

6. The Conference urges States Parties to commit themselves to adopt and implement strict national regulations for access to particularly dangerous microorganisms, including regulations governing domestic and international transfers.

7. The Conference encourages States Parties promptly to report internationally any adverse events involving the handling of pathogenic agents, such as accidental release of a highly infectious pathogen from containment.

8. The Conference recommends that States Parties consider possible national restrictions on who may possess or acquire specific organisms that are categorized as particularly dangerous and where they may be handled.

III. Genetic Engineering Oversight

9. The Conference encourages States Parties to commit themselves to sensitize their scientists working in the field of genetic modification to possible biological weapons implications of such work and to explore what type of national oversight might be appropriate.

IV. Professional Code of Conduct

10. The Conference encourages States Parties to commit to support development and adoption of a code of conduct for scientists working with pathogenic microorganisms. The Conference recommends that such a code include, *inter alia*, a statement that scientists will use their knowledge and skills for the advancement of human welfare and will not conduct any activities directed toward use of microorganisms or toxins for hostile purposes or in armed conflict.

ARTICLE V

1. The Conference notes the importance of Article V and reaffirms the obligation assumed by States Parties to consult and cooperate with one another in solving any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention. The Conference reiterates its appeal to States Parties made at the Third and Fourth Review Conferences to make every possible effort to solve any problems which may arise in relation to the objective of, or in the application of the provisions of the Convention with a view towards encouraging strict observance of the provisions subscribed to. The Conference notes that this Article provides an appropriate framework for resolving any such problems, and reaffirms that any State Party which identifies such a problem should, as a rule, use these procedures to address and resolve it.

2. The Conference also reviewed the operation of the procedures to strengthen the implementation of the provisions of Article V which were adopted in the Final Declaration of the

Third Review Conference and which built on the agreements reached at the Second Review Conference. The Conference notes that the implementation provisions were satisfactorily invoked since the Fourth Review Conference and calls on any State Party which identifies a problem arising in relation to the objective of, or in the application of the provisions of the Convention to use these procedures, if appropriate, to address and resolve it.

3. The Conference reaffirms that consultation and cooperation pursuant to this Article may also be undertaken through appropriate international procedures within the framework of the United Nations and in accordance with its Charter.

4. The Conference stresses the need for all States Parties to deal effectively with compliance issues. The Conference calls upon non-compliant BWC States Parties to terminate their offensive biological weapons programmes and comply fully with their obligations. In this connection, States Parties agree to clarify and resolve compliance concerns by mutual consent.

The Conference endorsed the following procedures:

Any State Party may request any other State Party to clarify and resolve any matter which may cause doubt about compliance with the BWC or gives rise to concerns about a related matter which may be considered ambiguous.

The State Party receiving the request shall respond promptly and fully, explaining how the information provided resolves the matter.

States Parties may arrange among themselves by mutual consent for exchanges of information, voluntary visits or any other procedures to clarify and resolve any matter which may cause doubt about compliance or gives rise to a concern about a related matter which may be considered ambiguous. Such arrangements shall not affect the rights and obligations of any Party under other provisions of the Convention.

5. The Conference stresses its determination to strengthen effectiveness and improve the implementation of the Convention through establishment of a procedure for international investigations of suspicious disease outbreaks and/or alleged biological incidents. Further, the Conference endorsed a procedure for investigation of outbreaks that appear to be related to illicit BW activities or alleged use:

Any State Party may request any other State Party to clarify and resolve concerns about an outbreak of disease that is potentially related to illicit BW activities or alleged use of BW;

Any State Party may request an investigation to resolve a concern regarding a suspicious outbreak of disease or alleged BW use in violation of the Biological Weapons Convention or the BW use provisions of the 1925 Geneva Protocol;

When requested, a State Party shall be required to provide access to the site of the outbreak on a timely basis;

Any investigation would be conducted by an international team, drawn as appropriate from a list of national experts nominated by States Parties, and commissioned by the United Nations Secretary-General, in close consultation with the President of the United Nations Security Council, to conduct the investigation;

All access within an area of investigation shall be controlled by the investigated State Party. States Parties agree to cooperate with the investigating team in addressing the stated concern and, if requested access is not granted, to make every reasonable effort to clarify the concern that generated the investigation;

The team shall prepare a factual report that would be distributed by the United Nations Secretary-General to all States Parties.

6. In accordance with the decision of the Fourth Review Conference, the Conference reviewed the effectiveness of the Confidence-Building Measures (CBMs) as agreed in the Final Declaration of the Third Review Conference and reaffirmed at the Fourth Review Conference. The Conference notes the continued importance of the Confidence Building Measures agreed upon at the Second and Third Review Conferences, as well as the modalities elaborated by the Ad Hoc Meeting of Scientific and Technical Experts from States Parties to the Convention, held in 1987.

7. The Conference notes the background information document prepared by the United Nations Secretary-General providing data on the participation of States Parties in the agreed Confidence-Building Measures since the Fourth Review Conference. The Conference welcomes the exchange of information carried out under the Confidence-Building Measures, and notes that this has contributed to enhancing transparency and building confidence. The Conference recognizes that participation in the Confidence-Building Measures since the last Review Conference has not been universal, and that not all responses have been prompt or complete. In this regard, the Conference urges all States Parties to complete full and timely declarations in the future.

ARTICLE VI

1. The Conference notes that the provisions of this Article have not been invoked.

2. The Conference reaffirms the importance of Article VI, which, in addition to the procedures contained in Article V, provides that any State Party which finds that any other State Party is acting in breach of its obligations under the Convention may lodge a complaint with the United Nations Security Council. The Conference emphasizes the provision of Article VI that such a complaint should include all possible evidence confirming its validity. It stresses that, as in the case of the implementation of all the provisions and procedures set forth in the Convention, the procedures foreseen in Article VI should be implemented in good faith within the scope of the Convention.

3. The Conference invites the Security Council to consider immediately any complaint lodged under Article VI and to initiate any measures it considers necessary for the investigation of the complaint in accordance with the Charter. The Conference reaffirms the undertaking of each State Party to cooperate in carrying out any investigations which the Security Council may initiate.

4. The Conference recalls, in this context, United Nations Security Council resolution 620 (1988), which at the time encouraged the United Nations Secretary-General to carry out prompt investigations, in response to allegations brought to its attention by any Member State concerning the possible use of chemical and bacteriological (biological) or toxin weapons that could entail a violation of the 1925 Geneva Protocol or of any other applicable rule of international treaty or customary law. The Conference also recalls the technical guidelines and procedures contained in Annex I of United Nations document A/44/561 to guide the United Nations Secretary-General on the timely and efficient investigation of reports of the possible use of such weapons. The States Parties reaffirm their agreement to consult, at the request of any State Party, regarding allegations of use or threat of use of bacteriological (biological) or toxin weapons and to cooperate fully with the United Nations Secretary-General in carrying out such investigations. The Conference stresses that in the case of alleged use the United Nations is called upon to take appropriate measures expeditiously, which could include a request to the Security Council to consider action in accordance with the Charter.

5. The Conference invites the Security Council to inform each State Party of the results of any investigation initiated under Article VI and to consider promptly any appropriate further action which may be necessary.

6. The Conference notes that the procedure outlined in this Article is without prejudice to the prerogative of the States Parties to the Convention to consider jointly the cases of alleged non-compliance with the provisions of the Convention and to make appropriate decisions in accordance with the Charter of the United Nations and applicable rules of international law.

ARTICLE VII

1. The Conference notes with satisfaction that these provisions have not been invoked.

2. The Conference reaffirms the undertaking made by each State Party to provide or support assistance in accordance with the Charter of the United Nations to any Party to the Convention which so requests, if the Security Council decides that such Party has been exposed to danger as a result of violation of the Convention.

3. The Conference takes note of the desires expressed that, should a request for assistance be made, it be promptly considered and an appropriate response provided. The Conference endorses that States Parties commit to provide coordinated rapid response teams to provide appropriate rapid emergency medical and investigative assistance. In this context, pending coordination of a decision by the United Nations Security Council, timely emergency assistance could be provided by

States Parties, if requested.

4. The Conference endorses that in the event this Article might be invoked, if appropriate, intergovernmental organization such as the World Health Organization (WHO), may play a coordinating role in providing assistance.
5. The Conference urges States Parties to commit to support the WHO's efforts to strengthen the global system for disease surveillance and its capabilities to respond in a timely fashion to assist in controlling disease outbreaks.

ARTICLE VIII

This Article addresses the complementary nature of the BWC and the Geneva Protocol.

1. The Conference reaffirms the importance of Article VIII and stresses the importance of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925.
2. The Conference acknowledges that the 1925 Geneva Protocol, by prohibiting the use of bacteriological methods of warfare, and the Biological and Toxin Weapons Convention complement each other.
3. The Conference reaffirms that nothing contained in the Biological Toxin Weapons Convention shall be interpreted as in any way limiting or detracting from the obligations assumed by any State under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare.
4. Noting the actions in support of the Protocol taken by the Security Council and General Assembly of the United Nations, through Security Council Resolution 620 (1988) and General Assembly Resolutions 41/58 C, 42/37 C, 43/74 A, 44/115 B and 45/57 C and recalling the solemn reaffirmation of the prohibition as established in the Protocol, issued by the Conference of the States Parties to the 1925 Geneva Protocol and other interested States held in Paris from 7 to 11 January 1989, the Conference appeals to all States Parties to the Geneva Protocol to fulfill their obligations assumed under the Protocol and urges all States not yet Parties to the 1925 Geneva Protocol to accede to it without delay.
5. The Conference stresses the importance of the withdrawal of all reservations to the 1925 Geneva Protocol related to the Biological and Toxin Weapons Convention.
6. The Conference welcomes the actions which States Parties have taken to withdraw their reservations to the 1925 Geneva Protocol related to the Biological and Toxin Weapons Convention, and calls upon those States Parties that continue to maintain pertinent reservations to withdraw those reservations, and to notify the Depositary without delay.

7. The Conference notes that reservations concerning retaliation, through the use of any of the objects prohibited by the Biological and Toxin Weapons Convention, even conditional, are totally incompatible with the absolute and universal prohibition of the development, production, stockpiling, acquisition and retention of bacteriological (biological) and toxin weapons, with the aim to exclude completely and forever the possibility of their use.

ARTICLE IX

1. The Conference reaffirms that Article IX identifies the recognized objective of effective prohibition of chemical weapons.

2. The Conference welcomes the fact that the Convention entered into force on 29 April 1997 and that 143 instruments of ratification or accession have now been deposited with the United Nations.

3. The Conference calls upon all States that have not yet done so to ratify or accede to the Convention without delay.

ARTICLE X

The Conference notes the importance of Article X and calls upon States Parties to affirm their obligations under Article X of the Convention. The Conference welcomes the statements of those countries which have participated with other States Parties in the exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes.

The Conference urges all States Parties to the extent possible under current national and international legislation to promote international cooperation and exchange with States Parties for peaceful purposes.

The Conference, recognizing the danger of cooperating and exchanging information with terrorist groups or organizations, therefore calls upon States Parties not to further the development and application of scientific discoveries in the field of bacteriology (biology) even for peaceful purposes for terrorist groups or organizations.

The Conference recognizes the surveillance and response capabilities of the World Health Organization and its logical association with Convention goals.

While the Conference realizes that this article was not meant to impose restrictions and/or limitations on exchanges for purposes consistent with the objectives and provisions of the Convention on scientific knowledge, technology, equipment and materials, the Conference is also assured that this article does not impose any obligation mandating transfers between States Parties.

The Conference recognizes that existing institutional ways and means could be utilized to ensure multilateral cooperation in order to promote international cooperation in peaceful activities in such areas as medicine, public health and agriculture in a manner that is consistent with the spirit of the Convention.

ARTICLE XII

1. The Conference decides that States Parties will meet between the Fifth Review Conference and the Sixth Review Conference to:

(a) Consider and assess progress by BWC States Parties in implementing the new measures adopted at the Fifth Review Conference; and

(b) Consider new measures or mechanisms for effectively strengthening the BWC.

2. The Conference decides that a Sixth Review Conference shall be held in Geneva at the request of the majority of States Parties, or in any case, not later than 2006.

3. The Conference decides that the Sixth Review Conference shall consider, *inter alia*,

- The Sixth Review Conference in 2006 should consider:

- Progress on measures and mechanisms agreed to at the Fifth Review Conference, and reviewed in the intervening period;
- The impact of scientific and technological developments relating to the Convention;
- Efforts to enhance universality of the Convention, pursuant to Article XIV of the Convention;
- The relevance of the provisions of, and the implementation of the Chemical Weapons Convention on the effective implementation of the Biological and Toxin Weapons Convention, duly taking into account the degree of universality attained by such conventions at the time of the Sixth Review Conference;
- The effectiveness of confidence-building measures as agreed at the Second and Third Review Conferences and reaffirmed at the Fourth Review Conference.

4. The Review Conference recommends that conferences of States Parties to review the operation of the Convention should be held at least every five years.

ARTICLE XIV

1. The Conference notes with satisfaction that eight States have acceded to or ratified the Convention since the Fourth Review Conference.
2. The Conference calls upon States which have not yet ratified or acceded to the Convention to do so without delay, thus contributing to the achievement of universal adherence to the Convention.
3. In this connection, the Conference requests States Parties to encourage universality of the Convention.
4. The Conference particularly welcomes regional initiatives that would contribute to universality of the Convention.
5. The Fifth Review Conference appeals to those States Parties to the Biological and Toxin Weapons Convention which have taken part in the Conference to participate in the implementation of provisions contained in the Final Declaration of this Conference.

ARTICLE XV

The Conference notes the importance of this Article as well as the importance of the legal status of the languages of the Convention and the United Nations system.
